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. III.

PRINTED BY AUTHORITY.

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MANAGERS

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HON. L. W. COLLINS.

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FORTY-SECOND DAY.

ST. PAUL, MINN., Tuesday Mar. 7, 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, Bonniwell, Buck, C. F., Campbell, Castle, Clement, Crooks, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., Langdon, McLaughlin, Mealey, Morrison, Powers, Rice, Shaller, Simmons, 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 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 offered before proceeding with the regular order of business?

Mr. Manager COLLINS. Mr. President, I would like to be heard a moment on this question of printing. We have here the journal of last Thursday, the fortieth day. The journal of Friday is not here, and I would suggest that some action with reference to it be taken by the Senate—perhaps that the Sergeant-at-Arms be sent down with instructions to expedite the printing of it, so as to get it here as soon as possible. It is almost impossible for counsel to discuss this case intelligently, without the printed evidence, and we ought to have it here. It ought to have been here to-day; there is no reason for the delay.

The PRESIDENT *pro tem.* I understood this morning from the reporter that it was already printed and that he had seen it.

Mr. Manager COLLINS. The reporter has also informed me that it is already printed.

Senator GILFILLAN, C. D. I would inquire what are the documents which have been brought into the Senate this morning.

Mr. Manager COLLINS. They are the journals of last Thursday, the fortieth day; Friday's testimony we have not had.

The PRESIDENT *pro tem.* Have those been examined to ascertain whether or not the journals for Friday are in the bottom of the package?

Mr. ARCTANDER. No, sir; the printer has informed me that the journals would not be here until about noon. I have just come from there.

The PRESIDENT *pro tem.* What is the pleasure of the Senate with reference to the request of counsel?

Senator GILFILLAN, C. D. I see there is only one officer here this

morning; we have three. I would inquire where the other two are, Mr. Mellen and Mr. Bertram.

The PRESIDENT *pro tem.* I am not able to state. Do you know, Mr. Rice, where the sergeant-at-arms is?

Senator RICE. I understand that the sergeant-at-arms was sent up to Beaver Falls.

Mr. ARCTANDER. To Marshall.

Senator RICE. I understood that he was sent there for witnesses, and that he has not yet returned.

Senator GILFILLAN, C. D. Where is Mr. Bertram?

Senator MEALEY. Mr. Bertram could not be here to-day.

Senator CAMPBELL. Is it not a fact that the secretary of the Senate and the counsel for the respondent were to telegraph to the sergeant-at-arms at Marshall on Friday last? Was that done?

Mr. ARCTANDER. Yes, sir; but it takes two days for him to come down from Marshall, and he could not be here before to-day at noon. There were no trains down from there on Saturday after the telegram reached him, so that he could get through. The train connections are very poor.

The PRESIDENT *pro tem.* Mr. Arctander, are you prepared to take up the testimony of Mr. Hillman this morning?

Mr. ARCTANDER. Yes, sir.

The PRESIDENT *pro tem.* I suppose that will be the first thing in order?

Mr. ARCTANDER. We will call Mr. Hillman.

G. N. HILLMAN

Sworn as a witness on behalf of the respondent, testified:

Examined by Mr. ARCTANDER.

Q. What is your occupation?

A. Short-hand reporting.

Q. You may state whether or not you were the short-hand reporter who took the testimony of Judge Severance, and of Robert W. Coleman, before the judiciary committee of the House of Representatives this last winter, upon the preliminary investigation in this matter.

A. I was.

Q. Have you got the minutes of the testimony of those two men, taken before that committee?

A. I have.

Q. Did you take the testimony of Mr. Hunt and of Mr. Drew?

A. No, sir; I did not.

Q. Who took it?

A. It was taken by a younger brother.

Q. Where is he?

A. He is at Stillwater.

Q. Is he in health, or is he sick?

A. Well, I received a letter from him a day or two ago, stating that he was not well,—had been sick for some time.

Q. You have not the record of Drew's and Hunt's testimony?

A. I have his record here, but I am not sufficiently familiar with his hand-writing——

Q. Well, you would not know whether they were correct or not,—so you could not testify to them?

A. No, sir, I would not.

Q. I will ask you to turn to your minutes,—you took the minutes on the spot, did you, at the time the testimony was given, in shorthand?

A. Yes.

Q. Are those the original minutes of the testimony of Judge Severance and Coleman,—those you have in your hands?

A. Yes, sir.

Q. Now, I will ask you to turn to the minutes of the testimony of Judge Severance, in regard to the time when he came to New Ulm, the day before the Gezike case was tried, and found the Judge at New Ulm, on that occasion; I will ask you to state, after examining your minutes, whether or not, according to your minutes, Judge Severance testified before the judiciary committee at that time, that he "found the Judge sitting in an old barn back of" some building.

A. [Reading.] "Back of somebody's building."

Q. Those were the words he used, according to your minutes?

A. Yes, sir.

Q. Are those minutes correct?

A. I believe them to be so. I have no recollection of the testimony.

Senator CAMPBELL. Let us understand. Did he say that he did find him in an old barn, or simply that he found him back of some old building?

Mr. ARCTANDER. Read the whole thing there.

The WITNESS. [Reading.] "But we were very anxious to try the case. I went around looking for Judge Cox; I understood he was drunk. I found him sitting in an old barn, back of somebody's building, pretty thoroughly intoxicated."

Q. Now, I will ask you to turn to the testimony of Robert W. Coleman. I will ask you to state whether or not Coleman testified before the judiciary committee, in regard to the Renville county term, according to your minutes, as follows:

Q Do you mean to say that he was in this state while upon the bench?
A. Yes, sir.

And further, immediately following that:

Q. Well, what evidence did he give of being in that state?
A. Well, his movements, and the motions of the man and his actions were not in accordance with those of a sober man—such as hilarity, an extreme degree of hilarity which he exercised while upon the bench, and the use of loud, boisterous language and conduct. His conduct was very loud and boisterous, and he exhibited the results of intoxicating liquor.

Mr. Manager DUNN. Mr. President, I wish to make an objection to that manner of obtaining this evidence. I understand the rule to be that the witness can testify only to that which he recollects of his own knowledge. He may refresh his memory, as a matter of course, from any memorandum that he made at the time, but he cannot testify from the minutes themselves. The question asked the witness is, does it appear from your minutes? These minutes are no better than any

other memorandum made by anybody else at the time. He was not a sworn officer, and there is no sanctity or authenticity attaching to his minutes more than to the minutes of anybody else made at that time. If the witness has any recollection as to what anybody testified there, that is, of course, proper evidence; but I do not understand that it is proper for him to testify as to what is in his minutes.

Mr. ARCTANDER. I do not know whether it is competent or not, but certain it is that this is allowed in all courts; and if you will turn to the proceedings in the Sherman Page case, I think you will find that the same thing was there allowed, and without objection. The reporter read from his minutes as to what the testimony was—not even in the manner proper with regard to impeachments, after the question whether such and such testimony was given had been asked, but he was allowed to read, from his original minutes, whole pages of the testimony taken before the judiciary committee.

The President *pro tem.* I think that has been the practice here in this trial since it began; that the reporters have been called upon, from time to time, to read from their minutes.

Mr. ARCTANDER. We see it done every day in the courts of justice.

Mr. Manager DUNN. The President will bear in mind that these reporters are sworn officers of the court. The reporters before the judiciary committee were simply accommodation officers—not sworn, but simply individuals employed by the judiciary committee of the House of Representatives, in order to economize time, to assist them in taking evidence. They were neither officers of the House nor of the Senate, and, therefore, the evidence that the gentleman would give from his minutes would not come at all within the rule governing the minutes of a sworn officer, as in the case of a short-hand reporter, who is appointed by the court, and sworn to do his duty.

MR. ARCTANDER. That is the reason why I asked him whether his minutes were correct. Had he been a sworn officer I should not have asked him that at all.

Mr. Manager DUNN. I do not object to the witness testifying so far as his recollection serves him, but you cannot put in minutes of testimony taken by him, and claim that his minutes are evidence, and that is the effect of this style of examination. The question is, does so and so appear from your minutes? That is what we object to. The witness can testify what Judge Severance swore to, or what Mr Coleman swore to, if he has any recollection of it; but, if he has not, his evidence, based upon minutes taken at the time, is better than——

Mr. ARCTANDER. That is better than recollection, certainly.

Mr. Manager DUNN. No, he has no right to do it; he may look at them of course; but, if he has no recollection apart from his memorandum, the evidence is not competent.

The PRESIDENT *pro tem.* I think Mr. Dunn is right as to that.

[To the witness.] You may refresh your memory from your notes, and then testify as to what your recollection is.

By Mr ARCTANDER.

Q. Look at your memorandum and state, after refreshing your recollection from it, whether Mr. Coleman did testify as I asked you. Do you want me to repeat the question?

A. No, sir. I will state, however, that the better way, perhaps,

would be for me to read just what I have here, and then you can, yourself, compare as to the accuracy of it.

Mr. Manager DUNN. We don't want that; I object to it.

The WITNESS. I don't think it is exactly as you put the question.

Q. Let me read it now, and you say whether I was correct or not.

Mr. Manager DUNN. We object; that is just the objection. We do not propose to have counsel read certain questions that he has obtained here from some source. The proper way for him to get at it is, to ask the witness if he remembers what Judge Severance and Robert W. Coleman testified to, before the judiciary committee, upon a certain point. I have no objection to the counsel suggesting the points to which he desires to call the attention of the witness, but I do not think it proper for him to read whole pages of testimony, and to ask the witness whether a person testified so and so.

Mr. ARCTANDER. I understand that to be the only proper way in which we can ask this, upon the matter of impeachment. We asked Mr. Coleman a question, and we must repeat the same question to this witness, and ask him whether Coleman did or did not testify so. That is the only proper way to ask the question, where a witness is sought to be impeached, and it was so held by Senator Hinds when he was in the chair the other day, and that has been the theory upon which we have acted all the way through, and it is the only one sanctioned by the books,—to repeat the question that was put to the first witness, and ask whether he did or did not so testify. You cannot leave it to the witness to say what he did testify to. He must answer the question yes or no.

The PRESIDENT *pro tem.* I think the better way would be for the witness to refresh his memory by consulting his notes, and then to testify according to his best recollection, as to what the former witness did say on that occasion.

Mr. ARCTANDER. Does the chair hold that this is an incompetent question upon impeachment, to ask whether he did say so and so?

The PRESIDENT *pro tem.* I think it would be better to ask him what he did say.

Mr. ARCTANDER. That is not the rule of law.

Mr. Manager DUNN. Mr. Coleman did not deny that he said so. There is no foundation laid for the question, and I object to it on that ground. He fails to deny entirely that he did make such a statement; he admits that he made it but explains it; and therefore, I object to the question on the ground that there is no foundation laid for it.

Mr. ARCTANDER. I think, Mr. President, that if you examine the testimony given here at the time, you will find that Mr. Coleman, though he did admit that he gave one answer to one question, yet denied, in part, that he gave it with reference to his condition on the bench; and then the question was put to him, "Didn't that follow the question right preceding it; 'Do you mean to say that he was in that state while upon the bench?' A. Yes, sir." He tries to explain that it did not apply to the bench particularly. I put both the questions together and asked them in the order in which they were asked before the committee, which showed that there was no talk about anything except his condition while on the bench. I might probably simplify the matter by asking Mr. Hillman this question:

Q. State whether or not the testimony of Mr. Coleman, as I have

read it, was with reference to the condition of the Judge while upon the bench?

Mr. Manager DUNN. I object to that. Let him state what was said, and the Senate will determine what it had reference to. This witness has no business to express an opinion as to what it was in reference to. He is no better judge than the Senators here assembled to decide that very point.

The PRESIDENT *pro tem.* Is this testimony for the purpose of impeaching Mr. Coleman?

Mr. ARCTANDER. Yes; it is hardly worth the powder, I admit.

The PRESIDENT *pro tem.* I did not understand that was the object of it.

Mr. ARCTANDER. That is what it is for, of course.

The PRESIDENT *pro tem.* [to the witness] You may answer the question.

The WITNESS. What is the question?

Mr. ARCTANDER. Was this testimony given with reference to the condition of the judge while on or off the bench?

Mr. Manager DUNN. Does the chair express an opinion upon that point?

The PRESIDENT *pro tem.* Let him state the facts.

Mr. Manager DUNN. He can state what was testified to. Mr. Coleman admits that he testified to it, but explains it.

The WITNESS. Shall I answer?

Mr. ARCTANDER. I understand that the court has ruled that you can answer.

Mr. Manager DUNN. I don't understand that the court has said that he can express an opinion.

Mr. ARCTANDER. State whether you remember what was the subject matter under consideration while that evidence which I read was going in.

The WITNESS. Well, I have no independent recollection of scarcely anything that transpired before the committee.

Q. Independent of your minutes?

A. No, sir; not independent of the minutes.

Q. Well, now, refreshing your memory from the minutes, can you testify what was the subject matter under consideration?

A. The subject matter was the question of his sobriety or inebriety.

Q. Where, on the bench or off the bench?

A. Upon the bench.

Q. At that term?

A. That is my idea of it.

Mr. ARCTANDER. I don't think I will bother any more about the matter.

CROSS-EXAMINATION.

By Mr. Manager DUNN.

Q. Mr. Hillman, the fact is that that testimony was taken in a great hurry?

A. Short hand notes are almost always taken in a great hurry.

Q. Well, I mean the whole work of the judiciary committee, so far as your recollection serves you, was very hurriedly done, was it not?

A. Yes, sir; I think so.

Q. Fragmentary sessions—short times?

A. Yes, sir.

Q. First one reporter, then another, and a part of the time with no reporter?

A. My brother and myself took all the notes, except a small portion which, I believe, one of the members of the committee took; we took the greater portion of it.

Q. And some of the time there was no reporter?

A. Yes, sir.

Q. Did you not find, Mr. Hillman, a great many errors in transcribing your minutes, when you transcribed them?

A. No, sir; I did not find any.

Q. Didn't you find some that was entirely left out—some of the witnesses' testimony—you furnished the judiciary committee with a copy.

A. Yes. Not so far as my knowledge goes. I am sure that my minutes were correct, and I do not recollect any errors, or anything of that kind.

Q. In the transcription of them?

A. No, sir.

Q. Did you take the evidence of Mr. Sullivan?

A. No, sir. I did not take his testimony.

Q. Did you not take his testimony?

A. No, sir.

Q. Have you any remembrance, Mr. Hillman, other than what you gather from your minutes, as to the testimony which Mr. Severance gave?

A. I have not.

Q. You don't know whether he said he found him in an old barn or near an old barn?

A. No. I could not recollect of a thing of what he testified to.

Q. Well, do you ever find yourself mistaken in taking stenographic notes—sometimes getting the wrong word?

A. Why, I think such a thing is liable to occur.

Q. And it may have occurred in this instance, may it not? He may have said "near" an old barn instead of "in" an old barn?

A. He may have; I would not swear positively that he said that. I mean to say that that is the way I understood him; that is what I understood him to say, but I would not swear that he did say that.

Mr. ARCTANDER. If he said he stood up against an old fence you wouldn't have got it down that he was sitting down in an old barn?

A. Well, I don't know; I don't think I would.

Senator GILFILLAN, C. D. I would like to ask the witness one question, Mr. President; it is this: Was the testimony of Judge Severance and Mr. Coleman read over to them after it was taken down?

The WITNESS. No, sir.

Q. It was not signed by them or read to them?

A. No, sir.

Senator GILFILLAN, J. B. Was the testimony of these particular witnesses taken by yourself or your brother, before the judiciary committee?

A. By myself.

Q. What you mean to be understood, then, is, that you have no

doubt but what your minutes are correct, as you understood the language of the witness at the time?

A. That is as I wish to be understood.

Q. The possibility is that you may have misunderstood the exact words that he used at the time?

A. Yes, sir; that is the way I mean to be understood, that there is such a possibility.

Mr. Manager DUNN. There was no attempt to verify your record?

A. No, sir, none at all.

Q. By any of the witnesses or others?

A. No, sir.

Mr. ARCTANDER. That is never done with short hand minutes,—to verify them at all?

A. Well, it is done in some cases; I have frequently taken depositions, and matters of that kind.

A. Yes, but when you take evidence in court you don't verify it?

A. No, sir, not while acting in the capacity of official reporter.

Mr. ARCTANDER. The respondent rests, Mr. President.

The PRESIDENT *pro tem.* This closes the testimony. Are the managers now ready to proceed with the argument?

Mr. Manager COLLINS. I stated a moment ago, that, so far as I was concerned, I was ready to proceed to the consideration of the testimony; but, upon reflection, I feel like asking for farther time. The Senate will bear in mind that the testimony taken up on the 41stday,—last Friday,—was confined mainly to the Waseca term, which is the second of the articles, and consequently the second one to be considered by counsel in summing up. If I can get a copy of that testimony for fifteen or twenty minutes, I think I can arrange to go ahead, but without that, I shall speak upon the second article without having seen the testimony and with only the recollection or knowledge of it derived from having heard it at the time. The reporter informs me that it is already printed, but, for some reason or other, it is not here. If the Senate will take a recess for fifteen or twenty minutes, we can, perhaps, find out something about it.

The CLERK. I am about to send for it, and it will be here in ten or fifteen minutes.

Mr. Manager COLLINS. Then I would ask for a recess for that time.

Senator MEALEY. I move it be granted.

The PRESIDENT *pro tem.* It is moved that we take a recess for fifteen minutes, to enable the counsel to get the testimony of the 41st day. If there be no objection, the motion will be granted.

AFTER RECESS.

Mr. Manager COLLINS. Mr. President, the messenger who has just returned, says that the testimony will not be ready until three o'clock this afternoon. As I said before, the testimony of the 41st day, has particular reference to the second article. It has been suggested by one of the board of managers, and it ought to have occurred to me, that it is unnecessary to discuss the second article in its order; and I will, therefore, go on and discuss the second article when I have had an opportunity to examine the testimony. Shall I proceed?

The PRESIDENT *pro tem.* Yes, sir.

Mr. Manager COLLINS. Mr. President and Senators, I must say that it is with a great deal of diffidence that I attempt to begin the series of arguments which will be made here on the part of the State. It is a diffidence that ought to be natural, at least it ought not to be unexpected, for several reasons. The first, and the principal reason, is the magnitude of the case, not only so far as the State is interested, not only so far as the people of the State are interested,—the good name, the welfare of the State, but so far as the results may affect the respondent in this proceeding. It is a case in which the very best talent might be employed to advantage. There are very few cases of this kind in this country. I may say that happily they rarely occur. Again, the fact is, that during the trial of this case, the board of managers have been so occupied in putting in the testimony that they have had very little time to prepare for its analysis. They have had very little time to give to it the attention which would be necessary to enable any person, any of the board of managers, to make a clear and concise argument. In taking the testimony for days, as we have done here—in taking testimony that covers more than 2,000 pages of this journal—it is difficult for any man to so remember, and to so digest it as to be able to state it fairly unto this Senate. I presume I shall make many errors in my statement of what I understand to be the evidence. I shall not do so intentionally. I have no doubt that these errors will readily occur to the Senate, and that it will bear with me while I make them. They are errors that everybody must make where so much testimony is to be considered, and, as I said, they will not be intentional.

On Friday, the 16th day of December, after a week or ten days of consideration, one way and another, this Senate adopted an order overruling the demurrer which had been interposed by the respondent,—a demurrer which, to rid it of all its technicalities, simply said, admitting that I am guilty of all these offences, what do they amount to,—admitting that I have been guilty of drunkenness upon the bench and off the bench,—guilty of other offences which were charged in the original articles,—admitting that I have been guilty of all of these, what are you going to do about it? What can the people of the State of Minnesota do about it, except at the time I offer myself for re-election? What is there in our statute, what is there in the common law of this land, that you can do in this matter, admitting that all these charges are true? To be sure, I am drunk in the discharge of my duties; I am outraging common decency on the bench and off the bench; I am frequently seen staggering and reeling through the streets, almost unable to reach my position and occupy my seat; my judgment may be so affected by the use of intoxicating liquors, that I cannot properly try a case; but the only thing that you can do is to defeat me when I offer myself for re-election. The only redress you have is to go to the people and let them, by their ballots, say that I am unfit to hold and occupy that place.

That was the demurrer to the indictment, ridding it of all its technicalities. It was a position that the counsel assures us the respondent did not want to take. I regret that the counsel did not exercise the same discretion, follow the good judgment exhibited by the respondent, and not take that position himself,—the position that this respondent may go crazed and maddened by the use of liquor, upon the bench, to try cases, where your life or your property is involved, and yet there is no relief, nothing that we can do to rid ourselves of so disgraceful a

character. I say that I regret that the counsel did not yield to the views of the respondent, and say that it was an unwise plea,—a plea that would not commend itself to any person,—a plea which would not commend itself to any court. It is the position, substantially, that a man may willingly and voluntarily commit offences of that kind, may put himself in a position where he is unable to exercise a fair and reasonable discretion, and nevertheless, that there is no relief.

I say upon the 16th of December there was an order adopted by the Senate unanimously, by which it overruled the demurrer which had been interposed, and said it would listen to the testimony. Now, I shall have very few words to say upon the law in this case, because I assume that the Senate in that discussion, or at the close of that discussion, decided that, under the law, they had the power and the authority to reach this case; that they had the power and authority to say that when a man voluntarily became intoxicated and attempted to exercise the functions of the high office of judge of the district court, that he could be impeached, that there was in this Senate the power to try, to convict, and to remove him. I say that I assume that. I do not know but I am assuming too much. I should judge from the opening argument of the counsel of the respondent that in his opinion I am; that he makes a distinction between the Senate and the Senators; for he says that while the Senate unanimously adopted that order, you, as individual Senators, are not bound by it. Yet I apprehend that while every act here is an individual act, together it is a collective act, the act of the Senate, and I am convinced, Senators, that every man who voted here upon the 16th day of December, to overrule the demurrer and to sustain the articles of impeachment is bound by that action, and that where he has once decided these articles as charging an impeachable offense, he cannot now say that a judge may attempt to discharge the grave duties entrusted to him, in a state of inebriety and not commit an impeachable offense. I assume therefore, that the law of this case, so far as the law in this case is concerned, is settled by this body; that there can be no question whatever but that it is a misdemeanor, that it is an offense; that it is one of those offenses and one of those misdemeanors well known to the law, and one that was contemplated by the framers of the constitution when they provided for impeachment. The counsel for the respondent, Mr. Allis, in a side remark during the argument, said something about this respondent being civilly dead, in case he were confined in State prison; in case he had committed an offense which was indictable; had been confined in State prison; he is civilly dead, and consequently, his office terminates. I think the illustration was used at that time that if this man had committed an indictable offense in the State of Iowa, or an offense which would be indictable in another State but would not be indictable here, that he could be impeached here; and that led to the remark by the counsel that he would be civilly dead, and, consequently, could not hold his office.

Now, it is true that many years ago there was such a thing as a man being civilly dead. I presume that every reader knows that at one time such a state of affairs existed,—that when a man was convicted of certain crimes he became dead in law, was deprived of many rights, and in fact, ceased to exist as a citizen. These punishments were much more severe than are permitted by the constitution in imposing judgment here, provided you find the respondent guilty. The man was prohibited not

alone from holding office, but from participating in the benefits and the privileges of society, and everything of that sort. There have been a great many innovations upon the doctrine, and no prisoner is now civily dead; he cannot now be pronounced so by any judgment or by virtue of any statute. If a man is civilly dead, as the counsel has suggested, I would like to know why it is necessary to say in our statutes, that after he has been imprisoned in the State prison he shall not have the right to vote. Without that he certainly would have the right, but our legislature has gone so far as to deprive him of that privilege, unless he be pardoned. I would like to have the counsel tell me why, if a man is civilly dead when he is confined in State's prison, it is necessary to provide specially that his wife may procure a divorce by reason of his conviction; if he is civilly dead he is no longer her husband. It is a doctrine that does not commend itself; in fact, it is not the law. A man is not civilly dead unless there is an express provision for it. But to proceed. The counsel has also taken the position that an offence to be impeachable must be committed officially and be of an indictable nature. It must be an offense of a grave character, it must be committed in the discharge of an official duty. Murder—if he be correct—may be a common pastime of the officer and yet not impeachable. In every impeachment trial this same outrageous position has been assumed and in every trial declared bad law. The counsel for the respondent has commended the Senate for overruling the demurrer, has expressed his gratification for having an opportunity to present the facts in defence and yet he reiterates that no offence has been alleged, that drunkenness upon the bench is not an offence that will render the offender impeachable. In one breath he denies our charge and insists that this man cannot be impeached, notwithstanding all these articles may be true,—notwithstanding the drunkenness upon the bench and off the bench,—that he cannot be convicted, that he is not responsible in this proceeding.

Now this matter has, of course, been considered before. I have said that there has scarcely been an impeachment trial, in which the counsel have not taken precisely the position which has been taken here. The reason is obvious. A man occupying so high a position as this rarely commits an indictable offence. I do not know that there ever was a case of that character, where a man committed an indictable offence, or where it was charged that he committed an indictable offence; but as a matter of fact, these cases, where officers holding high positions, commit offences that are a stench in the nostrils of every honest man, are quite common, and the counsel in every one of those cases have taken the position that has been taken here,—that you can only impeach or convict for indictable offences committed in office,—and I again say, from an examination of the authorities, that I have never known that position to be successfully maintained.

The counsel, in his opening, has spoken of several cases that have been cited here, and I differ with him considerably as to the character of those cases. Counsel has spoken of the Pickering case, on page 67 of his opening argument. Judge Pickering was charged, you will remember, with misbehavior in office. That misbehavior consisted, in substance, of two things: one, misbehavior in the trial of a case—I think a refusal to sign an order that he was compelled by law to sign; another that he had been upon the bench in a state of drunkenness. Judge Pickering made no defense. His son, in his behalf, interposed a

defense of insanity; or rather said to the Senate of the United States, that his father was insane.

Judge Pickering did not answer nor did he appear, and while he did not appear, the managers went on and tried the case before the Senate of the United States, and he was convicted upon all three charges.

They proved this drunkenness, and the counsel, by way of showing what we ought to prove in this case, I presume, says they proved the Judge was so drunk that he had to have somebody sit upon the bench with him and hold him up. I shall not take up the time of this Senate to read the annals of Congress, wherein this case is reported. I will simply say that there was no evidence of that character. One or two parties claimed that he was insane, but the testimony showed conclusively that he was drunk. The testimony does not show anything of the kind claimed here by the counsel for the respondent. It shows that the Judge was in a state of intoxication; that he used blasphemous language, and that the degree of intoxication was about the same that the managers will claim has been shown to you in this case.

The counsel also, on page 76 of his argument, spoke of the Edmond's case. It will be borne in mind that during the argument of Counselor Sanborn, at about its conclusion, I put to him some question touching that Edmond's trial. The counsel stated that he had not examined that case, but that Mr. Arctander had. Now, I rather suspect from my examination of it, that if I had asked Mr. Arctander the same questions when he had concluded his argument, or at least, when he had spoken of this matter, that he would have laid his knowledge of that case upon Mr. Sanborn, his colleague; for they certainly differ as to the case, and they certainly differ very much from my view of the case as I read it. In that case the tenth article charges Mr. Edmond, land commissioner, with drunkenness. The counsel says that they found him not guilty upon that—that while it was very conclusively proved, yet that he was found not guilty. The facts were these: Mr. Edmonds was accused of being drunk on one occasion at a hotel; and it was proved by two or three parties, who saw him there, that he was very drunk. There were a number of other parties who testified that they were there on that occasion, that they saw him, and that he was not drunk. The result was that it never went to a vote; that the managers withdrew the charge and that article ten was not voted upon. That case was tried in Michigan by some of the ablest of their attorneys in the board of managers as well as in the defense, and no question was raised upon the sufficiency of the articles, and it was conceded all through that drunkenness was an impeachable offense—that if this article ten could be sustained Mr. Edmonds must be removed. He was not the judge of one of their courts, but simply a land commissioner. The question was no where raised that drunkenness was not an impeachable offense, but as a matter of fact, when they got through with the testimony, the managers withdrew the charge and no vote was taken upon it; they withdrew it because they considered it was not proved. So much for the cases cited here.

Now, what have we in here in the line of defence when we come down to the facts in the case? What have we here? There is a vast difference between what the counsel stated in his opening in this case, lasting two or three days, as to what would be proven and what has actually been proven. I thought when the counsel got through with his argument, that we were trying the wrong man. I suspected, to use a home-

ly expression, that we had "got the wrong pig by the ear"; that instead of trying the man who was beastly and continually drunk up in that ninth judicial district we were trying the man who was painfully sober. For, certainly, the counsel made statements here in his opening argument that would bear any one out in the opinion that this respondent, instead of being the guilty man we supposed him, was wholly innocent of the crime charged or even of drinking moderately. The counsel took up the articles one by one and stated how they would be overthrown, how they would show we were wholly mistaken, that our witnesses were wholly at fault, that they were actuated by bad motives, that they had come here,—three or four of them,—desiring to do him injury, that they had the money of the Winona & St. Peter railroad company in their pocket, that this railroad company was determined to convict this upright Judge, that they desired for some reason or other to have him removed, that he was not a man they wanted in that position—that some other man would serve their purposes better. Then, again, the evidence of drunkenness testified to by our witnesses was to be contradicted, and shown to be untrue, distorted and impossible. Judge Cox was sick at times. He was laboring under many difficulties during his terms of court,—at one time the sunlight glared in his eyes, causing him to look drunk; at another time, he had one of Job's comforters, producing an intoxicated appearance; at another time he was sunburned and had ridden through the mud; in fact, his was a painful path, and he had all the ills that man is heir to.

It seemed to me from the opening, that during the time he had been judge, he has ran through the entire category of diseases and disasters known to mankind; and yet when we come to look at the testimony and analyze it, we fail to see the promised proof; we fail to see any reason for this mistake upon the part of our witnesses, except in one instance in Waseca, where the Judge was suffering from a sick headache. I think there is testimony of that. Then, again, it was promised that it would be shown that when Judge Cox was in a state of intoxication there were certain marks about his face—I think something about his nose—that indicated that he was drunk, that unless this scar developed—either became black or blue or white, I have forgotten just which—that unless the scar assumed a certain color the Judge was not drunk. Now I suspect that was an invention of the counsel, and I suspect that when the Judge discovered the counsel would assume such a position he exercised the discretion which he has exercised before in this case, and told the counsel that was not exactly the proper defense to make, that it would leave him in rather a remarkable position. It would leave him, perhaps, in the position that our old friend Governor Ramsey was left in on one occasion, which has just occurred to me. I remember reading about it at the time, and I believe Gov. Ramsey tells the story himself, so that he will pardon me for relating it. It seems that at a certain time when Bill King had a cattle fair up at Minneapolis—you know what they are—that Gov. Ramsey and Senator Windom met there. Both were senators at the time, and an evening paper published there, said that Senators Ramsey and Windom were observed while engaged taking a drink at the hotel bar. Senator Windom took enough notice of the squib to write a little note to the editor, in which he stated that he did take a drink with Senator Ramsey at the Nicollet house bar that afternoon, but that *he* drank a simple lemonade.

It is said that when Senator Ramsey read this note as published in the newspaper he wrote to Senator Windom: "It is true you did take lemonade, but in saying so in the newspaper what a thundering fix you left me in!" [Laughter.] I have no doubt but that the respondent here said to the counsel, "If you assume to prove that when I am drunk the scar upon my nose developes white or black or changes color, you will get me into trouble. Just consider this method of proving the condition of the respondent—that those who know him can tell when he is drunk by the color of the scar upon his nose, that it becomes black or white, when he is drunk, that the judge of the district court could not have been intoxicated, because the scar on his nose has not assumed an unnatural color. I apprehend that the respondent exercised the discretion about which I have spoken, and said to the counsel that that would not do, that if attempted it would show to the Senate that he was frequently drunk; that these witnesses would have to testify that they had seen him intoxicated over and over again, that his intoxication was so common that these witnesses had seen this change of color frequently, and it would indicate to the Senate habitual drunkenness. That was one of the things they were going to prove, and the counsel went on at length to detail others. Why I remember part of his argument here on page 98, where he boasts of the aid he has rendered the prosecution by his cross-examination, and claims what is strictly true that a great deal of the testimony that has been particularly damaging to this respondent, has been brought out on cross-examination. Of course, lawyers differ, and always will differ upon methods of examination, and I have no doubt that the counsel will, for all time, claim that in doing that he has served his purpose. He claims it in his opening in the following words:

I submit to you, Senators, who has built that castle? Who has sat here day after day, and placed stone after 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.

Very pretty language, but what are the facts? It is true that in this cross-examination the counsel has assisted the board of managers, and it is true that the board of managers, when they discovered that counsel was doing that, sat silently by and gladly allowed him to do it. They were glad to have him, and their questions were put with the deliberate purpose of having the counsel pursue the rigorous cross-examination as he had started out, and it was frequently with fear and trembling that we turned our witnesses over to the counsel apprehensive that he had discovered the mistake he had made, and would recede from the position he had taken in regard to cross-examination. Again, much testimony was brought out on cross-examination that we could not possibly bring out upon the direct, because, under the rules of the evidence, we

would hardly be allowed to ask circumstances or to go into details—at least, that was the supposition of the board of managers—that we could simply ask the questions that were asked upon the direct examination, and if the counsel dropped the witness there we could go no further. Now, a man's testimony as to the drunkenness or sobriety of a person, is, to a great extent, a question of opinion. If you ask a man as to the intoxication of another, he gives it as his opinion that he is drunk. That is a mere opinion. You hold it as an opinion. But when he goes on, under cross-examination or any other way, and relates circumstances —the things that took place, that describe and indicate to you the condition of the man, as has been done in this case upon the cross-examination, then you are convinced; you have something more than an opinion You have the facts—things that were done, things that were said, indications that amount to more and must be more convincing than the opinion of any man.

So far as that remark bears upon the testimony for the defense, I say that the testimony for the defense on cross-examination has shown simply that the witnesses differ as to the degree of intoxication that a man may be laboring under, or, rather, as to the degree of intoxication that this respondent was laboring under. Some call it "under the influence of liquor"; some call it "intoxication"; some call it "drunkenness"; but I think they nearly all admit that he had been drinking somewhat. So that a man's opinion as to whether he was drunk or not depends entirely upon his view as to what constitutes drunkenness, that is, as far as the testimony for the defense is concerned.

The testimony for the prosecution upon the direct examination rested, in nearly every instance, upon the bare opinion of the witness. The respondent's counsel sought to go further, and did go further, and he drew from these witnesses certain things that took place upon the different occasions, and it is true that he did pile stone upon stone on this castle. Now it would be perfectly safe for a man to do that if he had an overwhelming defense, if he had a defense which, as the counsel stated, would crush the prosecution; but, so far as this case is concerned, it does seem to me that we have been materially assisted by the counsel for the respondent, and that our case has, as he has said been built up, stone after stone, by much of this cross-examination, by much of the testimony drawn out by the counsel.

So far as the law is concerned, it is not advisable for me to attempt to discuss it. I hardly know what position the counsel will take,—whether they will still insist that this respondent shall be acquitted upon a technical defense—for it would be technical, and just as technical upon the conclusion of this case, in the final vote, as upon the decision overruling the demurrer,—if he is discharged because this is not an impeachable offence; and I leave the discussion of the law in other hands, leave it for those who follow me, to discuss it at a time, perhaps, when discussion may be necessary. We shall, of course, have to decide, or wait until a decision is made by the counsel as to whether they will insist, that a man can commit this offence of drunkenness as we allege it,—drunkenness, disgracefully open and notorious, and be acquitted, when brought before the Senate, sitting as a court of impeachment.

Counsel for the State, I think I may safely say, have introduced here a class of witnesses quite uncommon. They have introduced a class of men here, whom they thought were men whose judgment upon this

matter would commend itself to you; men, who by their character, their position in society, the belief that is attached to any statements they make, would satisfy you of the truth of our accusations. We have brought them here, and they have been examined before you, and I am confident that whatever they said about the matter, has been considered by this Senate as almost unimpeachable, because of their high standing in the State.

Now, what sort of witnesses have we had here upon behalf of the defense? I ask the question; what sort of witnesses—what kind of men? I have made a little summary of their occupations. I have found that the defense has had twenty-two lawyers. I judge that the most of them are lawyers by trade, not by profession. [Laughter.] We have had twenty-two of that class of men. We have had ten saloon keepers. The saloon keepers come up here and swear that this respondent was not drunk. We have had five cattle dealers, and the remainder of the witnesses have nearly all been farmers. I think two or three of them have testified that they had no business, and I discover that one, in the index which has been prepared by the counsel for the respondent, is put down as capitalist. I refer to Mr. Stickles. I say that for the defense there have been ten saloon keepers upon the witness stand. It is a remarkable thing for saloon keepers to say that a customer is drunk. They do not like to do it; and sometimes they are ashamed to admit their business. We had a little illustration of it here in this case. Saloon keepers who called themselves keepers of gentlemen's furnishing rooms. I observe that the counsel is counting them up. I call his attention to two there that he says are merchants. They are not saloon keepers but merchants, but they keep saloon just the same, and I suspect there were two or three others whom, if we had followed, we should have found to have been in the same business. I say we have twenty-two lawyers and ten saloon keepers brought here on the part of the defense. I have no doubt that a saloon keeper can be an honest and a respectable man, a truthful man—I have known many of them, but there is one thing they do not like to admit, and that is that any man is drunk. They never like to admit that. It is a thing that reflects upon their occupation.

I now desire, gentlemen, to speak for a moment, of the history of this case and the history of the defendant as connected with it. We all know that Judge Cox is an old resident of the State, that he has been a prominent man—not so prominent as he might have been, not so prominent as he ought to have been with his abilities and opportunities. We all know that he was among the earliest settlers; that years ago when there were very few people upon the Minnesota river, Judge Cox located as an attorney at law; that he had a good practice; that he was frequently in politics. I have no doubt that members of this Senate were with him at the time he was in the Senate of this State. We know that on one occasion he was selected by the Democratic party as a candidate for Congress. And we all know that had it not been for this habit which seems to follow him, which seems to have been a curse upon him, he would have been elected; that he ran in a district which was very close, where he, with his popularity and his methods, could very easily have been successful and would probably have been elected had it not been for this habit of intoxication, which seems to have been deep seated from early manhood. We know that shortly after that it became necessary to elect a judge up in that district, and that in the fall of 1877

the respondent was elected to the bench by a very flattering majority, that in January he came to St. Paul and almost within the sound of my voice took the oath of office prescribed by law and which has been read to you. He had reached a place that nearly every lawyer aims to reach, a position that seems to be one for which every lawyer strives—the position of judge, a position that ought to command a better salary than it does, a position that ought to command better men than it does. He had reached the goal of his ambition. I remember very well being present when he qualified and seeing him take the oath of office, and as I saw him stand there, knowing his tendencies, knowing what a man he could be if he desired, I said that I hoped the man would realize the importance of the office, the solemnity of the oath, and that the people of the ninth judicial district would never have occasion to regret that they had elected him. I knew him to be a generous, whole-souled man with but one fault, and my heart went out towards him in a desire that he might retrieve himself and occupy the high position he had attained with honor to himself and to the judiciary of the State. This was the earnest hope of all who knew him, but what do we find as the result? In ten days after that time we find him down at Fairmount, in Martin county, charged with drunkenness upon the bench! So drunk upon the bench that it became a matter of public notoriety, that it got into the newspapers; people talked about it; some public action was taken in regard to it. That was very shortly after the first of January, 1878. The steps taken have been mentioned here; it is a part of the evidence in this case—part of their defence. Such complaint was made that the legislature saw fit to examine into the charge in the winter of 1878.

So much for the history, so far as it goes. The private history of this man I do not care to go into. It does not make any difference to me whether he was a soldier or not. It makes no difference to me whether he defended New Ulm or not,—whether he has a coat of arms, as has been stated by the counsel, or not. But I am surprised that the counsel should attempt, in a democratic country at least, to talk about anybody's coat of arms,—to boast about it, to cite the inscription thereon, and to appeal for a consideration of the fact in a trial of any character. But the counsel prates about the family of this respondent, their standing, their reputation and their coat of arms. We have had coats of arms in this country. I remember one in New York some time ago; the coat of arms of a man who seemed to have the city at his command; a man who built palatial hotels and magnificient opera houses, equipped and ran elegant steamships; who was possessed of all the wealth—or, at least, was supposed to be—that man desired; a man who had unlimited influence there,—he had a coat of arms; and that man was shot down, in a quarrel in a hotel about a mistress. I remember another coat of arms in New York, where a man ran the corporation of that great city for years, and he seemed to have it as firmly in his grasp as was possible. He had a coat of arms, too; and that coat of arms finally landed in Ludlow street jail. The owner of that coat of arms afterwards became a fugitive from justice, was caught in Spain and brought back here, to shortly fill a dishonored and disgraced grave.

Let us hear no more of his lineage, no more of family, no more of his ancestry and their coat of arms.

But I can pardon the counsel for speaking of it. He comes from a country where a coat of arms is of consequence where a coat of arms is

rarely disgraced, and he may be pardoned for alluding to the fact of its existence in the family of this respondent.

I will now attempt to analyze the testimony and call your attention to

ARTICLE ONE,

known as the Martin county case. You will remember that the counsel for the State, in opening our case, said he did not regard it as one of the chief articles; that we were not prepared to show, nor would we show to you, that this judge was, at the time stated, in a maudlin condition, but we would show that he was there under the influence of liquor to such an extent as to attract attention. That admission could be made concerning many of these articles. It is true, that under many of the articles set forth, we have not shown, nor do I suppose it could be shown, that this judge, by means of his intoxication, was wholly incapable of transacting the business of his court, but rather that he was somewhat under the influence of liquor, and the testimony upon these articles, slight as it has been, characterizes his course of conduct, indicating it to be censurable and of a dissipated tone. Now, I suppose a man might be under the influence of liquor occasionally—perhaps once or twice in three or four years—would not be regarded as a very serious offender; but when we find that he was in such a condition that many of the witnesses noticed him to be on the bench under the influence of liquor frequently, it must affect a proper discharge of his duties. I say, that when we find such a state of things it characterizes his whole conduct, because a man who gets slighty under the influence of liquor (and it is the experience of every man who has ever drank) does not stop there. He goes farther, and if he is full of liquor on the bench on one occasion you may safely rely upon the assertion that he will be more seriously under the influence of liquor on another occasion. These things happening frequently, I say, will lead to greater intoxication. They will lead to serious cases of intoxication. For a man who will allow himself to be under the influence of liquor under any circumstances will, at times, allow himself to become drunk.

We have shown here by the testimony of several reputable witnesses, Mr. Everett, the postmaster, Mr. Graham, the attorney, Mr. Higgins, the attorney, Mr. Livermore, judge of probate, and Mr. Wolleston, a merchant—the good, old Englishman, as the counsel calls him—the situation and condition of Judge Cox at Fairmount. Within ten days after he had taken the oath of office in the opera house, in the city of St. Paul, he goes to Fairmount to hold a term of court. It is not in his district; it is outside; and we find from the testimony that while engaged in the trial of cases on two or three different occasions, he was somewhat under the influence of liquor. I do not think it is necessary for me to take the testimony and read it to see what the witnesses say. Some characterize it as intoxication; some say he was under the influence of liquor; some say he was drunk; but they all say that while he was presiding there, while he was holding this term of court, and while he was upon the bench he was under the influence of liquor.

Now, I say that no man can properly go upon the bench or transact any business whatever under the influence of liquor in any degree, so that it affects him. I do not pretend to say that a man cannot take one, two or three drinks, or perhaps more (of course to be determined by his

capacity,) without feeling the effects of it; but I do say that when he reaches a stage where it is noticeable, he has lost the discretion that he ought to have, and that he cannot exercise the judgment he should in the trial of a case or the transaction of any business. It is so with a lawyer who is trying the case, and in a greater degree is it true of the court. It is because the man is in an unnatural condition. It is the natural condition in which we ought to find him, clear headed, cool, in full possession of all his faculties, the condition which is his by nature, and not an unnatural condition brought about by the use of stimulants of any kind. There can be no doubt from the testimony that this respondent was under the influence of liquor at Fairmount, in Martin county, while in the discharge of his duty. Take the testimony of the State, and the testimony of the respondent, put them together and you will discover it almost beyond dispute. I have already alluded to some peculiarities in the testimony for the defense in this investigation. And there is another peculiarity of this testimony all the way through of which I might speak of here. We have brought five witnesses here on nearly every article—fewer than that in some—who have testified as to the condition of the Judge right through the different terms, and on nearly every day thereof. We have had no difficulty in finding plenty of witnesses who had witnessed the alleged indiscretions, but the respondent claims that he must examine more persons, for the reason that he had to show his condition at different times during these terms of court. I cannot understand the force of that argument, nor did I understand it at the time it was made. Why had the defense difficulty in finding men who were in court as frequently as those who have been examined by the State? Are we to suppose that Mr. Everett, Mr. Graham, Mr. Higgins, Mr. Livermore and Mr. Wallenston were the only persons who were present at that term of court and attended regularly? Why is it necessary that they should have more witnesses than the State to show the condition of the court, and that he was not intoxicated at the times we allege he was. I say there was no necessity for it. I say that the reason given does not commend itself to any one, but it is simply because they have been obliged to take that class of witnesses. They have been obliged to take up a witness here and a witness there, who happened to lounge into court occasionally and noticed nothing wrong, who happened to have been present in court on certain days, and simply because they failed to observe the condition of the court are positive he was sober. I have no doubt, gentlemen, that you and I have passed drunken men, when we were together, and that you noticed that the man was drunk, while I failed to notice it. I have no doubt that you and I have passed men when I might say the man was drunk, and you not notice or pay attention to it. I have no doubt that many of the witnesses for the defense who have testified that the Judge was strictly sober on days when we allege he was drunk, have testified honestly to it, that they failed to observe his condition. The faculty of observation is like all others, developed more in some than in others. Some men observe the features, the apparent condition, and the clothing of those they meet, while others are wholly indifferent on these points. There are many men in this room who can hardly tell the dress that is worn here by others, or describe their features, while there are others who can particularize the dress of every Senator, even tell his

height, what his complexion may be, the color of his hair and eyes, as clearly as a detective. So as to this condition of drunkenness; one notices it, and another does not. One man notices it, because his faculties are cultivated in that way; he has perceptions in that direction. Another man notices it because he has particular or peculiar business with the person charged with being intoxicated, and he notices it because he is brought in contact with him—rubbed up against him, as it were. So it is with these witnesses who testify strongly yet honestly upon either side of the case. Upon article one they have for the defense a young man by the name of Smales, but it appears from his testimony that he was not in court but little of the time.

On page 241 of the testimony for the defense, you will find that Mr. Smales stated that he was present everyday ; but when we came to cross-examine him, he concludes he may be in error ; that he was interested in one case there only, the prosecution of a man for the sale of liquor without a license ; he was interested and paid particular attention to that, and that only ; but he thinks that Judge Cox was not drunk,—honestly, I have no doubt. We have the clerk Fanchen, who, upon page 231 of the testimony for the respondent, says, that Judge Cox was not intoxicated, in his opinion, was not under the influence of liquor ; but Judge Cox looked tired, looked fatigued, looked worn and weary.

Now, right here, at the start, I desire to call your attention to a little particle of testimony that has a bearing upon that sort of evidence. You will remember that one of the witnesses from St. Peter, Mr. Davis, an attorney, who has known the Judge twenty-three years, testified as to the peculiarity of Judge Cox's face when he was under the influence of liquor. He told you that his eyes seemed to retreat ; that he had a worn and haggard look ; looked tired out. That is his testimony; and similar testimony is given by others.

Judge Cox has not the appearance of most men when he is under the influence of liquor,—a puffed up, swollen appearance of the face, but he looks tired ; his eyes retreat into his head, and he has the appearance of a man worn out, wearied and fatigued. That is very easily accounted for in my opininion. It seems to be conceded all around that Judge Cox has sprees, and I apprehend that a man of his temperament, a man who is able to hold a good deal of liquor, a man as one poet has said, "with an unbounded stomach,"—I apprehend that such a man, when he is through with his sprees always presents that appearance. It is an appearance peculiar to that class of men. Now, a man who has a different kind of face, a man who has a short spree occasionally, presents a wholly different appearance when drunk, from him whose indulgences are habitual ; and it seems to me that the testimony of the witness Davis, and other witnesses, as to the appearance of Judge Cox when on a spree,—a fatigued, worn and wearied expression of the face, accounts for much of the testimony of the defense, for many of the witnesses who have come in here and said "we have observed nothing except that he was tired, worn and wearied,—had a fatigued expression ;" that is what Mr. Fancher, the clerk of the Court said ; and sheriff Bird testifies to the same thing.

I now call attention to the testimony from page 233 to page 236 for the defence. Mr. Eird testifies to a state of affairs at Fairmount which surprises me taken in connection with the statement of counsel that we should be shown, that since Judge Cox had been elected Judge of the

ninth district, there had been a decided improvement in the way of running saloons. Says the counsel, you could not visit a saloon in that part of the country without seeing a sign up, "No boys admitted here," and that results from the way Judge Cox treated these dealers in strong drinks. The counsel also says before the election of the Judge there was scarcely a license issued down in that country, and now there was not a saloon open there and kept without a license. All that we could attribute to the pertinacity with which Judge Cox had enforced the laws regulating the sale of liquor, and there was a variety of that sort of talk in the opening of the counsel. You will bear in mind that during the Fairmount term of court there was a number of indictments, and, among others, an indictment for selling liquor without a license. Sheriff Bird testified on pages 233–236 that Judge Cox was visiting these unlicensed saloons, admits that the Judge, who is the officer of the law, supposed to have entire control of this matter, in whose court these indictments are found, the men tried and punished if found guilty,—the Judge who imposes the fine and sentence, visited and drank in unlicensed saloons in Fairmount—saloons that were kept open in violation of law. I presume there are plenty of men within the sound of my voice who have visited unlicensed saloons, who are not particular to inquire whether a saloon is licensed or not when they visit them, but I do say that no Judge who has any respect for himself, no Judge who has any respect for the position he occupies will visit, openly, a saloon, licensed or unlicensed, and when the place is open contrary to law all officers are guilty of a breach of good faith to their constituents, one that is very obnoxious and much to be condemned, and it seems it was the habit of Judge Cox to do that habitually and defiantly during that term of court, if we can believe a witness for the defense who testifies to it,—who states that while they were prosecuting these violations of the law, while the grand jury there was indicting them for selling without a license in a town where no license was allowed, the Judge was winking at it by visiting these places himself in company with the sheriff, both drinking at the bar. I do not know that this is a very great offence. I do not think it is, but it indicates the character of the man, the manner in which the Judge has conducted himself there, until the outraged people have protested against a continuance of his indecency. Almost his first official act is in a town where they vote no license, where no license is allowed, to render aid and comfort to men under indictment there by visiting their unlicensed saloons, and by implication, at least, assuring him of his sympathy. I say this behavior is and ought to be condemned. I do not know that it is impeachable, but it is behavior which outrages the sentiment of the community in which it occurred, a community striving to keep out saloons and their results. It was the habit of the Judge to visit these unlicensed saloons at this term of court, to visit the men whom he is called upon to try, to visit the men whom he is called upon to sentence, to visit men who are daily and nightly violating the law, to witness these violations and participate in them by purchasing and drinking the forbidden articles.

The testimony in this case, as I have admitted, does not indicate a very great degree of intoxication, but it proves and indicates complete demoralization upon the part of this Judge which should be very strongly criticised and condemned.

So far as article two is concerned, I will ask the Senate to bear with

me upon that until after dinner, so that I shall have an opportunity to examine the journal of the proceedings of the 41st day, which has just been handed to me.

The next article I desire to examine is

ARTICLE THREE,

an occurrence in Brown county. We know it, in this trial, as the Wells vs. Gezike case.

The witnesses upon the part of the State are B. F. Webber, John Lind, Judge Severance, S. L. Pierce and C. C. Goodenow, the first four attorneys, the last one, a clerk in the land office at New Ulm. The witnesses upon the part of the defense are Blanchard, the clerk of court; Mr. Gezike, a cattle dealer, who was in that case as a party; Mr. Behnke, a merchant, and Mr. Fitzgerald, a mason. Mr. Webber, Mr. Lind and Mr. Severance, it seems, were attorneys in the case. It had been agreed between the parties in the action that the court should try it without a jury and during the term of court then to be held at New Ulm. For some reason the attorneys did not arrive until court had adjourned and the respondent had commenced his customary celebration of that event. They arrived there on the afternoon of Friday, and found from talk on the streets that the Judge was upon a spree, but they were anxious to try the case, because they had come a long distance, most of them, and they consulted as to the probabilities of sobering the court sufficiently to undertake it—to bring him into a reasonably sober condition so that he might take it up at that time. After some discussion over the situation it was agreed that Judge Severance should go, as a sort of ambassador from these attorneys, to the court, and, if possible, settle the preliminaries. It had been understood that the court was a little off its base, and Judge Severance, and old friend of this respondent, was selected to go to the judge. He found him in an alley *back* of an old barn talking to some person in the rear of a house near by. The testimony of Mr. Hillman, the stenographer, had reference to this occasion, and it was the respondent's desire to show by Mr. Hillman that Judge Severance testified that he found Judge Cox *in* that old barn before the judiciary committee of the House when that committee took up the testimony. I apprehend that it is not necessary for me to defend Judge Severance against any comments or attacks made upon him. I apprehend I am wasting time by urging to this Senate that Judge Severance testified to you that he did not say before the judiciary committee that he found Judge Cox in the barn, hat is the end of it, and the recollection of the reporter, Mr. Hillman, or the reporters' minutes will have little weight. No doubt the stenographer so understood the testimony, but he made a mistake. He took those minutes just precisely as he understood it, but the haste with which business must be dispatched by the judiciary committee, the fact that the room was small and crowded with witnesses waiting to be heard, everything in noisy confusion the reporter made many mistakes, I have no doubt. I do not think that the counsel will dare to intimate or contend to this Senate or contend to any body of men, who may have the pleasure of knowing Judge Severance, that he falsified or colored his testimony in the least. The Judge says that he found this court—this Judge, who had just come off the bench, who just got through with the trial of cases involving

large amounts of money, the trial of criminal cases involving the liberty, and perhaps the lives of individuals, of cases involving this very question of drunkenness—he finds him in New Ulm leaning up against a fence talking to somebody in a back yard, in broad daylight, not only drunk but, as the Judge said himself, he was "damned drunk." He used that expression to Judge Severance. "Judge Severance, I am damned drunk, and I don't want to go on with that case." But he did consent to go on with the case provided they would get somebody to take the testimony, and I suppose that Judge Cox remained "damned drunk" all that afternoon. He undoubtedly was in that condition later in the day exhibiting himself upon the streets of New Ulm in that disgracefully drunken mood and again admitting that he was "damned drunk."

Now I do not have the respect for the judiciary that some men have. I do not expect to see our judiciary beyond all criticism; to see them so far elevated above their fellow men as to have no faults or vices. It has not shocked me to learn that many of our wisest and best men, use ardent spirits, nor is the world moved by such knowledge. I do not ask that they shall be teetotalers, but I do demand that all public officers, especially those filling these important stations, shall conduct themselves with propriety on all occasions. We demand that their lives shall be such, as to commend them to the public whom they serve, and that a Judge of a court, with a power that our district court has—and almost everything can be done by them—shall so behave himself in public, as not to bring down disgrace upon the judiciary, as not to lead them to such a moral condition as we find in this instance, a condition that invites contempt only. I would like to ask any gentleman here, especially any practicing attorney, how much reverence he can have for the opinions and decisions of a Judge, who tells him in broad day light, in the public streets, that he is damned drunk,—a Judge who has voluntarily surrendered himself to the demon drink, until he boasts of his condition. How much respect can he have for him as a court or as an individual? How much confidence can you expect suitors to have, whose cases are determined by a brunting, foul-mouthed drunkard? How much respect have you for a friend, I care not whether he occupies an official position or not, who is in the habit of going upon the streets in a besotted condition, and boasting that he is "damned drunk?" I say, how much respect do you have for him? What business do you want to place in his hands? What sort of a position do you want to give him? Is he the kind of a man that you want to consult or employ in your private affairs? If there is a merchant here, does he want to employ a clerk who goes out upon the street, and when he is accosted upon a business matter tells his employer that he is damned drunk? We do not think such a class of men in any public position, much less do we want such a class of men in the position occupied by this respondent. Drunkenness in the streets may not be an impeachable offence, probably; it would depend upon the frequency and publicity with which it occurred, because under certain circumstances such behavior amounts to a misdemeanor which may end in the incarceration of the offender in jail.

But that is the language he used to Judge Severance, who at last obtained his agreement to try the case if the parties would get somebody to reduce the testimony to writing for Judge Cox, he being of the opin-

ion that he was not in the condition to take it himself, he would sit there, as has been stated by one of the witnesses, like a graven image, to give some sort of character to the proceedings, he would represent and then look the testimony over afterwards and decide the case. Well, next morning they meet. The next morning court is opened and his honor is upon the bench. Mr. Goodenow is there simply as clerk to write down the testimony: he is to write down all that may be offered in evidence, and take a memorandum of all the exhibits, and the Judge, in his sober moments, is to examine the matter and render his decision. Now, there is a little difference of opinion here among the witnesses for the State as to the stage of inebriety the Judge was in. Mr. Pierce has said that he was "crazy drunk." Mr. Webber has said that he was "drunk." Mr. Lind stated that he was in the secondary stages of drunkenness. Mr. Severance has stated that he was "intoxicated," and Mr. Goodenow has stated the same thing. Mr. Lind also states that he was suffering from *ketzenjammen*, a German word. We have no corresponding word in English, I might translate it, however, as "cat's lamentation" or complaint, and I have no doubt that gentlemen in my hearing have heard cats howl and cats lament, and this expression is derived and compounded from the two German words "*katzen*," cats, and "*jammer*" lamentation or complaint. We have an authorized word derived from this German word "*jammer*." I refer to "*yammer*," used frequently by those who are accustomed to hear German spoken—"*yammer;* I suppose many have heard the word used, as when we speak of a man "*yammering*." It comes from the German "*yammer*." Undoubtedly Mr. Lind has considerable knowledge of the German language, and has frequently heard the expression, for it describes, better than any other phrase, the condition in which a man finds himself after having been on a terrible spree,—when his head is big, his stomach disordered, his brain refuses to work, and he is really more unfit to transact business than when he is under the immediate effect of liquor. To the victim of the debauch all noises, all exertion is a perpetual cat's concert of the most discordant character.

Mr. Lind is of the opinion that this Judge was then in the secondary stage of intoxication, was sobering up, and was no longer exhilerated and boisterous. Now, the counsel will ask why we do not examine Gordon E. Cole upon that article; that he was present as one of the attorneys, that the State had him subpœnaed as a witness and he was present recently for examination. I answer that the State called its five witnessss and could not call another. The records of this court show that Gordon E. Cole was also subpœnæd here as a witness for the defence and was in attendance. The records show that Blanchard, Gezike, Fitzgerald, Behnke, only four in number, were examined as witnesses on this article in behalf of the respondent. Why did not they call him? When they say to us, why did not you call Gordon E. Cole, one of the most prominent and ablest men in our State, a truthful man, a man who has more than a State reputation, we say to them, why did you not put him on the witness stand? We had five witnesses and you had but four, you had the opportunity to put him upon the stand and let us see what Mr. Cole would testify to. The respondent dared not to do it.

Well, these witnesses tell you that the Judge was drunk. Judge Severance tells you more graphically than anyone else the state of affairs

during that proceeding, and he tells you that the Judge was very much under the influence of liquor; that he kept getting worse and worse; that there were recesses taken, during which the Judge went out; that he kept growing more intoxicated. There are very many men who sober up after a spree by getting drunk again. There are very many men who find themselves totally unfit to do business until they indulge in a few drinks of liquor, and I apprehend that was the condition of the court upon that morning; his head was too big; his hat was too small; every individual hair stuck right straight up, and it seemed to him as if he had been on a spree for many weeks. I have no doubt that he went out and got liquor during the trial that day, as detailed by Judge Severance.

Now, for the defense, Mr. Blanchard testifies squarely and fairly that the Judge was not drunk at that time; was not under the influence of liquor; Mr. Blanchard was the clerk; was often there; he does not tell you that he remained all the time. In fact, he tells you that he did not remain all the time. He did not tell you whether, in his opinion, the Judge was suffering from *katzen-jammen* or not; whether his tongue felt badly; whether his breakfast did not agree with him, and whether he was in a condition to have taken that breakfast at the pump with greater satisfaction than any other place. He does not tell you that, but simply says he was not intoxicated.

Mr. Gezike was the next witness. He, I believe, is a cattle dealer; a German; one of the parties in the case; undoubtedly a truthful man, and he was asked here as it appears on page 423 of the defendant's testimony:

Q. Well, I will ask you what, if anything, you have observed after having seen Judge Cox on a spree the evening before, the following morning?

After having seen Judge Cox on the evening before, we endeavor to get from this witness what he observed the next morning about his condition.

A. Well, you can't hardly see anything. I never saw anything differently the next morning.
Q. You have never seen any traces, the next morning, at all, of any spree?
A. No, sir.

The witness admits that Judge Cox was on a tremendous spree; he saw him on a tremendous spree at night, and he notices no traces or signs the next morning. What sort of testimony is that? It is impossible for any living man to be upon a spree at night, and show no indications of his debauch when recovering; his physical appearance and his condition, must be plain and unmistakeable. There are plenty of things to indicate his disorganized bodily state, and it is only a matter of degree; some indicate it more that others.

Mr. Gezike sees nothing in the Judge indicating drunkennesss.

Now, Mr. Gezike is a man who lives up in that neighborhood; a German, accustomed to drink thirty-five or forty glases of beer every day; accustomed to seeing men in that condition, and he does not notice those things; he does not pay particular attention; he does not pay the attention that lawyers do who are trying their cases before this Judge; and every one of those lawyers who were present, except Gordon E. Cole, testify that the Judge was drunk. And yet they will ask

you to take Gezike's evidence that he was not intoxicated,—the testimony of a man who did not have the facilities nor the opportunities for observing, without speaking of the faculty or ability to determine, possessed by these attorneys.

The next witness was Mr. Behnke. Mr Behnke is in the mercantile business; occupies a country store. I have no doubt he keeps a bar; I don't know whether he testified to it or not. He testifies that he did not see anything in the appearance of this man, indicating that he had been on a spree the night before. He does admit that he has known Judge Cox for some twenty-four years, and that he has seen him under the influence of liquor on several occasions. He was present during that term of court; constantly in attendance. He does not see any difference in his appearance that morning from the day before. Mr. Behnke is one of that class of men who think that a man does not get drunk very often—a man may get under the influence of liquor, get intoxicated, may stagger and all that sort of thing, but he does not get drunk.

In response to questions, he testifies, on page 431, as follows:

Q. Well, what do you mean by drunk?
A. Well, when a man is so full that he lays in the street.

That is Mr. Behnke's opinion of a drunken man—that he must lie in the street. I suppose that a man could not get drunk, it would be actually impossible in the opinion of Mr. Behnke, unless there was a street for him to lie in.

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.

Now, that is the class of testimony, and that is the kind of witness the respondent relies upon and asks you to believe as against Judge Severance, Mr. Lind, Mr. Webber, Mr. Pierce and Mr. Goodenow, the clerk there—a man who testifies that he does not consider a man drunk until he lies in the street. How many drunken men are there—men whom we know to be drunk, who reach the standard of drunkenness fixed by our old friend Behnke? Few indeed, I am glad to say. That is the rule that Mr. Behnke gives you. I suppose Mr. Behnke did not intend to have his answer taken literally. I give him the credit of meaning that a man must, to be drunk in his opinion, be so far gone in his potations as to be unable to walk, and consequently have to lie down. Now, it happens that this is not the view that most people take of drunken men. Most people come to the conclusion that a man is drunk when he indicates it either in his walk, his conversation, or by any of the many different ways in which drunkenness is conclusively indicated—when he shows by his appearance that he is under the influence of liquor, when he is intoxicated—for intoxication and drunkenness are according to Webster, synonomous; you can use either of them. We, sometimes, when we are a little polite, say that a man is intoxicated. If we are speaking of a judge of a district court we say he is intoxicated, but when we speak of plain John Smith, who is hauled up before a police magistrate, we say he is drunk. That is the difference, perhaps.

It is a more polite way of expressing the condition a man is in, who is decidedly under the influence of intoxicating liquors. But Mr. Behnke's testimony, whose conclusion is that a man is only drunk when he must lie down in the street, is the class of testimony that they desire you to take as against the testimony of such men as Judge Severance and the others.

Mr. Fitzgerald—page 432—one of their four witnesses testified that he resided at Sleepy Eye, (that is in Brown county, about twelve miles from New Ulm;) that he is a mason by trade and has known Judge Cox for twelve years; that he has sometimes seen him under the influence of liquor; that he was present during the trial of that case; that he was there during the forenoon only; that he was in attendance upon the court previous to this as a witness; that he met Judge Cox at the entrance going into the court room on the morning of the trial of the Gezike case and went in with him. He is asked here:

Q. Have you ever, at any time, during these 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 knew: I did not know it.

He says there was nothing to indicate that he was intoxicated. Now what does that testimony amount to? Here is a stone mason who lived down in the small village of Sleepy Eye. I think it has been testified that New Ulm is a place of nearly 2,000 inhabitants, and it seems necessary to get a stone mason from Sleepy Eye, who happened to be there and to have met Judge Cox that morning, to testify that in his opinion Judge Cox was sober. Where are the other persons who were present at the trial of that case? Why do they not exhaust their five witnesses? It was a case that was tried publicly in that court house. There were several persons there who had business with the court, lawyers and others, and yet they are obliged, in order to make even four witnesses upon that article, to take this stone mason from Sleepy Eye, who only met Judge Cox that morning for a moment as he was going into court. The only way that he can recollect that it was that morning is because they were trying the Gezike case, he could not tell a word that was said or who was present, except Severance and Lind, the attorneys, who were in court the day before. That is all he can tell about it, and does it not seem remarkable that this mechanic should remember for over two years that he met the Judge at the court house door. You will find all through this testimony for the defense that in the consideration of nearly every one of the articles, instead of bringing the men that we might suppose they would offer as witnesses, they have gone into the highways and byways of the land, picking up a saloon keeper here and a mechanic there. Quantity, not quality, seems to have actuated them, and they seem to have avoided jurymen, lawyers, litigants, all of whom possessed excellent opportunities of observation, they have picked up their witnesses in a slip shod manner—a man here and a man there, a man who happened to be in court this evening for two or three minutes, a man who happened to be in court another evening for two or three minutes, and they have brought that class of witnesses here in every one of these articles, and this was done in the case known as article 3. They took Mr. Blanchard, Mr. Gezike, Mr. Behnke

and Mr. Fitzgerald, but four witnesses, and they did not dare to call Gordon E. Cole, who was one of the attorneys engaged in the trial, was subpœned by them, and who sat here in court more than one day patiently waiting to add one more "stone to the castle," as the counsel says.

In this Wells vs. Geizeke case, the managers think they may safely state that it is one of the instances in which they rely upon conviction; that this Judge attempted there to exercise the duties of his office; attempted to try that case when he realized and knew that he was not in condition to do it; that he was offensively drunk during the trial of that case; sat there in a condition of intoxication; drunk; unable to comprehend what was going on.

Perhaps it will be necessary for me to explain somewhat the nature and condition of the Wells vs. Geizeke case as to the laymen of this body. I think the lawyers understood it. Wells had brought a suit against Geizeke and others, including the sheriff of Brown county, to restrain the latter from selling certain property by virtue of an execution issued in action wherein Geizeke was plaintiff and Mr. Behnke was defendant. A confession of judgment had been made by Behnke in favor of Geizeke, and on his confession of judgment the sheriff had levied upon this property. Believing this confession voidable, Behnke, as a creditor, caused the same goods seized first by a writ of attachment, and then (after obtaining judgment by virtue of an execution) he then brought an action to set aside the confession and to prevent the sheriff from selling upon the execution in favor of Geizeke. As will be seen, the bond or undertaking in attachment or the writ of attachment cut little or no figure, for the plaintiffs rights turned upon the legality of the confession of judgment and the execution issued under it. The writ of attachment cut no figure in the case, but during the trial the Judge came from his seat and takes this writ or undertaking, which has been offered in evidence there, and made some comments on it. If he had been sober and acquainted with the case, if he understood the issues in it, he would have seen that the writ of attachment or undertaking needed no bettering because it hinged upon the same thing that had transpired prior to the entry of judgment on the confession. Well, the party suing could get no rights in the case through the undertaking or the writ of attachment. The title to the property depended upon the execution in person by Geiseke and the execution depended upon the sufficiency of the confession of judgment. What had the undertaking to do with it? The undertaking was in an attachment case of Wells vs. Behnke and the goods were first seized by virtue of the writ of attachment, but whatever rights Wells received had merged, as it were, in the levy under execution which had been executed in judgment subsequently obtained. The Judge made these remarks, according to the testimony of Judge Severance, page 38 of the journal of the 19th of January.

A All the attorneys engaged in the trial of these cases, upon the part of the plaintiff, were conducting them upon the theory that it was necessary that the plaintiff should have a lien upon the property in question in the action, in order to maintain their suits at all. There were attachments and had been execution levies, especially in my case, and, I think in the others. The papers were all in court, the writ of attachment and all files, and the undertaking for attachment laid, I think, on the Judge's desk, if not on a table near it.

I suppose this was not a bond, but an undertaking under our statute.

The Judge took up the undertaking and wanted to know who was the author of this "deuced" or "infernal" thing, or something of that kind.

Q. He wanted to know who was the author of that deuced or infernal thing?

A. He wished to know who put in such an institution as that in a suit, and said he never heard of such a thing as that, and looked at it, and shook it, and made other remarks about it. I stated that it was of no materiality in the case; we had a levy by execution subsequent to the levy by attachment, and that it cut no figure in the case at all. Well, he laid it down after a while, and said he never heard of such a thing, and he acted as though he wanted it said that the case ought to be dismissed then and there, but it passed over at that time. I suggested, and so did all the rest of the attorneys, that everything was to be taken under advisement; that our objections would be recorded, and everything was to be taken under advisement, to be determined when the whole case was determined, and not before. Well, the Judge, after a while, took up the same paper again, and began to rail at the paper, its form and so forth. Myself and Gordon E. Cole both then told him that it cut no figure in the case. The attorneys on both sides spoke to him, and said that the lien that we had, and that we relied upon, was a lien by levy of execution, and not by attachment, and that it was immaterial, and of no consequence at all. At any event, we said we wanted to get through, and all these matters were to be taken under advisement, and wanted him to take them and decide it afterwards, and not there.

Now, during the trial of this case, when the undertaking attachment cuts no figure at all, as I understand, the Judge seizes the paper, shakes it, rails at it and wants to know who put in that infernal thing, that he never heard of such a thing as that. This is the testimony of M. J. Severance, mind you, who was trying the case. He gives you the language of the court. I think the testimony of Judge Severance upon that point disposes of the evidence of Gezike, of Behnke, and of the mason Fitzgerald. Judge Severance understands what he is talking about. He describes the antics and gives the words of his Honor, that during the trial he was railing at and striking the paper, making these remarks, and that the attorneys engaged in the trial were very much annoyed by his interruptions and drunken comments.

On the cross-examination Senator Powers asks the witness this question:

Senator POWERS. The words of the former witness were, "to keep still." He didn't say, "shut up your mouth."

Q. Well, did you say so to him, or tell him "to keep still?"

A. I don't recollect, but I wouldn't wonder at all. I did—

Mr. Manager DUNN. Just answer that, so that they can all hear it.

A. Well, I can't say whether I used that exact language or not. When these expressions occurred we were trying to get away, and we wanted to utilize every moment, and I might have said "stop." I was very much annoyed.

Senator CAMPBELL. "If you will stop, we will get along faster;" those were the words of the other witness?

A. Oh, possibly; I was very much annoyed.

Now Judge Severance is not one of the witnesses the counsel will comment upon, as upon Mr. Webber, Mr. Gould and Mr. Miller. Judge Severance has no desire to occupy the position Judge Cox has. His name cannot be mentioned in connection with the prospective vacancy. He is already the honored Judge of another district, and has no motive (selfish or otherwise) to state unfairly, the behavior of Judge Cox upon the bench at this time was disgraceful, and such as to annoy

them very much. He relates to you the manner in which he attempted to try the case, the manner in which the judge sat there, simply because it was necessary to have the court present, drunk or sober.

The Senate here took a recess until 2:30, P. M.

AFTERNOON SESSION.

The Court met at 2:30, P. M., and was called to order by the President *pro tem.*

The PRESIDENT *pro tem.* Mr. Collins will resume his argument.

Mr. Manager COLLINS. Gentlemen, at the time the recess was taken this noon, I had about finished my comments on the testimony on article three, the Wells against Gezike case. I find, however, in examining the testimony, at the suggestion of a member of this court, that I have made one mistake, which I desire to correct. It is a mistake which was made unintentionally, and I have no doubt that many mistakes will be made by each of the counsel as they address the Senate, for the reason that in the examination of over 2,000 pages of testimony, and the slight examination that we have been able to give it, we must necessarily make some errors. I refer to the testimony of sheriff Bird, in article one. I stated that the sheriff testified that he had been in saloons in the town of Fairmount with the Judge, during the Martin county term of court, and had drank with him. That is not the testimony of Mr. Bird; upon the other hand, he testifies that he did not visit saloons. He testifies, however, that there were saloons in that town. It is in evidence that none were licensed, and it is in testimony by other witnesses, that Judge Cox drank in saloons repeatedly at that time in the town of Fairmount. The correction, then, is, that other witnesses, and not sheriff Bird, testified that they drank with Judge Cox in the unlicensed saloons. These mistakes, as I said, will occur, and we cannot help it.

If I were addressing an ordinary jury, I should be more cautious as to these errors, and should endeavor to be more careful in making these statements; but I know very well, that in stating to the Senate the evidence, if I am in error the Senate will correct me, and will understand that I have made the statement unintentionally.

There is another matter in connection with this explanation, which I desire to speak about, and that is, the allusions which counsel has already made to matters that are not, and cannot be, in testimony,—matters that would not be admitted in evidence here if they were offered, simply because they are improper. For instance, this matter of the petition which has been gotten up, which the counsel had here flourishing in our faces during his opening argument but which we have not seen since. That is one, and there are other events and circumstances of which counsel have spoken here that would be inadmissible, matters that should not, and will not control you in determining the guilt or innocence of this respondent. I may, perhaps, myself, allude to incidents outside the case,—to matters that are not evidence; I shall not be so careful about that as if I were addressing a jury, for the reasons already given. If I do allude to these matters, you will understand, of course, that they are not in evidence and are not to be considered by you.

Now just before adjournment, I spoke of the high character of the witnesses who had appeared before you on article three, in behalf of the

State, and I compared the reputation and character of the witnesses for the prosecution with that of some of the witnesses for the defense. In speaking of the standing of these men, I allude particularly to Judge Severance, a man whose reputation is beyond question,—a man who has a character which we must all admire, a man who has, at one time, by means of strong drink, been very degraded, and has been strong enough to lift himself above his frailties to rise above his appetite and become one of the most honored and respected citizens of this state. I say that he is a man whose truthfulness is beyond question, and whatever he may state before this or any other court is almost conclusive.

The other witnesses which we have had upon this stand, Mr. Webber, Mr. Pierce, Mr. Lind, Mr. Goodenough, are honorable, respectable citizens. It is true, as the counsel claims, that Mr. Webber aspires—to use the counsel's language, is mean enough to aspire—to the position that this respondent has obtained—a position that the respondent has disgraced ever since he was elected to it by the credulous voters of his district. I say credulous voters, for had they not relied upon the respondent's pledges of reformation he would not have received their votes in the fall of 1878. Mr. Webber's testimony has been the testimony of a truthful man, modestly and carefully given, and there is nothing in his appearance or language which would authorize the counsel to attack him in the way he has—alluding to him as a man who is willing to swear to anything to obtain the position of Judge in case of a conviction. Now these remarks are applicable to Mr. Ladd and Mr. Wallin, both having been talked of up there as candidates for the position soon to be vacated, we believe. I have no doubt that this matter of money and the probable candidates has been talked about. I have no doubt, that in considering this trial, the people of that district have discussed to a great extent who would be the successor of Judge Cox. In talking over the proceedings they have done just what we might expect them to do—perhaps not the best thing or the most politic thing in the world to do, but certainly just exactly what we might expect, and it is unfair and unreasonable that the witnesses should be attacked as liars and perjurers ready to testify to almost any falsehood, simply because their names have been mentioned in connection with the vacancy, should the vacancy occur.

Now, of the character of the witnesses for the defense, I have very little to say. So far as I know, with one exception, they are honorable men; but there is one man whom to bring here to testify is an insult. The Senate will understand that the character of this witness has not been in evidence, but I say that a body of men were never more insulted in the world than by bringing one person as a witness for the defense in article three upon the witness stand as a reliable, honest witness. There are Senators here who know his character and history, and those Senators, of course, will understand to whom I refer, and they will bear me out, if it is necessary that I should be borne out, in the statement made.

Mr. BRISBIN. I certainly never heard of it.

Mr. Manager COLLINS. It would be better if no one had ever heard of it.

Mr. BRISBIN. Well, what you assert is not in evidence in the case.

Mr. Manager COLLINS. It is not in the case. It will be remembered, gentlemen, that because of the absence of the journal of last Friday, the

41st day, I took up the consideration of these articles out of order, taking up article three, the Wells vs. Gezike case at New Ulm before article two,—the term of court at Waseca. I desire now to consider

ARTICLE TWO

for a short time; and I will say that I regard this article, and the testimoney under this article, as among the strongest that we have presented.

It seems that in March, 1879, Judge Lord was sick and unable to attend a term of court in his district at Waseca, Minnesota, and he secured the services of Judge Cox to go down there to hold that term of court. It is in testimony here that during the first week of that term Judge Cox presided with dignity and in the manner we might expect from a man who was in the full possession of his senses. His conduct was unexceptionable, as I understand it,—at least that was the testimony of the witnesses. It seems, however, that in the course of the second week, the Judge having refrained from drinking for a week or ten days, began to show signs and symptoms of intoxication, that they were manifested about the 3rd of April to a very great degree, and that they were continued to a greater or less extent all the balance of the term.

Now, the testimony can properly be divided into two heads: The trial of the Powers vs. Herman case, commencing upon the second day of April and ending upon the fifth, and the arguments on the motion upon the 5th day of April that has been testified to by Robert Taylor principally, and I think also by B. S. Lewis. It seems that on the 5th of April, or rather upon the 29th of March, Messrs. Taylor & Bentley, of Winona, attorneys for the plaintiff in a certain case, had motions returnable before Judge Cox. The present Judge of the United States Court for Dakota, Edgerton, was attorney upon the other side. These motions were I say returnable upon the 29th day of March, but for some reason, not given—I presume because court was otherwise engaged, were postponed until the 5th day of April. These cases were something of this character. An answer had been filed in an action which was regarded as insufficient by Messrs. Bentley & Taylor, attorneys for the plaintiff. They moved for judgment upon the pleadings, a proceeding quite familiar to attorneys. Had that motion been granted it will be seen that the case, so far as those proceedings were concerned, would have been at an end, judgment being for the plaintiff on the pleadings, for the reason that the answer did not state facts sufficient to constitute an action. Admitting it to be true, it was not a defense. The sufficiency in pleadings is more frequently raised by demurrer. But the motion under consideration was for judgment on the pleadings. Judge Edgerton resisted this disposition of his answer of course, but at the same time made an application that if the Judge should hold that the plaintiff was entitled to judgment upon the pleadings as they stood, that he might be allowed to amend his answer so as to allege a proper defense, so that they might have a trial upon the facts. That was one motion, and I desire the Senate not to get it confounded with another motion which was to be argued at the same time. There were not two motions in this instance under consideration. But one a motion for judgment upon the pleadings, and a mere application arising out of the motion for

leave to amend the answer should it be held insufficient, a thing that is frequently done.

There was another motion returnable there at the same time. A motion by the defendant to dissolve the writ of attachment which had been issued in the case and under which the property had been seized. I have no doubt that the motion was made on the ground that the writ of attachment was improperly and unprovidently issued, the affidavits being untrue, for instance. On the 29th of March the attorneys came up and read their affidavits in each motion. The matter was then continued for argument until the 5th day of April, and Mr. Taylor and Mr. Lewis both tell you that the judge at that time was under the influence of intoxicating liquor. We are unfortunate in not being able to have Judge Edgerton here to testify on that article, a gentleman you know well and favorably. The testimony of Mr. Taylor is that Mr. Bently, Judge Edgerton and himself arrived before dinner; that they went up to the court house, that he and Judge Edgerton walked back to the hotel and that immediately preceding or immediately behind them came Judge Cox and Mr. Bently; that Mr. Bently and Judge Cox stopped at a saloon on the way down; that all then went to the hotel and after dinner returned to the court house, and that the Judge was manifestly under the influence of liquor when he heard the argument. This was the testimony of Robert Taylor.

Now, as one reason why he knew him to be under the influence of liquor, the witness states that Judge Cox could not tell which side of the case he was presenting,—addressed some question to him concerning his position, and in order to rebut or excuse the Judge for making such enquiry of Mr. Taylor, the defense have put upon the stand Lewis Brownell—Judge Brownell as they call him—to show that a sober man might experience the same difficulty. I expect he got that title in running for Judge of the district court, in that district, in 1880. I find from examination that Judge Buckham received 10,223 votes and Lewis Brownell received 4. And in that contest he must have received the title of Judge. The counsel styles him Judge although he expressly disclaims the appellation. But they put Lewis Brownell upon the witness stand to testify that he did not understand which side Mr. Taylor was on. I am surprised that counsel of the acuteness of brother Arctander should attempt before this senate to show as a reason why Judge Cox did not understand Mr. Taylor that Lewis Brownell failed to appreciate, to understand him. Why, Lewis Brownell cannot understand an argument made by himself. The fact is that Mr. Taylor is noted for his clearness of statement, a clean cut lawyer; a man keen and sagacious in arguments, and there is no trouble in discovering which side he is on unless the person listening is under the influence of liquor or otherwise incapable. But Lewis Brownell says he did not understand him, and for that reason they want you to believe that Judge Cox was perfectly justified in making the inquiry. Mr. Taylor tells you that when he made his argument on this motion the Judge failed to understand his language and supposed he was connected with Judge Edgerton instead of being opposed to him. He then goes on to explain the nature of incompatible orders that were made, only one being signed. We discover that Judge Cox granted the motion, that he said "Yes, the answer is manifestly insufficient; judgment on the pleadings for the plaintiff is rendered, and you may draw such an order." He then gave leave to Judge Edgerton to amend his answer to draw his order, told each to draw their orders. Would a

sober man do that? The counsel attempted to cloud and mystify the transaction by saying that such orders are not uncommon. I have no doubt that it is frequently done but always in the same order. I have no doubt that a court frequently orders that unless the defendant amends his answer so as to make it a defence judgment on the pleadings shall be rendered. Such an order is not uncommon, would be consistent but these attorneys were each directed to draw orders wholly incompatible. Why did he direct Mr. Taylor to draw an order for judgment on the pleadings, an order which, if signed, would end the proceeding, and at the same time tell Judge Edgerton to draw an order permitting an amendment to the defective answer. If the order is signed, allowing an amendment, the order for judgment on the pleadings is of no value. Or if judgment on the pleadings is rendered, amendment is of no consequence. The race was to the swift on that occasion and was won by Judge Edgerton, who quickly drew the order allowing him to amend his answer, obtained the signature by the court and laughed at the discomfiture of the attorneys on the other side. They had no use for any further orders, and, as appeared here, they never drew them. It is clear that those orders were incompatible, and no Judge in his sober moments would ever direct them to be drawn.

Mr. Lewis testifies to the same occasion,—testifies that he was there at the time, and that the respondent was manifestly under the influence of liquor. I do not remember what the testimony of the defense is upon that point, except so far as Father Herman is concerned. I believe that Father Herman stated that he listened to that argument, that he called the attention of his attorney to it, and to the manner in which some young attorney was speaking—just whom, he does not know. Now I take it that Father Herman intended to be truthful when testifying in this case, but he feels under some obligation to Judge Cox; his lawsuits had been successfully tried before him; the Judge had treated him handsomely, possibly he fancied and favored him; the Father is charitable, as all of his class, are, I am glad to say, and he came here, not intending to wrong, not to testify to an untruth, but with a disposition to aid his friend, overlook his indiscretions, believing, perhaps, that Judge Cox was imposed upon; he came here and testified as favorably as he could, as to his condition, not realizing exactly the position in which he was placing himself by doing it.

What further testimony have we upon the condition of the Court? I answer, the testimony of Robert Taylor, that the motion to dissolve the writ of attachment was not argued at that time, simply and solely because the Judge was manifestly not in a condition to hear it. He was intoxicated, and the attorneys knew it ought not to be submitted to him. One drunken decision had been given, and they refused to submit their motion for fear of another. If we are wrong in giving this as the reason, why is not Mr. Bently here? Why is not Judge Edgerton's testimony taken? It could have been taken by deposition, although he is out of the jurisdiction of this court. I say if this is not a fact, why is it not denied? Why had they not witnesses here to show that there was no other motion pending, or that it was not argued for some other reason? Why does not Judge Cox go upon the witness stand himself, as in all these other cases, and explain to you the position in which we have put these matters? But no, Judge Cox was in such a condition on the 5th day of April, that they did not dare to submit to him the

other motion they had there; in getting these incompatible orders they had had enough of it. The counsel agreed that he was not in a condition to do any business; and they came away and left him, drunk and disgraced.

The other offence at Waseca was upon the 3rd day of April, two or three days before the arguments of the motions. They were argued on the 5th day of April, and this Power-Hermann adjournment was on the morning of the 3rd day of April. In the case of Power *versus* Hermann, Father Hermann had been sued to recover, I suppose, the contract price for building a church; he was sued presumably upon the contract he had made with this man Power. It seems that a jury was empaneled and Mr. Power went upon the witness stand on the afternoon of the 2nd day of April. It will be observed that he got through with his testimony on the direct examination on the afternoon of the 2nd of April, and on the evening of the same day Lewis, attorney for Father Herman, commencod the cross-examination and continued it until the morning of the 3rd day of April. Now, on that morning it is alleged that Judge Cox was very much under the influence of liquor; that he was so drunk that they had to adjourn the case. And I am free to say that if this prosecution has not made out a clear case of intoxication upon this article, we have failed in every one of them.

What is the testimony? We have heard Mr. Lewis, who was the attorney for Father Hermann, the defendant in the case. We have the testimony of Mr. Collister, who was the attorney for Mr. Power, the plaintiff, and they agree as to the condition of the respondent. Mr. Collister, you will admit, is a man who comes here unwillingly, a man whose friendship for Judge Cox makes him hesitate. He is not untruthful, but he is inclined to shield his disgraced friend, in any honorable way.

In addition to these gentlemen, we have the testimony of James B. Hayden, the clerk of the court, a man who evidently knows what he is talking about. We have the testimony of Mr. Newell, the testimony of Mr. Blowers, who was at that time the chief of police or city marshal; and upon the defense they have the testimony of Dennis Murphy, who was deputy sheriff, the testimony of James Murphy, a brother of his, and who was a juryman in the case, a saloon keeper—did I say saloon keeper? I will take it back, I don't want to offend Mr. Murphy, he keeps "a gent's furnishing store," if we rely upon his own words as to his occupation; the testimony of Mr. Lansing, a carpenter, who is a neighbor of Judge Cox at St. Peter; the testimony of Father Herman, the testimony of Lewis Brownell, the testimony of Bohen, an insurance agent; the testimony of Mr. Forbes, a saloon keeper, although I think he testified that he was a clerk; and the testimony of Alexander Winston, another gentleman down there who keeps "a gents' furnishing store." He "furnishes" whisky to Judge Cox and others.

The testimony on the part of the State is substantially that while Mr. Power was being cross-examined and when Mr. Lewis was pressing him closely, Mr. Collister desired to interfere. He thought his witness was being badgered, being aggravated and confused. He thought, probably, that Mr. Lewis was a little too sharp. I suppose, as a matter of fact, his witness was getting cornered and he desired to relieve him. He therefore, addressed the court concerning the matter, and found that Judge Cox was manifestly under the influence of liquor and asleep or

stupid. His condition had not been observed before that time, and I think I can understand why it had not.

You will remember Mr. Murphy testified that there was a fire in the court room that morning, and all understand the influence that going from the open air into a room which is warm always has upon a man who is under the influence of liquor. His inebrety begins to show itself as soon as the body is affected by the atmosphere. It is the experience of every man here that men have come into their presence to all appearance sober—not discovered to be under the influence of liquor—but after being a little warmed up the liquor begins to indicate its presence; begins to work; begins to manifest itself very perceptibly, the reason is very plain. The liquor is beginning to affect the brain, and there is where we first discover it. Until liquor affects the brain, we do not observe its presence in the system. During the rapid cross-examination of the witness no one paid attention to the Judge, but when Collister attempted to attract the attention of the Judge in regard to Mr. Lewis pursuing his witness, he found that Judge Cox was under the influence of liquor; was drunk and asleep; what did he do? He did not propose to go on and try the case with a drunken Judge. He did not propose to jeopardize his client's interest, nor did he even pursue a course which would attract attention to the condition of the Judge; the disgrace which would attach to that exhibition. He suggested to Mr. Lewis that he should make a motion for a continuance; make a sham motion for time to get a witness from Janesville or some other point. He did not want him to oppose it, telling him the reason, and calling his attention to the situation. After a few moments the motion was made by Mr. Collister. The Judge revived and denounced it as an unheard-of proceeding, but on being urged by both attorneys adjourned court, Mr. Hayden, the clerk of the court, realizing his unfortunate condition, went with him out of the court room and up street.

Now, Father Hermann states, and you remember the quite dramatic air with which he testified upon that point, that while Mr. Lewis was cross-examining the witness Power, he saw a paper there among those belonging to Power, which he wanted Lewis to obtain possession of and show to him; that Mr. Lewis got hold of it as it lay upon the table, a piece of brown wrapping paper, and upon a slight examination he said there must be a change of front, they must adopt a different method in the case: that another plan of the church, the contract price of which was in dispute, would be introduced in evidence and that a consultation must be called immediately at Mr. Lewis' office and that Lewis obtained the adjournment at his suggestion and for that purpose only. Now, Mr. Collister tells you an entirely different story. He tells you it was not Mr. Lewis who made the motion in order to get the witness, but himself who made the motion and solely because the court was drunk. Father Herman is positive that it was his attorney who made the motion. I think I can satisfy any attorney who will listen for a moment that independently of these opinions there is enough to show that Father Herman is mistaken. Mr. Lewis and Mr. Collister both testify that the plans were in court the day before; the day they commenced on which Power relied and upon which he claims the church was built. Father Herman claimed that it was built upon other plans and it seems if we judge from the result which was favorable to Father Herman. It must be plain that the plans Mr. Power relied upon would be introduced in

evidence. On the first day, the day he opened his case, he built the church for Father Herman. He is attempting to recover for building a church according to certain plans; and, they would come into testimony upon direct examination at the outset. That would be the natural thing. They came into testimony on the 2nd day of April, because Mr. Power, in order to sustain the case, would be obliged to show what plans he used, and further, show that he complied with these plans in building. The brown paper, which seems to have stirred Father Herman into a peremptory call for a council of war was simply the wrapper upon the plans Powers proposed to rely upon in his suit. The plans enveloped in this brown paper had been introduced in evidence the day before, Mr. Lewis says, before Collester was through with the direct examination of Mr. Power. That would be the time to produce them, just as the attorney tells you was done upon the first day of the trial and during the direct examination of Mr. Power.

Now, Mr. Hayden testifies he saw Judge Cox in loud conversation with Mr. Child, the editor of a radical temperance paper in Waseca, just after the adjournment, near the court room door, and fearing a collision he called the Judge away. For reasons which will manifest themselves to the Senate, we did not care to call Mr. Child; we did not desire to put a witness upon the stand in this case, whose presence could be construed as a manifestation of feeling on the part the temperance people of this State. We did not want a witness upon the stand, who could be characterized by the counsel for the respondent as bigoted in this matter, and for that reason, Mr. Child, excellent citizen as he is, was not called. Mr. Hayden, the clerk of the court, who knew the condition of the Judge, saw Mr. Child and Judge Cox near the door in an altercation. Judge Cox was pressing Mr. Child for a reason why he was not prosecuting certain whiskey cases. I apprehend, although I do not know it to be a fact, that Mr. Child was the county attorney, and did not care to bring on his cases before that court. There was evidently some feeling between the two, and Mr. Hayden, fearful of a row, steppped up and quietly said to the Judge, "I want you to go up street with me." What was the reply? "No, I am full now; I have got enough now." The counsel asked him on cross-examination, whether that was the language, or whether the Judge said, "No, I have had enough now." It does not make any difference what the language was; it indicated to Mr. Hayden, and to everyone who heard it, that Judge Cox realized he had drank enough, perhaps too much, and did not propose to drink any more. I have no doubt, gentlemen, that Judge Cox knew at that time, as well as anybody, that he had been upon the bench in a condition unfit to do business, that he was very thankful to his friends who had quietly procured the adjournment, who had given him an opportunity to sober up. In fact, he admitted afterwards that he was thankful to these friends who were endeavoring to shield him from publicity,—from the disgrace he had brought upon himself by drinking.

Well, Mr. Hayden is contradicted by Mr. Dan Murphy, the deputy sheriff. Mr. Dan Murphy says that he was not in court at that time. He was absent just when court adjourned, but returned soon after, and met the Judge at the foot of the stairs; that he then went up stairs; sat and talked with Mr. Hayden after the Judge went away. Just how Mr. Murphy remembers these details so distinctly I cannot tell. He is a

man of remarkable good memory if he can remember unimportant events so long. I presume the counsel will ask how Mr. Hayden remembers the occurrence so well. He remembers it because Judge Cox was drunk; because of the adjournment for that season. One who realizes the plight of the court would remember everything connected with it. But there is nothing that fixes it in Mr. Murphy's mind more than any other day; it was the regular routine of court; there was nothing unusual happening. Mr. Murphy did not understand that the Judge was drunk, nor that the court adjourned, because of his intoxication. It was, so far as known, a mere adjournment for a witness; but he testifies to all these minor points to help out his friend here, the man with whom he was drinking day and night during that term, even until after midnight on several occasions. But it seems necessary to the worthies that they contradict Hayden on this point, and also Mr. Collister, who says he heard the altercation, and saw Mr. Hayden go there and induce the Judge to go away with him, and to do it they call on Alexander Winston. Mr. Winston testifies that he keeps a sample room in that town; he is not so particular about describing his business as our friend Murphy; he keeps a sample room; Murphy keeps a "gents' furnishing store"; Winston testifies that he was in court that day when it adjourned; that he came out of court and walked up the street with Judge Cox; he remembers it distinctly, and there is an evident intention upon the part of the witness Lansing to corroborate Winston in his assertion; he remembers that he walked up the street with Judge Cox; when we come to fix the day it appears that he knows it was that day, simply because he mentioned to his friends when he left his "gents' furnishing room" that he was sorry his brother-in-law Ecob was not there to go with him to court; that Ecob had gone hunting with the gunsmith, Neiboltz, who lived next door; but he fixes the day positively, and states that his only reason for being positive is that his brother-in-law had come from the east the day before and had gone hunting that day; we put Mr. Neiboltz and Mr. Welch upon the witness stand, and show by them and Mr. Welch's books that it was on the 13th of April when this man Ecob went hunting with him, and he recollects the day because they shot a swan, an unusual bird; Mr. Welch also recollects that they shot the swan that day; that is they remember the things so distinctly, and there can be no doubt, from the statement of Neiboltz and Welch, that Mr. Winston, as fixing this occurrence as the 3d day of April, is mistaken as to the date. His brother-in-law had not arrived in Waseca on the day of this adjournment.

Mr. Newell testifies that he was in court at the time of the adjournment, and that Judge Cox was manifestly under the influence of liquor. Mr. Blowers, the marshall, testifies that he met Judge Cox during the term of court at the different saloons in the night and saw him drinking as late as two or three o'clock in the morning. Now, I call attention to one point that I desire to make,—that the witnesses for the prosecution have fixed the hours during which Judge Cox was visiting and drinking in these saloons, sometimes as late as two or three o'clock in the morning, and that the witnesses for the defence have fixed it later than eleven o'clock on two or three occasions. I desire to read the law which was in force at that time in regard to the closing of saloons. The law was passed in 1875, and is to be found on page 288 of the statutes 1878:

All persons heretofore, or that may hereafter be, licensed to sell intoxicating liquors in this State, whether such has been or may be granted by the board of county commissioners of any county, or by the officers of any city, village, or town in this State, as the case may be, are hereby required to close their places of business (hotels excepted) at eleven o'clock at night, and keep the same closed until five o'clock in the morning, and it is hereby made unlawful between the hours last named, for persons so licensed as aforesaid, to sell, give away or otherwise dispose of, any fermented or intoxicating liquors, at their said place of business, or to permit the throwing of dice, or playing of cards therein, by any minor, at any time.

I say that the witnesses for the prosecution have fixed the visits of the respondent in this saloon of Hall & Winston as late as two or three o'clock in the morning, while the witness for the defence, Dan Murphy, has fixed it later than eleven, in two or three instances in Waseca. All over this judicial district the respondent visits saloons later than eleven o'clock, in direct violation of that law. Now, I ask you what obedience to the law can we expect from these saloon keepers, what respect for the officers of the law, when the Judge of the district court is found in these places at eleven o'clock or later, no matter what his condition is, whether drunk or sober? Do we expect the saloon keepers to obey a law that is violated by the Judge? I say this class of testimony indicates the manner in which business has been conducted down there, the manner in which the law is enforced,—the utter and entire demoralization that exists there, so far as obedience to the criminal laws is concerned.

Mr. Blowers testified that he saw Mr. Baker, the night watchman, take Judge Cox to the hotel one night; that Judge Cox was very much intoxicated, so that he staggered, and where is the testimony to contradict his assertion? Why do they not call upon this Mr. Baker? It is in testimony that he is living at Waseca; why is he not brought to testify that this is not true, unless they know it is true; if untrue, why do they not subpœna Mr. Baker? They are not confined, as we are, to five witnesses on an article; they could bring Mr. Baker in here when we could not; why do they not do it? simply because Mr. Baker would corroborate Mr. Blowers in his testimony that during this time Judge Cox was carousing, holding these jamborees night after night, taken to his hotel drunk late at night, far into the night engaged in debauches which rendered him wholly incapable of transacting the important business then before him. But the counsel will attempt to whistle down Mr. Blowers testimony by belittling it. He has no other way of meeting it, and is forced to that method. I have commented upon the testimony of Mr. Dan Murphy, deputy sheriff, whom we have shown here to have been drinking with Judge Cox day and night; the testimony of his brother, James Murphy, saloon keeper; the testimony of Mr. Bohen, who is an insurance agent; the testimony of Mr. Lansing, Judge Cox's neighbor; the testimony of Father Hermann, and the testimony of Mr. Forbes; the latter, by the way, was a juryman in the Powers vs. Hermann case. He testified that Judge Cox looked pale, look fatigued; just exactly what I have heretofore called your attention to; evidence that when he is on a spree his appearance is as testified to by two of his old neighbors from St. Peter, by Mr. Forbes, and by others. Dan Murphy says not only that he was not drunk on this occasion, but that he was not intoxicated at that term of court in his presence; he further testified that in this little back room in which they were drinking, and which he hated to admit was a part of the saloon, Judge Cox was the coolest man in the crowd. I suppose he

meant to say that Judge Cox held more than anybody else, and consequently was not so drunk; I have no doubt of it. I again call your attention to the fact that Murphy shows positively that Judge Cox was not intoxicated on this occasion, nor was he under the influence of liquor during the time he was in Waseca to his knowledge, nor in his presence. We have the testimony of several reputable citizens impeaching Murphy on this and showing him up in his true character, that of an able-bodied liar. One, Mr. Collister, tells you, page 1016 of the journal, that on one morning he met Judge Cox and Mr. Dan Murphy. His words were:

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," 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 the street and left him.

Mr. Collister testifies that at that time he saw Judge Cox and Mr. Murphy for a moment only; that he can't say that Judge Cox was intoxicated, but he tells what Mr. Murphy said. What may we infer from that language? Do you suppose that Mr. Murphy would say to Judge Cox that he was full enough now, or "you have got enough now," unless he was in the condition which has been described here—that he was drunk or intoxicated? Of course not. It indicates very clearly that in Murphy's opinion then, the Judge was intoxicated. He is contradicted by his own language as detailed by Mr. Collister, who is not a willing witness against Judge Cox—a truthful man, but with a desire to shield the Judge. We again impeach Murphy by Dr. Cummings, page 1,023 of the journal, who says:

A. I met Judge Cox and Mr. Murphy on the sidewalk; they were coming from the direction of Mr. Hall's saloon.

This was in the evening.

By Mr. ARCTANDER.

Q. From the saloon?

A. Yes, sir; well, coming from that direction; I didn't see them come out of the saloon. Mr. Murphy had the Judge's arm, and as they came along he met me; they spoke, and Mr. Murphy suggested that I go with him 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, the public talk it was creating.

Here we convict Murphy again by showing that he took Judge Cox to his hotel that night, and after he got him to the room—getting a friend, Dr. Cummings, to help take him there—talked to him about his condition and the talk it was creating, then coming here and testifying that the Judge was not intoxicated in his presence. I read further:

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. * * * * I don't recollect the lan-

guage 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. * * * Mr. Murphy said that he had been at the saloon of Hall & Smith. * * Mr. Murphy and myself left the room a few minutes after that.

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 round the corner several times, and looked at his window to see that he stayed there, and didn't go out again.

Keeping watch at the front door of the hotel to prevent the Judge from going out to get more whiskey at this saloon of Hall & Smith's at a time when he felt that he had too much. Going round the corner and looking up at the window to see if the Judge remained there. And then swearing that he never saw the Judge under the influence of liquor. Attempting to convey the impression to this court that he was perfectly sober, except that he did what most any man will do, take a glass of beer occasionally. But we are not obliged to rely upon Dr. Cummings and Mr. Collister to show that Dan Murphy has either willfully lied, or has forgotten a great deal. We called Mr. Cleghorn. See page 1,026. Mr. Cleghorn resides at Waseca and is acquainted with Judge Cox. He says:

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.

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 or noticeable?

A. He was; quite so.

Q. Now, you may state the circumstances.

A. I heard a noise 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 on 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——

And then came an interruption.
After some little discussion.

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, let's 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.

Mr. Arctander objected to the character of that story; I don't know but it is quite as well that Mr. Arctander objected; that the objection was sustained. It was such a story that I should be ashamed to read; it is a story that I am glad to say cannot go upon these pages; it was a story perfectly outrageous in its obscenity; recited by his honor on the public streets of Waseca; no wonder the counsel objected. We find Murphy approaching Cleghorn, stating that it was Judge Cox "drunker than a fool" and again testifying here that he never saw the Judge under the influence of liquor. This obscene story, it seems, was told in a loud tone of voice upon the streets in the manner I have stated. I think, taking the testimony of Mr. Collister, Dr. Cummings and Mr. Cleghorn, we have shown that Daniel Murphy is not entitled to credit here. We have shown that for some reason or other—a reason that I do not care to ask particularly about—he has stated under oath what is manifestly false. Mr. Murphy has also distinguished himself by swearing that there was considerable wrangling in that Power against Herman case, the morning before the adjournment. In this I think he was contradicted by every witness who has gone upon the stand. I may possibly except Father Hermann. The witnesses testify, right through, so far as that case is concerned, that the cross-examination of Mr. Power commenced immediately upon the opening of court, and that it was continued, uninterruptedly, up to the time that the motion was made for adjournment. It is not very material anyway, but characteristic of Murphy. Mr. Bohen, a young man, an insurance agent, has testified that he was in court, occasionally, was there at the time of the adjournment, and in his opinion Judge Cox was sober. Mr. James Murphy testifies that on the second and third day of the trial, and at the time of the intermission, Judge Cox looked weary and tired,—another witness who gives the appearance of Judge Cox as has been described to us by the witnesses for the respondent, a wearied, tired, instead of flushed appearance of the face. Mr. Murphy is the witness ashamed of his business. I happen to live in a town where we have upwards of thirty places where liquor is sold. We have, of course, very respectable men keeping some of those places; we have some who are not so respectable; but I do not believe there is one of them, if put upon the witness stand, who would be ashamed to acknowledge that he kept a saloon, when asked his occupation.

Now during that trial there were twelve jurors, more than twice that number during the term of court. There was, of course, the usual audience, and the number of people which you usually find about a court room in the trial of a case, especially a case of that character, a case in which Father Hermann was interested; and yet look at the men they have been obliged to rely upon. They have brought two witnesses here, both saloon keepers, who were jurymen. There were ten other jurymen who sat in the case, who knew all about the condition of the court and they did not dare to call any of them gentlemen. One of that jury, its foreman, sits before listened to that testimony, is a member of the senate. I refer to Senator McCormick who was foreman of that jury; why did they not go to him? Why are they obliged to rely upon two saloon keepers? Why, if they desire to get out the truth on this point, is it necessary to hunt up this young man Bohen, who looks to be hardly twenty-one years of age, and admits that he was in court but little, to

testify as their fifth witness? Why do they do that? Why not call upon the jurors who were present?

I desire to call your attention to Mr. Lansing for a moment. It appears that he was a witness residing at St. Peter, a carpenter by trade, and a near neighbor of Judge Cox—I think he has known him twenty years. He was forty miles from home, and resided in another county,—a witness for Father Hermann in the Powers vs. Hermann case. It cropped out that he was on a jury in that court the day before, on another case; and when we come to investigate that matter we find that he was taken from the bystanders by his old friend Murphy who knew he resided in Nicollet county, and was not a competent juror in Waseca. That is not a criminal offence by any means; but it is a thing that reflects not only on Judge Cox, but upon the Sheriff who put him there.

Here is a man who lives at St. Peter, in Nicollet county, a perfect stranger, except to the Judge, and down there attending a term of court at Waseca as a witness. They desire a juror, and the sheriff, Murphy, who knew him, and had known him for over twenty years, selects him. Now it is barely possible that he was eligible as a juror, but I say, as a matter of fact, that he was not, that he had no right there,—that it was not only a breach of law, but that it indicates what I have spoken of before, the manner, the demoralization with which this court was conducted. What right had he there? I suspect, gentlemen, that if one of you should happen to drop into Judge Wilkin's court in Ramsey county, you would be very much surprised to find yourself empanelled as a juryman. You would be very much surprised, and I have no doubt at all, that if it were a criminal case, it would result in a new trial; because jurymen are not qualified unless they are residents of the county in which they serve. Our statute is very brief upon it; but it says that the qualifications of petit jurors shall be the same as those of grand jurors. I know it would be a very remarkable thing for a grand juror to be taken from outside the county. I apprehend that if a man got upon the grand jury who did not reside in the county, the work of that grand jury would be very promptly set aside. There is no lawyer who would permit it. Yet there is Judge Cox's neighbor taken by the sheriff of that county, with the consent of the Judge, and put on the jury in that case. I have no doubt that it was an imposition upon the parties in the case,—that they had no idea they were trying a case to a man who lived forty miles away in another county; they supposed they were trying that case to such jurors as they were entitled to have.

Mr. Lansing testifies that Judge Cox, upon that day, had this same fatigued appearance; he calls it fatigue; he looked weary; he does not admit that he was under the influence of liquor. Now I want to call the attention of the Senate to these as a specimen of the questions asked by counsel here. Mr. Lansing was asked:

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 blood-shot, or otherwise?
A. No, sir.
Q. I will ask you to state, Mr. Lansing, whether or not you have ever noticed the eyes of the respondent blood-shot, even after the most fearful sprees?
A. I don't think I have.

Trying a judge of the district court here, and the counsel asks repeatedly this question, "Have you seen the eyes of the respondent bloodshot even after the most fearful spees?" I think the counsel used that language very ill-advisedly. I do not believe it the kind of language anybody should use in a case of this sort—to ask the witnesses, one after another, whether they ever saw Judge Cox after or during his fearful sprees. It seems to have been quite a common occurrence; a very common occurrence for him to have fearful sprees. I believe that nearly every witness testifies that he has seen him on fearful sprees. There is a peculiarity about these witnesses, Mr. Lansing with the rest. They have all seen Judge Cox upon sprees, and some of them upon fearful sprees, but none of them ever happen to have seen him at the time our witnesses saw him at the time we allege him drunk, and I expect that if we were prosecuting Judge Cox for the sprees these witnesses have seen him upon, and we were to put them upon the witness stand to prove our charges, many others would come as witnesses for the Judge, who had seen him upon sprees at other times than those the witnesses testify to.

The peculiarity is that while they have all seen him upon sprees, it never happens that they saw him upon the sprees we accused him of, it always happens to be at some other of his numerous debauches. Now, Mr. Lansing is desirous of helping out his old friend and neighbor, and he testifies that he saw Judge Cox walk up that morning from the court-house to the hotel—he followed behind him; that it was not Hayden who was with him, he knows it was not; when we get right down to it, he had never seen Hayden before that week, and yet he comes here and attempts to testify that he *knows* it was not Hayden; he could not tell who it was, but he recollects distinctly, and is able to tell you the size of the man, that it was a pretty stout man, shorter than Hayden; yet the only acquaintance he had with Hayden was obtained during the few days he had been there. He has never seen him since then; I think he testified that he thinks he could point him out. Still he is very certain that Hayden did not walk up with the Judge. Another effort upon the part of the respondent to show that Hayden was mistaken in saying he walked up with the Judge to the hotel that eventful morning.

In this connection I desire to call the attention of the court to this fact. On page 298 Father Herman says that on the morning of the third day of April Judge Cox looked wearied; Lewis Brownell testifies that Judge Cox looked sick on that same occasion. They admit there was something the matter with him, that he looked sick, or wearied, but they do not attribute it to intoxicating liquors; it is something else.

Now let us see what did affect him. Judge Cox came back there in the afternoon after he had been in bed, as has been testified to, and that doesn't seem to be denied. He came back and excused the jury until night, giving as the reason, that he was troubled with a sick headache; and one or two witnesses testified that he had a sick headache. Some witness, I have forgotten who it is, testified that he took a glass of beer with him; they took a pony of beer as they walked up to the hotel. I suppose Judge Cox took that pony of beer to cure his sick headache! I never heard beer recommended for a headache; would never use it myself for a headache of any kind, but I believe they took it as a remedy for the sick headache. They will claim that he took the ride on the

2nd of April, when he had the hotel-keeper and one or two others in the carriage with him, for a sick headache. The fact is, as stated in the opening, that a friend of Judge Cox took him on that occasion, and drove him around town for the sake of keeping him out of these saloons; the carriage was gotten from that livery stable, and the livery stable keeper, Welch, drove him around, as has been testified to here, to keep him reasonably sober. Yet the defence would have you believe he was suffering from a sick headache; drinking beer and immediately following it up with a drive around town. If any of the senators have ever had a sick headache, they know what it is, and what the treatment is. They know that a man gets into bed as quick as possible, and has no inclination for beer, and not the slightest inclination for a carriage ride, on such an occasion.

It is not an occasion when a man wants an airing by any means, but begs for perfect quiet. This carriage ride might result from one or two things. His friends might take him out, or the Judge might desire himself, under such circumstances,—in such condition, to ride around the town. Mr. Lewis and Mr. Collister testify that in the evening they called upon the Judge, and he told them he regretted what had occurred, regretted his condition; talked to them about it getting into the newspapers. That was the time he felt he was under obligations to these men for the treatment he had received. He felt kindly towards them. He felt they were friendly to him, they desired to shield him, and he expressed to them them the hope that this disgraceful conduct upon his part should not get into the newspapers; and they told him it should not, and I believe it did not, at any rate in that town.

Now in that connection I desire to call your attention to what Mr. Taylor has testified,—a little conversation which he had with Judge Cox; the conversation the counsel for the respondent has attempted to distort,—a conversation had with him on April 15th, and after the argument of the motion. On page 13 of the Journal of the 12th of January you will find this:

Q. Did you have any conversation with the respondent after this time upon his conduct during the day?

A. Not any extended conversation; after court adjourned we went to the hotel. Judge Cox was quite lively and talkative with different ones in the room. I was not engaging in the conversation, but sitting in the room, and he came and sat down beside me and requested that I should not say anything to Judge Lord about what I had seen in the management of the court.

That is the remark Mr. Taylor has testified to. Now the counsel on page 108 of his argument attempts, I think to distort that in this language:

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 the 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 wit-

ness 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 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. 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.

Judge Cox had a great deal of consideration for the feelings of Judge Lord. It seems we have not heard any of these praises; no attorneys have told that there was any *great* amount of praise sung around the streets of Waseca for the manner in which business was managed. I have no doubt business was expedited; that was the trouble with the management down there; too much expedition when the Judge gets "loaded,"—when he gets "steam on." He is desirous and bound to push things, to hasten things, to be undignified in the haste with which he conducts cases. That is one thing which attorneys complain of,—that they could not look up questions that came up to be tried, as they should be looked up. There was no consideration shown to them by the court, nor could there be where there is so much haste. It is a complaint which you will find running all through this testimony, admitted by everybody, that the Judge pushed things when he got a little full. I don't believe that any one, except the counsel, ever heard the praises that he speaks about when he attempts to distort this conversation of Judge Cox with Robert Taylor. He tells us that conversation did take place, but gives Taylor's testimony incorrectly. Mr. Taylor tells you that Judge Cox requested him to say nothing to Judge Lord about the management of the court, not the management of business in court, as counsel has it. Now, do you believe that had that been the fact Judge Cox would have gone to Mr. Taylor and asked him to say nothing about it? Would Judge Cox assume that he had so pushed business there that Judge Lord would feel hurt, and would he go to all the attorneys there, and ask them not to say anything to Judge Lord about it? Why, Judge Cox must have more vanity and more conceit than I gave him credit for, if he would do so foolish a thing as that.

They could not deny the conversation, and they attempt to put that feature upon it, to give it that character, as with the various other conversations all through this case, distort it, make it appear not what it is—differently. That was the object of the statement of the counsel in this respect. 'Say nothing about what you have seen in the management of the court; say nothing to Judge Lord about the manner in which Judge Cox has conducted himself down there.' Judge Cox was very anxious about this, and in half a dozen cases we have seen from

the testimony that Judge Cox has appealed to his friends, to the attorneys who have been about there, to say nothing about his management of affairs; to say nothing about his habits; to say nothing about the disgraceful condition in which he had placed himself. It was a frequent cry on his part, especially when he is a little in liquor, and a little emotional, as Dr. Cummings has testified he was, the night Dan Murphy and himself got him to bed—emotional, so that he shed tears.

The next article which I desire to consider, is

ARTICLE FOUR.

It is known as the case of Brown vs. The Winona & St. Peter Railroad Company. It seems that Brown had brought an action against the Winona & St. Peter Railroad Company, and had obtained a verdict. There was a desire upon the part of Judge Wilson, attorney for the railroad company, to go to the supreme court, and of course he had to settle what is known as a "case," really a statement containing history of the case—the pleadings, the fact whether or not it was tried by a jury, and the various exceptions and rulings which were made all through the trial. That is what is known as a settled case. It is in evidence here that he notified Judge Cox that he would settle it on a certain day, and Judge Cox, I think, has admitted—his counsel admitted, I think, that a postal received, containing such notice, it seems that Judge Cox had been off at New Ulm and came back that morning, and with the attorneys went to a hotel at St. Peter to settle that case. The testimony of all the witnesses, Webber, Wilson, Lamberton and Thompson, is that Judge Cox was drunk. He was so drunk that he would do nothing. He wouldn't decide anything. He was incapable of saying whether this thing or that thing was so, or anything about it, and they finally had to abandon the attempt to get a decision. Now, I presume the counsel will claim—I know that he did claim in opening his case—that on this occasion there was no court. He will claim that it did not amount to anything.

I say that whenever a Judge does an official act under the statute he is a court. He cannot do an act in the nature of official business when he is not a court. In fact, he is a court from the time he is elected until his term of office expires, every day and every moment, and under our statute is liable to be called upon to do an official act at any hour. On that occasion the attorneys from the different towns attempted to settle this case. The testimony is very clear from Messrs. Thompson, Lamberton, Wilson and Webber, that they did their utmost, but could not succeed on account of the drunken condition of the Judge. Mr. Lamberton, a man who has stood by this respondent through thick and thin ever since he has lived in this State—a man whose reputation for truth and veracity is beyond question—a man whom you all know as one of the very best of men in every way—says Judge Cox was jabbering there like a parrot; that he told him to keep still, that he wanted to have him stop his talking and allow the case to be settled. I don't know what interest Mr. Lamberton has; but the counsel will say that Mr. Lamberton is interested in some sort of a way; has said that Lamberton is or was, directly or indirectly, connected with the railroad company. That is his claim, and it is founded wholly upon the fact that Lamberton's brother has been their land agent. But Messrs. Wilson, Webber and

Thompson testify to the same state of facts, and I do not suppose the counsel will attempt to say they are not honorable men, so far as the evidence is concerned, to deny that Judge Cox was in a condition there unfit to do business, and that business could not be done on account of his condition. That the attorneys, who had come many miles to attend this hearing, had to return in order to complete it.

The next is article five; and I believe that I may say that articles four and five are the only articles in which they have not attempted something by way of defence, some excuse for his apparent bad conduct. Article five is known as the *mandamus* case. A *mandamus* had been issued by the supreme court of the State, commanding Judge Cox to sign his name to certify to a certain case—the papers were put in the hands of Mr. Long, sheriff of Waseca county, to get the Judge's certificate. Judge Cox had decided the case, refused a motion for a new trial without putting his name to the certificate,—a certificate that should be signed in every instance. I presume he had omitted to sign this inadvertently, because I do not see how it would be possible for him to omit it in any other way. He certainly had decided the motion for a new trial; had decided it upon a settled case, as because he could not render a decision without this case. He had, I say, decided that motion upon a case that was considered as settled, presented to him by stipulation as correct. As a matter of fact it did not bear his signature. He refused to certify to it because counsel for one party or the other,—I think Mr. Lewis was the counsel—had inserted the words "or his deputy" in some part of the charge, and Judge Cox claimed that this language was untrue and false. Mr. Lewis was obliged to go into the supreme court and obtain a *mandamus* compelling, or rather directing the Judge to certify to that case. (The 23rd day, pages 5 and 6.) This was a writ of *mandamus* issued by the supreme court of this State entitled, "The State of Minnesota to E. St. Julien Cox, Judge of the ninth judicial district of the State of Minnesota."

Then follows the relating part concerning the matter, but the part which was particularly directed to him; and which he was commanded to obey was as follows:

Now, therefore, we, being willing that full and speedy justice should 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 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. And in what manner this our command shall be executed, make appear to our supreme, court forthwith.

That was the official act of the supreme court of the State, directed to the Judge of the Ninth judicial district, acting as Judge of the Fifth judicial district. It compelled or commanded him to perform an official act. It is true, as stated by the counsel, that it was an act that required no discretion, except the discretion that every man must bring when he does any official act, but it required him to do an official act. Mr. Long went up from Waseca to St. Peter, and after enquiring about him, found the Judge in a disgracefully intoxicated condition, at his own home, within a stone's throw of his own house, of his own family,—a family

that I presume we shall hear from when the counsel speaks, for I have no doubt he will appeal to you about that family.

The Judge is found drunk on the street. He presents him with this mandamus, and the Judge says: "Ha! ha! a writ of God-damn us is it?" to the sheriff. Now what sort of language is that? Is that the style of judicial officer that you want to try your cases? Is that the style of man that you, as lawyers, want to try cases before? Do you, as suitors, men who have interests at stake, want such a man to try your cases? A man who stands upon the public streets a drunken loafer, and talks about a writ of "God-damn us" from the supreme court? and who treats the supreme court with contempt by throwing the writ upon the street and saying he will not sign it? I say that while the act of signing the name does not require any discretion, while he did not exercise any judicial discretion in putting his signature upon the paper, still, as a matter of fact, he was performing an official act as an officer, as a Judge, and the law required him to be as sober as while he was trying a case down in Waseca county, just exactly. He refused to sign it, and expressed his contempt, expressed it in a way that you might expect from a drunken man, and Mr. Sheriff Long asks the bystanders what he shall do. He is referred to Jack Lamberton, the friend of Judge Cox, a man who has probably more influence over him than any other man. He is referred to him, and he asks him what he shall do. Lamberton tells him to hunt up Judge Cox and bring him around there. He brings him around to the store in that condition, and Lamberton said to the Judge, "You must sign," while the boozy rowdy responded, "I'll be d—d if I do!" And His Honor tells us he seriously thought at that time of resigning, because he did not want to certify to what was not true.

Mr. Lamberton tells him that he must sign it, and he finally writes that name "E. St. Julien Cox," the drunken signature that has been alluded to here, and requests Mr. Lamberton to write after it the words, "Judge of the Ninth judicial district, acting Judge of the Fifth judicial district." We asked Mr. Lamberton why the Judge did not write that himself, and he said that he could not do it, that he was so drunk that he could not do it,—appending his official signature to a paper (and I don't care what the character of the paper was) so drunk that he could write nothing else. Now, I presume that the Judge acts, in an official way, where he exercises no discretion, quite frequently. I think when he signs orders, appeals, bonds in attachment, settled cases for instance, very many cases of that kind, he acts officially, but he does not have to exercise a great deal of discretion. I apprehend that, usually, when he signs his name, he exercises no discretion, but, as a matter of fact, before he signs his name, he must exercise discretion. The mechanical act of making the signature calls for mechanical effort simply, but there, in all these acts, he is required to exercise more or less discretion before appending his signature.

Now, let us look at this case. The supreme court has issued this writ of mandamus. When served upon him he was not in a condition to exercise due judgment. They say it did not require any. If it did not require any, why could not Mr. Sheriff Long take any sort of paper he pleased to the Judge in that condition and get him to sign it? It did require the exercise of discretion, because he had to know the contents of that paper, he had to understand its contents fully, and it seems he

could not know any more about it than the man in the moon,—that he asked Jack Lamberton if it was all right—relied on Jack Lamberton, a man upon whom he could rely, and upon whom it is a great pity he has not relied more frequently, especially as to his behavior. I say he relied upon him to tell him whether or not that was a paper he ought to sign, —whether or not it was the riot act, or a writ of mandamus from the supreme court, and yet counsel tell us that it required nothing but his signature, and is no official act at all, that he could sign it as well drunk as sober. He should know the contents of that paper, know whether or not it was a proper paper for him to sign.

Jack Lamberton testifies that Judge Cox said he would be damned if he would sign the paper, and threw his pen down on the desk. Lamberton said he would sign it, and he did after this effort on the part of his friend, to keep him from being in contempt of court for a refusal to obey.

The next,

ARTICLE SEVEN,

is what is known as the Dingler road case in St. Peter. The witnesses are Mr. Webber, on the 13th of January, page 38; Mr. John Lind, on the 18th of January, page 24; Mr. Sumner Ladd upon the 20th of January, page 37; Thomas Downs upon the 25th day of January, page 51. Now, in opposition to these they have produced here Mr. C. R. Davis, who is an attorney, and the county attorney there, Mr. Keith Hatcher, a bailiff, who walked home with Judge Cox that night of the trial, Mr. Upton Meyers, who is not in business, (I suppose that he is a capitalist in the index that the counsel has); Mr. P. G. Harff, who keeps a saloon up at Minneapolis; Mr. Charles Ware, the official reporter; Mr. William Lehr, a stone-cutter and Mr. Kœlfgen, who keeps a saloon at St. Peter. These are the witnesses upon article seven, and they have also introduced the record. It seems that the county commissioners of Nicollet county—I suppose it was Nicollet county, as it was tried in that county—had established a highway, and an appeal had been taken under the statute, the appellant claiming more than $100 damages, and in that way it got into the district court, to be tried before Judge Cox.

You remember that it was testified by John Lind, who appeared for Dingler in this case,—who appeared for the appellants in all these cases; I think there were four of them,—that after the trial of the first case, he discovered that the county commissioners had laid this road through the village or town of Redstone. They had exercised jurisdiction where they had no authority to exercise it, because they are prohibited by law from laying out roads in incorporated villages or cities. That is a matter which is not within the power of the county commissioners. Mr. Lind discovered after the trial of the first case, in which the amount of dameges was fixed at quite a large amount, that this town of Redstone had been incorporated a great many years ago—a paper town I suppose —had been incorporated by one of the old legislatures of this state, and that the act of incorporation had never been repealed, so that Redstone, while as a matter of fact nothing but a farm, was so far as this statute was concerned, an incorporated city or village. Mr. Lind made the point. There seems to have been some doubt in the mind of the attor-

neys, and there seems to have been some doubt in the mind of Judge Cox as to the effect of an order setting aside and vacating that road so far as the village of Redstone was concerned,—whether it would vacate and set aside the decision of the commissioners wholly, ordering the establishment of the road.

How there could be any doubt about it in the mind of a practising attorney, a man who ever looked at a road law, or in the mind of the court, I cannot discover; but it seems there was some doubt. Mr. Lind tells you Judge Cox said when the point was raised, that he had no doubt he would reverse the order of the county commissioners, so far as the town of Redstone was concerned, but that he would not reverse it as to the remainder. He would reverse it as to the part in the south half of section 35, but the order as to the remainder of the road he would allow to stand. Mr. Lind appealed to him and attempted to show the impropriety of such a ruling,—that this road order was an entirety, that he could not dissolve part of it and allow a part of it to stand any more than he could dissolve part of a writ of attachment, and allow part of it to stand,—it was an entire road, and it must all fall or stand together. There should be no doubt in the mind of any practising attorney about it; the court could not hesitate if sober, it is very clear that this order must stand or fall as a whole; that it could not stand in part. The court record has been introduced here to show you that Judge Cox made the order which he claims to have made, and that he never made any other order. Now, I claim that this record shows the order which he did make.

It shows that there was an understanding that night that he was to make just such an order. I regret very much that we have not the orignal orders here, because I would like to have examined them. I would like to see if there had been any changes made in those original records —the change that might be very easily made.

Mr. ARCTANDER. You had the original records here.

Mr. Manager COLLINS. I know we had books but I did not see them.

Mr. Manager DUNN. We had them in the books.

Mr. Manager COLLINS. I am speaking of the original minutes made; of course they were transcribed to a book. I read now from page 454:

Daniel Dingler, Appellant,
vs.
The Board of County Commissioners, Respondent.

The appellant here moved the court to reverse entirely the order and decision made herein by the commissioners 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.

Motion argued by the respective counsel. *Motion taken under advisement.*

Now, it will be borne in mind that this is the record as copied from the minutes kept by the clerk of the court into his book,—a book known as the record of the court proceedings. It seems that this motion was argued and taken under advisement. Now that is undoubtedly true. That is precisely what Mr. Lind said. Mr. Lind tells you that Judge

Cox made a verbal order that night against him; that he got him to adjourn until the next morning, after going to two or three men and asking them what he should do,—knowing that the Judge was entirely wrong, and knowing that that improper and wrong view of the law in the case, came from his intoxication. There is no pretence that the Judge made a formal order that night, but he said what he should hold, and the next morning when they came in Mr. Lind renewed the motion, and Judge Cox decided it favorably and correctly without argument, and without any hesitation whatever. The next morning he was sober. Lind had appealed from Cox drunk to Cox sober, and in that appeal he had won his case. I say the order which was finally made bears me out in saying that Mr. Lind was correct in his testimony. I read in regard to appellant's motion:

* * 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 section 35 is concerned, is reversed.

Now that is precisely what Lind stated—the court said he would do that night,—that he would reverse the order so far as the south half of section 35, and the order as I have read it, without going further, is a final order. But there is something more I have not read at all; it seems to have been completed as follows:

And the court further orders that the laying out of 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 excused.

He reverses the order so far as the south half of section 35 is concerned, and then goes on and reverses the order again. That is precicely the theory which Mr. Lind has maintained here, it is precicely the theory of the board of managers, that he did make an order, a verbal order that night, reversing the order of the county commissioners so far as the south half of section 35, the town of Redstone, was concerned, and the the next morning, upon reflection, reversed it entirely, as he ought to have done the night before.

We claim that the record bears us out in our view of the matter. Mr. Davis in behalf of the defence, testifies on page 442 that he was puzzled, that it was a puzzling and perplexing question. I must say that prior to Mr. Davis' testimony I had a good opinion of his ability as an attorney, but there is no question in this matter which should puzzle or perplex any lawyer a moment. I read:

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 mattars that were puzzling and perplexing to his mind and our mind, in regard to the motion.

Q. Puzzling and perplexing to his mind 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 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.

He does not deny it squarely.

Q. I will ask you, whether the Judge made any order in the morning reversing any order he had made before in this case?
A. No, sir; he did not.

* * * * * * * *

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.
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.

He testifies that this question was puzzling or perplexing, and yet in the next breath that he should have combatted the court had it attempted to enter the order Lind insists was made. If this is true, what was puzzling or perplexing these legal luminaries? Certainly the only puzzling and perplexing question we have heard of was, whether or not the road order should be reversed as an entirety, or only so far as the road was laid through the village of Redstone. But the attorney who testified that it was a puzzling and perplexing question, one which provoked discussion tells you that he should have combatted the making of such an order. Of course he would. I have no doubt about it; and there is no lawyer who has.

Mr. Hatcher, the bailiff, on page 455, testifies that he was present part of that time. He has known Judge Cox twenty-three years, and is one of his next door neighbors, acted as bailiff of the court. Was in court part of the time during the Dingler case, and walked home with the Judge that evening. I read:

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.

Upton Meyers, on page 462, testifies that he has known Judge Cox fifteen years. He is a gentleman without business. He never saw Judge Cox only slightly intoxicated. Mr. Meyers draws upon the credulity of this court entirely too much, when he testifies that in fifteen years' acquaintance he has only seen Judge Cox *slightly* intoxicated. He was a juror, remembers the case, but remembers no names, nor does he remember what occurred. (Page 463.)

Now we are called upon to listen to the testimony of P. G. Harff, (page 465], who keeps a saloon. He has known Judge Cox fifteen years; never saw him under the influence of liquor; he also went home with

the Judge that night, and further testifies that he was the only man who did go home with Judge Cox that night. We have already the testimony of one witness, the bailiff, Mr. Hatcher, that he walked home with Judge Cox that night. Here we have another witness who testifies that he walked home with Judge Cox that night, and is the only man who did walk home with him; he is also the man who never saw Judge Cox under the influence of liquor; of course he never saw him under the influence of liquor, and he never saw any other man under the influence of liquor, simply because he is of the class of men who will not admit that he is in a business which leads men to become brutes, to become drunkards, to disgrace themselves and disgrace their families I might say,.gentlemen, in this connection, that Mr. Harff is another of those gentlemen who keep a gent's furnishing room; he says so, but he seems to have transferred his scene of operations from St. Peter to Minneapolis.

Mr. Charles Ware was the short hand reporter who was present, and on page 474 of his testimony he testifies that he took the minutes of the proceedings in the Dingler case, but hasn't them with him. I suggest, gentlemen, that it is a little suspicious that this short hand reporter who comes to testify in this caee, upon this and other articles, in no instance brings his minutes with him; a man who sat there and took every word which was said, or at least was supposed to take everything which was said, as the reporters do here, and yet he comes to the trial of this case, a case of this importance, when his minutes would clear up and show precisely what was said and done that night, without bringing his minutes with him. I say it is suspicious; it may be all right, but it does nor look straight to me. He testifies that he has seen Judge Cox on the bench under the influence of intoxicating drinks, but he also testified that it was not at any of the occasions we mention. He is another of these witnesses who have seen Judge Cox under the influence of liquor, but it happens inevitably not at a time when we claim he was in that condition.

I did hope, gentlemen, after we had made the examination which the board of managers did make of the evidence in this case,—after they had gone through the Ninth district for the sake of bringing witnesses here who would be of good repute; witnesses whose behavior and appearance on the witness stand would be such as to fully entitle them to credit,—I did hope that we had discovered all the cases in which this man had disgraced himself, and the judiciary of this State, by misconduct upon the bench; but in half a dozen instances, from their own witnesses, we find that while they have not seen him drunk upon the bench in the cases we have charged, they have seen him drunk upon other occasions. It is a common thing in their testimony, and it is regretted, to say the least of it. He remembers the order that night, page 476:

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 defendant's 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.

This short-hand reporter who has taken the minutes, who says the motion was noted upon his minutes, but who does not bring them here, testified that the order was made that evening, and I am inclined to think that he is right, and the only difference of opinion is that the final order was made the next morning,—the final order was made the next morning when the Judge got sober, I have no doubt that the minutes of the shorthand reporter, if brought here, would show precicely what Mr. Lind says occurred, and would have convicted this respondent of all we charge, was done that night, and would have been an indication that he was deeply under the influence of intoxicating liquors.

Mr. William Lehr, a stone-cutter, testifies on page 486. I think Mr. Lehr was one of the jurors. To use Mr. Lehr's word, for he seemed to have nsed it frequently, the case was "busted" that night; he never went back. He was one of the jurors and says that an order was made that night which reversed the order of the commissioners; the case was "busted" as he put it, that night. He is mistaken. And a man who goes upon the witness stand and is so far mistaken as that, is not the kind of a witness you are going to believe to any very great extent.—A man who dosn't know when a case which he is trying is concluded is not to be relied upon, especially when he attempts to tell you what took place in the case.

Then we have another man, Henry Kœlfgan. I will do him the credit of saying that when he is asked his business he replies, "I keep a saloon now." He has not a "gent's furnishing store" by any means. He keeps a saloon, testifies that he was a juror in this case, thinks the respondent was perfectly sober. Out of twelve jurymen that were empanelled in that case the respondent calls to testify to his sobriety two men who keep saloon, and one stone cutter. Where are the other nine jurors? I hope for the credit of the community that they did not have more than two saloon keepers on that jury. This indicates that a sixth of the jurors were saloon keepers, rather a large proportion, from which we might infer, possibly that a sixth of the population were saloon keepers; but they bring here three of these jurymen, leaving nine at home. Now, they are reduced to those straights. They are compelled to use that class of men to testify as to the sobriety of Judge Cox. Mr. Kœlfgan, on page 490, testifies as follows:

Q. Do you remember 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 a hundred times?
Q. More than one hundred times you have seen him when he was perfectly sober?
A. Yes, I have seen him the 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. Have you ever seen him intoxicated at all?
A. No sir.

Mr. Kœlfgan, the saloon keeper, testifies that he never saw Judge Cox under the influence of liquor. Some of these witnesses flatter the Judge fearfully, to put it in a mild way.

ARTICLE EIGHT

is the McCormick vs. Kelly case at New Ulm, May, 1880. Upon that we have two witnesses, Mr. Lind, upon the 18th of January, page 38; Mr. B. F. Webber, upon the 13th of January, page 42. For the defense, Mr. Rinke, a merchant at Sleepy Eye, page 338, testifies that he has known Judge Cox six or seven years. He admits reluctantly that he has seen him under the influence of liquor once. Mr. Baason, who has known him twenty-five years, testifies that he knows Cox drunk, and he knows Cox sober—so say all of us—but he doesn't testify, or at least he doesn't know whether he was present in court at the time of the Kelly-McCormick case or not. Mr. W. W. Kelly, of Sleepy Eye, page 349, testifies that he was a witness in that case; that Judge Cox was sober. Mr. J. J. Kelly, who has known Judge Cox twelve years, a brother of the other witness, and defendant in that case, says that Judge Cox was sober. We admit, gentlemen, there is no question at all but that the counsel has more witnesses to testify that Judge Cox was sober at that time than we have to show that he was intoxicated. It is merely a question for you to decide whether or not the attorneys who were trying the case to him, knowing his condition, observing him, knowing what his rulings and his behavior ought to be, —for an attorney is better able to judge of that than a layman—whether they are more reliable witnesses, and their testimony more conclusive upon this point than the testimony of the other men.

At this point the court took a recess for five minutes.

AFTER RECESS.

Mr. Manager COLLINS. Shall I proceed, Mr. President?
The President *pro tem.* Yes, sir.

Mr. Manager COLLINS.—Article nine has been dismissed, as you know, gentlemen, I now proceed to the consideration of

ARTICLE TEN,

that is what may be known as the naturalization case. It is a case as shown by the testimony which I think can be characterized as the most disgraceful of all these disgraceful proceedings which have been placed before this senate. It was in May, 1882, in Marshall, in Lyon county, when these men who had come two or three thousand miles to make their homes with us, attempted to take out their final citizen's papers. It is probably unnecessary for me to say anything to the senate in regard to the manner in which a person becomes a citizen of the United states; very many of you have had experience. It is all controlled by the law of the United States. You will find nowhere in the statutes of Minnesota, except the old edition of 1849-58, any abstract of the United States laws concerning naturalization. In the first place the person declares his intention to become a citizen, and after residing in the United States five years, and at least three years after declaring his intention to become a citizen, goes into open court and by means of his witnesses proves certain things, and takes out what are known as final citizen's papers. It is an important event to very many men, who come to this country for the purpose of becoming American citizens, perhaps the greatest event of their lives.

The United States regards it as of sufficient importance to require it to be done in court—in open court—with a degree of form and ceremony. In many courts it is one of the most impressive occasions we have.

The abstract of the United States laws upon this subject may be found on page 867 of the old statute of 1849–58, sections 2 and 6, entitled:

An abstract of the laws of the United States relating to the naturalization of aliens.

Speaking of the application which is required, the declaration of his intention, the statutes of the United States provide:

An alien shall, at the time of his application to be admitted, declare on oath or affirmation before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly by name, the prince, potentate state or sovereignty whereof he was before a citizen or subject; which proceeding shall be recorded by the clerk of the court.

The court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the state or territory where such court is, at the time of the holding, one year at least; and it shall further appear to their satisfaction that during that time he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. The oath of the applicant shall, in no case, be allowed to prove his residence.

You will observe that the authorities have felt the importance of this ceremony of naturalization, and have thrown around it the safeguards that I have mentioned. It seems that Judge Cox had fixed a special term of court, for the hearing of motions and things of that kind, I think upon the 5th day of May, 1881. The court was adjourned until the 12th

day of May, owing to the fact that Judge Cox could not be present, and on the 12th day of May he came down to Marshall. It is in testimony here from the witnesses on the part of the defence that he canvassed round the town to see whether they had any business to come before him, and that he said to them that he would not hold court. Now, it is wholly immaterial what he said to them, whether he would hold court or not. The fact which we need to prove here is, was court held? I don't know what justification or excuse they attempt to make here by showing that Judge Cox said he would not hold court, unless they shall attempt to excuse his drunkenness and his drunken condition by showing that he supposed there was no business to do, and had a perfect right to go and get upon the bender he apparently got upon. But it seems there were some men down there who desired to become citizens, who made applications to the clerk of the court, and desired to be admitted. Mr. Skogen testifies that in order to get Judge Cox to come up to the drug store where the clerk of the court had his office, he had to go and get him out of a saloon and coax him to go; that he went with him to the clerk's office where, in presence of the Judge, he took out his final papers.

It seems that Judge Weymouth was present and testifies that he didn't observe Judge Cox to be intoxicated. There is not a particle of testimony here, gentlemen, to show at the time Skogen was there, and got his papers, that the Marx brothers were present. Mr. Skogen does not testify that he saw any part of the altercation between Judge Cox and one of the Marx brothers. Judge Weymouth saw no part of it, and yet he was a witness for Skogen, so that it is safe to assume that after Skogen had received his papers, Judge Cox went back to the saloon where Marx found him. Then Marx desired to obtain his papers. He had to make a pilgrimage; he found the Judge in this salooon, which seems to have been his Mecca, coaxed him out, and in walking up the street, this man who had declared his intention to become a citizen of the United States, who desired to be admitted to full citizenship, was accosted by the court, which was to administer the oath, before whom it was to be proved that he was a good and loyal citizen, that he had been of good repute for five years, and asked if he had a quarter in his pocket. Marx admitted that he had, and the Judge suggested that he had better go into a saloon with him and spend it. Now that is a very pretty spectacle for people to consider, the court asking to be treated and both going into a saloon. It is in testimony, I believe, that they they drank brandy, and then went up to the drug store where the clerk held his office. That was not a court held as some courts are, it was not as regal in its appointments. as complete in its furniture and fixtures as the United States court now in the city of St. Paul.

That remark will apply to all the courts on the frontier. If you have ever been there you will have discovered that they are glad to get any place to hold court,—that they are not particular about the furniture and do not care anything about the finish of the room. The scene on this occasion was in the rear of the drug store, where an office 12x14, according to the evidence here, had been finished off in one corner, and where the clerk had a desk. However, it was a place where Judge Cox decided to hold his court. There was no sheriff to open court. It was not necessary. The only thing that the sheriff would do, had he been present, would be to get three dollars for his day's service. But it was

a court, nevertheless, because they are obliged to do that business in court. It was a court without the formalities that we are accustomed to. Mr. Marx, in the course of his proceedings, was obliged to ilsten to war reminiscences by Judge Cox, who was very drunk. I believe that is the testimony of one of the witnesses. It seems that Mr. Marx did not have as much respect for the defender of New Ulm as the Judge thought he ought to have, did not appear to be interested in the recital, so the Judge slapped him in the face. Mr. Marx seized him by the beard and ran him into the corner. The hero of Mill Springs, the conqueror of Zollicoffer, crawled out of that corner, if we can believe the testimony, hardly knowing what ailed him. A fine spectacle for a Jutdge of the court? And that without any excuse. They have no attempted to show that he had a boil on his posterior at that time. They have not attempted to show that upon that occasion he was suffering from a severe headache. They have not excused or defended it.

The Judge of the court slapped one of these men in the face, got rammed back in the corner, and it is a great pity that that newly made citizen did not, on that occasion, give him a whipping which would have lasted him until his next special term. The Judge was very much intoxicated, and I suppose was inspirited; was in the condition which Burns describes in the poem of "Tam O'Shanter."

"Inspiring, bold John Barleycorn!
What dangers thou canst make us scorn!
Wi' tipenny we 'll fear nae evil;
Wi' usquebaugh we 'll face the Dee'il."

That was the condition of the Judge. He had whiskey enough to fight anybody, but his attempt to knock this citizen down, turns out disastrously for him. He afterwards said he didn't intend to strike him; he could have knocked him down if he wanted to, had he intended the blow. The counsel in his cross-examination, was laying a foundation for showing that this blow was an accident on the part of the Judge, that he did not intend to slap the man's face at all. Is there any testimony of that kind? There were half a dozen men present, besides the witnesses we have had here. Have they attempted to show that it was anything else than a deliberate insult and blow upon the part of Judge Cox? Not at all; they have offered no excuse for it, they have only attempted to show that at different times during that day, prior to this occurrence, Judge Cox was not under the influence of liquor.

That occurrence is testified to by William Marx, by C. M. Wilcox, by Charles Marx; W. G. Hunter, the deputy sheriff, turns his back, he did not want to see it, he knew that Cox was drunk; I suppose he knew it quite as well as the old woman did, and this is a story for which I am indebted to my friend, Manager Ives. A man went home drunk one night and got into bed with his wife. She said "John Henry, you have been drinking; John Henry, I know you have been drinking; I can smell your breath." John Henry turned over and gave the old lady his back; whereupon she said, "John Henry, you needn't turn your back on me; it wont do any good; you are drunk clean through." (Laughter). I suppose Hunter could say the same thing to Judge Cox. He knew Judge Cox was drunk clear through; he did not want to see

the court engaged in such an affray, but he testified that he heard the blow and knew what was taking place.

Judge Weymouth testifies he thought Judge Cox was sober when he was in the court room. It is not shown that Judge Weymouth was there when the blow was struck; in fact we can safely say that he was not there or he would have testified to his knowledge of what transpired. Mr. Seward testifies that it was commonly reported that the Judge was "off" that day, but he thought him sober; that he was at the office and said, while speaking of the special term, "well, boys, I don't see any use of holding a term." Now, Mr. Seward was impeached upon one material point by four credible witnesses. I shall have occasion to speak of him in another article and so I will not say anything further regarding that impeachment. None of these witnesses, M. E. Mathews, V. Seward, Mr. Weymouth, Charles Andrews—none of them testify that they were present or that they knew anything about this occurrence in the drug store.

It is in testimony that other men than these I have mentioned were present there, and it is fair to infer that if they were present and saw nothing of this kind, the counsel would have brought them here. I say that was one of the most disgraceful of all the disgraceful scenes. It is one of those scenes that can only occur where a man has lost all reason, and has lost his judgment through the influence of intoxicating liquors.

The resentful manner of Marx sobered the Judge, I have no doubt, and when he crawled out of that corner and realized what had occurred, knew that he had slapped that man in the face, that he, the Judge of that court, had struck this suitor, who had been doing business before him, he was so ashamed that he felt disgraced, humiliated, and did not say another word. We all know that his silence did not arise from cowardice on the part of the Judge, for he is no coward; we can all testify to that; he exhibited no cowardice, but his humbleness came from very shame. He was ashamed of the condition in which he had placed himself, and I have no doubt but that shame remains to-day; ashamed because of his intemperate habits, and because he had allowed himself to be placed in that position.

We now come to

ARTICLE ELEVEN,

May 5th, 1881, a term of court which was held at St. Peter, at which was tried the case of Young vs. Davis. Mr. Lind was attorney for the plaintiff; Mr. Ladd, of St. Peter, attorney for Davis, who is also an attorney. Mr. Ware the short hand reporter, on page 500, testifies that Judge Cox was not drunk. Mr. Davis testifies that when he went in there he thought the Judge had been drinking, and it occurred to him so forcibly that he asked the clerk of the court if Judge Cox had not been drinking.

Mr. Davis upon cross-examination will not state that Judge Cox had not taken a drink. He does not testify to anything of that kind. Mr. Rogers, the clerk of the court, testifies that Judge Cox, in his opinion, was sober but they all agree that there was some peculiarity about Judge Cox, and Mr. Davis accounts for his expression of the face by saying that he went to Judge Cox's room after this case was tried and

there found out what ailed him. There was some grand juror who was not exhibiting the degree of respect for the court which the Judge thought he ought to, and he had been engaged, it seems, in looking up as to just what he ought to do with such an obstreperous man. His appearance and behaviour there led Mr. Davis to think he had been drinking, but all this is accounted for by Mr. Davis upon the supposition that it arose from the feeling which the Judge had, from the excitement that he was under concerning that grand juror. Now, gentlemen, do you suppose that if you had known Judge Cox as many years as Mr. Davis had on that occasion that you would have had any doubt as to what ailed him? Don't you believe that you could distinguish between drunkenness and excitement arising from a little difficulty with a grand juror? I apprehend you could, and I apprehend that this explanation is not worth a penny; that when Mr. Davis attempts to explain his remark there to the clerk it amounts to a mere endeavor on his part to help the Judge out of a bad scrape; that Lind and Ladd were correct when they say that the Judge was intoxicated. I have no doubt, gentlemen, that Judge Cox has trouble with grand jurors. It seems that he has had on two or three occasions. I believe that a Judge who conducts his court in the manner that Judge Cox does, a man who so conducts himself as not to be entitled to the respect of any man, is pretty apt to have trouble, not only with the grand jurors, but with the attorneys of his court; they lose all respect for him; it is impossible for them to have any respect for a court which voluntarily places itself in this condition—a condition beneath them—no confidence in a man who goes upon the bench in an intoxicated condition; who is about the streets drunk and disorderly; who indulges in these fearful sprees. Such behavior leads to just such scenes as we have discovered; just such scenes as have occurred, not only at St. Peter, but in other places where the attorneys, the grand jurors and petit jurors have manifested their indifference and contempt. When they attempt to explain that he was laboring under excitement on that occasion—an excitement of such a nature as to lead Mr. Davis to think he was intoxicated, it is not sufficient; it does not commend itself to you.

The next,

ARTICLE TWELVE,

is the Renville county, May, 1881, term of court, held at Beaver Falls. It was the term where this liquor case was tried—the Anderson case. We have upon the part of the plaintiff the testimony of S. R. Miller, who testifies that for two or three days Judge Cox was all right, meaning, I suppose, he was perfectly sober. On the fourth day of that term he began to show signs of intoxication; that he was drunk upon Sunday. We have the testimony of George Miller, the deputy sheriff, who testifies to some little exhibition there on the part of the Judge, which would indicate that something was the matter with him. Carl Holtz, the hotel keeper, with whom he stopped, testifies positively that on the third day he was drunk. The testimony of R. W. Coleman, who testifies that on the Thursday night, which would be the day of the court, Judge Cox was drunk.

Mr. Coleman gives you an illustration of his practices down there. Mr. Coleman gives it in the way of motions, indicating that the Judge was engaged in the very pleasant pursuit of catching imaginary fleas

and lice. The counsel attempts to show that mosquitoes were very troublesome. Now, I have no doubt that very many of you have had experience not only with fleas, but also with mosquitoes, but I never knew a man to make the same motion in catching a flea that he does in catching a mosquito. It is possible that it is necessary down there in in that country, but it don't strike me so. The motions are quite different, and the motions as described to you by these two witnesses are the motions of a man who is endeavoring to catch a flea or to catch a louse, I can't tell which—not in the way of slapping mosquitoes. Mr. Megquier testifies that there was a concert there one evening, and that there was very much trouble the next day with mosquitoes in the court room. He also testifies to Mr. Coleman's absence upon Saturday; he also testifies that it takes an unusual number of drinks to get Judge Cox full. Mr. J. W. Whitney, the "scratchetory" of Judge Cox, as it seems he announced on one occasion, states he was there and he noticed these mosquitoes. He testifies that Judge Cox was sober. Mr. Jensen, who it seems is sheriff, testifies that Coleman was not there on Friday or Saturday, but he don't remember anything about mosquitoes. I suppose that Mr. Jensen was in a condition—I should judge so from what he testifies concerning his habits—not to know a mosquito if he should see one. He admits that he gets drunk himself occasionally and did at that time. Mr. A. Ahrens testifies upon that point that Judge Cox was not drunk on that occasion. Mr. James Greeley testifies to the same thing. That I believe is the list of witnesses.

Now let us examine this testimony a little. It seems that during this term of court there were very many indictments found, or very many cases tried on indictments for selling liquor without a license. Some of the indictments had been found at the term previous. Among them was one in the case of the State against Anderson. Mr. Anderson had been tried, convicted and sentenced, and after he had been sentenced Judge Cox, in his drunken moments, had him brought before him, pardoned him, and remitted the fine. Now it may be barely possible that in the municipal court, as has been stated by counsel, this thing is permitted. There is no law whatever for it; and I say that I never heard of such a thing in the district court. I venture the assertion that it is the only case of the kind in Judge Cox's court; and I venture the further assertion that he would not have done it had he been sober. The man had been tried, convicted and fined. They discover in some sort of way that he had paid some money to a county treasurer; the testimony upon that is not very clear, and Judge Cox took the word of the attorney for the defendant and remitted the fine, and told this man, who had violated the law in regard to procuring a license, to go as he pleased without payment of that fine. That is one of the things which took place there. There are other equally disgraceful things. For instance, it is admitted here that Peter Berndigen had been selling without a license, had been indicted, and yet we find from the testimony of all the respondent's witnesses that Judge Cox was in Berndigen's place drinking, pending his trial; in a saloon there, the owner of which had been indicted for selling liquor without a license, indulging in drinks. That is the testimony of Judge Cox's friend, Whitney.

Judge Cox's friend, Whitney, testifies on page 644, that Cox drank in Berndigen's saloon. Jensen testifies to the same thing on page 658, and Ahrens testifies to the same thing on page 668. Here was a man indict-

ed for selling liquor without a license, whose case was pending there in that court. The Judge knew all about it, and yet visited his saloon with the sheriff, with this attorney Whitney, with Ahrens, and drinks. Mr. Megquier testifies that the indictment in that case had been found the year before. Another thing; it seems from the testimony of Mr. Greeley that while at that term they had a little game of cards, the Judge got strapped, or at least he was strapped, and wanted to borrow some money. He sent Mr. Greeley out to borrow some money for him of this man Berndigen. Now, this offense is not one upon the bench, but it is of that class of offenses of which I have spoken, this drinking at night. It is of the same character of these debauches, carousals, which have an effect upon the court the next day,—the sort of thing which should be avoided, not only because of the physical effect, but for the moral principle, for the dignity of the court, and the effect it might have upon the community. We find Judge Cox on this night engaged in gambling. He looses his money and needs to borrow. He sends his friend Greeley over to Berndigen's saloon to borrow for him, and Greeley gets three dollars, and brings it back; borrows it from the man who is indicted for selling liquor without a license, and whose trial is pending in this court, for the Judge before whom he is to be tried,—brings it back and gives it to the Judge. I say that a Judge who will feel this affair no disgrace, will not feel it out of the way in the least, to go upon the bench in a state of intoxication.

It was during this term of court that Judge Cox took occasion to speak to the county attorney in very dignified language,—"He didn't want any more monkeying, monkeying in that court." Now that must have impressed the bystanders very sensibly with the dignity of the court,—the presiding Judge of a district court using that kind of language—going further than that, and using blasphemous language, as in testimony.

I will now come to the Lincoln county term, held first at Marshfield and then at Tyler, June, 1881.

ARTICLE FOURTEEN.

I start out with the broad proposition, that the attorney who advised the clerk of that court not to move his record, was right upon the law, and that Judge Cox moved his court without any statutory authority whatever. The only law there is concerning this matter, is paragraph 16, page 624 of the statutes of 1878.

Whenever the court house or place of holding court, is destroyed, unsafe, unfit or inconvenient for the holding of any court, or if no court house is provided, the Judge of the district may ap, oint some convenient building in the vicinity of the place where the court is required to be held, as a temporary place for the holding thereof.

Now, under that statute, it was evidently the intention of the law makers, to have the court held at the county seat,—it is not permissible for a Judge to move a court from one town to another to suit his convenience, or suit his ideas of what may be proper in the way of accommodations. The testimony on the part of the State is, that Judge Cox was driven over from Tyler to Marshfield, about four miles, in a buggy, having arrived at Tyler on the train that day; that he was in a state of

intoxication; that he was intoxicated when he arrived at Marshfield; that immediately after getting there he said, "Mr. Clerk, what is the business?" and then enquired of the sheriff, what provision he had made for the court, for the jury.

The sheriff told him they had one room for a jury, and that there was another room, the bar-room of the hotel, which they might get, whereupon the Judge said, "Which is the nearest town? How far is it to Lake Benton? and how far is it to Tyler?" That he discovered it was nearest to Tyler, only four miles away, and thereupon he ordered the clerk of the court to pack up and move there. Now, I say, that is an usurpation of power by the Judge, for which there is no warrant in the law or elsewhere, and that a man who is sober would not do it. It is true that Tyler is a larger place than Marshfield. It is true that Marshfield consisted at that time of very few houses. Tyler, while it was larger, was not much to brag of, I judge. Here was a court room provided, as far as we have observed, was quite as good as the court room at Tyler, and the Judge, without knowing what conveniences were to be had at Tyler, without knowing anything about it, orders the county seat moved down there and the clerk of the court, jurors and everybody else attended there. Now, gentlemen, if that could be done in that case, it could be done right in this county. When the Judge takes a whim that he will move, he may do so. If your jury rooms are not such as strike him as fit or proper, or your court room is not personally satisfactory to him, he may order your term of court to be held at another place. It is characterized by this man Matthews, in a letter he wrote to Whitney, as an outrage, and I say he characterized it correctly. There was not a juror there. There were quite a number of buildings in the village. It was the county seat fixed by the people of the county. Did he inquire whether there was a proper building there or not—whether rooms could be had?

He found that one room had been provided, and was told that another room could be had, a bar room at a hotel, but it struck him that it was an unfit place, possibly it was. It would be an unfit place if it was a bar room, but it is in testimony that not a drop of liquor was sold in Marshfield at that time? And if that be so, the jury could deliberate as well in a bar room as anywhere else. They would of course have to clear the room. It would not be expected that they would go in there with a multitude of people about, to deliberate; the possibility of using the room would depend upon circumstances. I remember attending a term of court once where the only jury room which could be had was that part of the saloon occupied by a billiard table. In order to get in or out of the court room even, it was necessary for all to go through the saloon. I remember seeing jurors at that term figuring up on the billiard table the amount due in a case, and I thought it was one of the most convenient places in the world for a jury to figure on. That was on the Northern Pacific railroad, and the Judge didn't consider it necessary to remove the court to another place. He was a Judge who adapted himself to circumstances, holding a term of court over a saloon, and placing the jury for deliberation in that part of the saloon used for a billiard table. Whenever he wanted to use the jury room he had the room cleared and locked up, and I never knew the verdicts at that term to be affected because the jurors deliberated in a saloon and made their figures on a billiard table. You will bear in mind that this was not a

bar room; it was a sitting room which was provided. The Judge made no inquiries for conveniences. I apprehend that he knew that the conveniences which *he* might desire were not there—there was not a saloon in town, not one.

Well, the court was removed from Marshfield to Tyler. There is a question right here as to the condition of Judge Cox when he arrived at Tyler. The witnesses on the part of the State are A. G. Chapman, A. C. Mathews, Mr. Stites, Mr. Coleman, all attorneys, all of whom testify as to his condition when he arrived at Marshfield. They are corroborated to a certain extent by Mr. Allen, a young man who is in the office of Wilson & Gale at Winona, and by Sherbourne Sanborn, who is connected with the railroad company. Now on the part of the defense we have Col. Sam. McPhail, the celebrated Samuel; C. W. Andrews, who studied with Judge Cox; Mr. Charles Butts, Mr. W. E. Dean, Dr. Scripture, although I think Dr. Scripture confines his testimony to his condition at Tyler entirely; Mr. Hodgman, who keeps a hotel; Mr. Alexander Graham, who deals in lumber; Mr. G. Larson, who is auditor; Mr. J. L. Cass, who is an attorney; Mr. Cass was present in Marshfield, some of these others were not; Mr. C. H. Griffith, who was at Marshfield only; Capt. Strong, who testifies on that article, but not as to the sobriety of Judge Cox; Mr. Nash, who was a grand juror, but was not at Marshfield; Mr. Apfeldt, who keeps a saloon at Tyler, but was not at Marshfield; Mr. Pompelly, who was foreman of the grand jury, but was not at Marshfield. We find Judge Cox on this occasion going from a term of court which he had held at some other point upon Tuesday up to Marshfield. It is claimed that he arrived at Tyler in a state of intoxication; that he went over to Marshfield by means of this buggy; that he was intoxicated when he got there; that he came back to Tyler and held a term of court, and was intoxicated during the term of court. This is testified to by several of these persons. Mr. Chapman says that Judge Cox was as drunk as a lord; that Judge Cox went to bed several times during that week with his boots on.

It seems from the testimony of all these parties that at Judge Cox's room in the hotel kept by Mr. Hodgman all were more or less intoxicated each night, that they played cards, that they gambled, that they drank more or less, and that it was very difficult to tell who was sober and who was not. Now, Mr. Chapman testifies to you that he saw Judge Cox in bed, put to bed with his boots on, and they have taken a great deal of pains to show that it was impossible for Mr. Chapman to see into Judge Cox's room in the way he testified. Now, that may be true, but I call your attention, gentlemen, to the fact that it was not in Judge Cox's room at all that Mr. Chapman saw the Judge put to bed with his boots on. If the counsel had taken the pains to examine the testimony he would have found on page 53 of the Journal of the 25th of January the testimony of Mr. Chapman concerning this.

Q. You say they rolled him into the bed?
A. I say they helped the Judge up into the bed, or pushed him up or got him up some way.
Q. They got him up there?
A. Yes,—with his boots on.
Q. Was that his room?
A. No; I think that was Mr. Butt's room.
Q. Did you see Judge Cox lay there during that night?

A. I saw him as late as three o'clock, and sawhim again perhaps as late six or seven o'clock.
Q. You were in there again at three o'clock, were you?
A. I went in and got Mr. Newport out about three o'clock.
Q. What were you doing when you got back there about six o'clock?
A. When I got up the Judge was there in sight.

Now, it was not Judge Cox's room at all, in which this witness Chapman testifies that he saw him put to bed with his boots on. He saw him in Butt's room. Where Butt's room was, or what means this witness had to see it, I cannot say: but he does not claim any where that it was in Judge Cox's room that he saw this occurrence. The testimony of Mr. George Chapman is, that during that term of court he was convicted of simple assault; had been indicted, I think, for an assault with intent to commit rape. The testimony was that he merely kissed the girl, and the jury convicted him of an assault.

After he had been fined, as is shown by the record, although it is disputed here by one or two parties, it was discovered that he had never been arrainged, and his attorney determined to take advantage of that neglect. You will recollect that Samuel McPhail was the County Attorney there, and I am not surprised that between Samuel McPhail and Judge Cox, in the condition they were evidently in, they neglected to arraign the prisoner. The wonder is that they ever got to trial with him, but they did, and it was discovered after conviction that he had never been arraigned, and an attempt was made to take advantage of it. It seems that Judge Cox ordered that the verdict of the jury be set aside and that a new trial be had. The record shows that on this first conviction he was fined $10, nothing said about the costs. It seems from the testimony, and it is not contradicted, you will bear in mind, that this man Chapman met Judge Cox during the noon recess. The Judge took him to one side and told him he had better plead guilty, that he wouldn't have "any damned Connecticut blue laws down there in his district." Here we have a man who had been convicted of this crime, the verdict of the jury set aside, and Judge Cox taking him round the corner of the building and telling him that he had better plead guilty. That is not contradicted by anybody. Did Judge Cox go upon the witness stand and pronounce that false? Not at all. You don't find him upon the witness stand upon any of these material facts at all. He does not deny it so it must be taken as true. Judge Cox did state this to the accused, and when he gets into court asks him, "have you got money to pay your fine?" Finally the Judge fines him $10 and costs, amounting to $25 or $30, and they never have collected that yet. Now, how do they attempt to disparage the testimony of Mr. Chapman upon that point?

Why, they got one gentleman here, Capt. Strong. It seems that Mr. Chapman testifies that when he talked with Judge Cox, either he or Judge Cox left Capt. Strong. He thinks so. Now, I don't suppose that Capt. Strong would have any recollection about it if it were so. I don't know that the witness testified that Capt. Strong saw them talk. I don't know that he testified that either Judge Cox or himself were engaged in conversation with Capt. Strong at all, but he gives it as his opinion they bring Capt. Strong to testify upon that point. Let us look at his testimony a little; there is a peculiarity about it. Capt. Strong, on page 593 of the testimony for the defense, testifies that he has

resided for two years and a half in Tyler, Lincoln county, Minnesota; that he is is engaged in buying wheat on the Dakota Central Railway; owns warehouses; was present at the term of court; was there 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 court 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 of a man by the name of George Chapman that was indicted at that term of court and tried?

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 days.

Q. I will ask you to state whether, on Monday, in your presence, Judge Cox had any conversation with this man Chapman?

Chapman never claimed that he did,—not at all.

A. No, sir, he did not.

Q. On the street, 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 workbench 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 arrainged and tried?

A. Oh, certainly, he was just brought to town.

Now the time fixed by Chapman is after he is tried and convicted by the jury.

Q. After that he never came up in your presence and spoke to the Judge, or the Judge spoke to him, in your presence in any way?

A. No, sir; that is the only time that I saw the Judge and Mr. Chapman speak at all.

Q. Is there another gentleman living round 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 in your presence?

A. Not to my knowledge; I know nothing; if there was anything of the kind; I saw nothing of the kind.

Here was a grand juror present at that term of court who was put upon the stand by them upon this immaterial matter, and they dared not ask him the condition of Judge Cox as to sobriety; dared not do it. But

instead of that they depend upon two or three attorneys there, and two or three men who were in court occasionally; I believe that I may safely say that there is not on the part of the defense a single juror brought in here who attended that term of court. Men who were there, between forty and fifty of them, as part of the court, observed its proceedings, and they do not dare bring any of them here to testify upon this point. They do bring one on another point, and they don't dare ask him what was the condition of Judge Cox on that occasion. They bring in the county auditor; they bring in the sheriff, who testifies that he gets drunk himself occasionally; testifies that he was in the saloons I speak of with Judge Cox. They bring in one or two men who dropped in court occasionally and accidentally; men who observed nothing about his condition, and ask you to believe from their testimony that it was impossible for Judge Cox to have been drunk. I beg the pardon of the Senate for stating that among these witnesses there was no juror; there was one juror, one of the members of the grand jury, who testifies that he was in court two or three times, and that he saw no indications of Judge Cox's inebriety. There is one attorney here, Mr. J. L. Cass, who seems to have been on very friendly relations with Judge Cox, and he testifies that on one occasion, when there was some whisky in the room, he looked in the bottle, he was there watching particularly.

He was there I suppose in the nature of a friend to the court—he was there to see that the Judge didn't get drunk. Mr. Hodgman testified that he was in the court room, but you will observe that on page 580 and 581, he declines to answer questions as to the sobriety or inebriety of Judge Cox. In addition to Capt. Strong they have brought up here Mr. S. P. Pompelly, who was foreman of the grand jury. They have brought him in here to testify as to a signature to certain resolutions which it seems were adopted by the grand jury, concerning the administration of affairs by Judge Cox. It seems that Mr. Pompelly—I don't know whether the grand jury did it or not, there is nothing about the resolutions indicating them to be the work of the grand jury—gave Judge Cox a certificate of good character at that time. For some reason or other they felt it necessary, and Judge Cox, in return for their delicate compliment asked them over to the saloon and swelled them up—another of the very pleasant things that seem to have taken place occasionally in that district. The grand jury find resolutions commending Judge Cox, and in return for that the Judge takes them over to one of these saloons and they take a drink together. It was a very happy affair, and while it might strike most people as being rather a remarkable one, yet I suppose it is like many other instances in this case. There is no blush on the face of the court at the mention of this affair. He does not think it is improper for the court to take the grand jury over to a saloon, and treat in return for flattering resolutions, but I say it will strike most men as being an improper thing; that it ought not to be countenanced; that there is something wrong in the man who would do it. He is either naturally wrong, or has become wrong from the use of intoxicating liquors.

I say they have brought Mr. Pompelly here; they never asked Mr. Pompelly a question as to the condition of Judge Cox; they had him upon the witness stand, and did not dare ask him a question as to the condition of this man, any more than they do Capt. Strong, another of the grand jurors; they were afraid of it, but from the testimony of these

witnesses it is very clear and very evident that that term of court was nothing but a huge travestie upon justice, and that the nights were spent by these attorneys and by this Judge in drunken debauches at this hotel. There can be no question, but that this Judge repeatedly went to bed in an intoxicated condition, and we might have gone farther and shown some very indecent things which were done there while he was in that condition and with him had we been permitted by the Senate.

Upon

ARTICLE FIFTEEN,

we have had the testimony of M. Sullivan, who was foreman of the grand jury; the testimony of A. C. Forbes, an attorney; the testimony of Mr. John Lind, who tried a case there with him; the testimony of C. E. Paterson, clerk of the court; the action of the grand jury; Sheriff Hunter; Mr. Hunt, the hotel keeper; M. B. Drew, an attorney residing there; and R. W. Coleman. On the part of the defense, they have had the testimony of Judge Weymouth; Mr. Seward, who figures quite prominently here; Mr. C. W. Main; Mr. Weymouth, an attorney; Mr. Gley, a book-keeper down there, an old acquaintance; Mr. W. S. Eastman, a farmer, who was not in court once; Mr. Hartigan, a saloon keeper; Mr. A. C. Grass, an attorney; Mr. M. E. Matthews, Mr. C. Andrews; Mr. Chas. Butts, an attorney; Mr. James Morgan, a farmer, who has known Judge Cox for twenty years, and never saw him under the influence of liquor; Mr. Allen and Mr. Sanborn.

Now it seems that Judge Cox, during his terms of court last summer, which I might characterize as one grand spree from beginning to end, had occasion to go up to Marshall to hold the June term, 1881. He had held the June term at Tracy, and had in company with him Mr. Whitney and one or two other gentlemen. On the way, at Tracy, they visited a saloon, and the saloon keeper, Mr. Hartigan, is brought here to show that the Judge was perfectly sober. Mr. Hartigan testifies that the Judge took two or three glasses of beer in his place, that he was perfectly sober and there was no doubt about it. I do not believe it is necessary for me to argue again to this Senate, the disposition of a saloon keeper under such circumstances, or to argue to the Senate that a saloon keeper is not a witness to be relied upon in such a case; that when a saloon keeper comes into court and testifies that a man is sober, while others who are not in that business, testify that he is drunk, it is perfectly safe to say, to be charitable about it, that the saloon keeper is mistaken. We have the testimony then, of Mr. Allen and Mr. Sanborn; Mr. Allen, who is connected with Judge Wilson, the attorney for this railroad company in some very important position, manager I think, that when Judge Cox came upon the train at Tracy, he was under the influence of liquor, very perceptibly. They tell you that he first came into their business car; that one of his party made the remark, that they were in the wrong pew.

This fixes the time because Mr. Hartigan testifies that the business car was on the train that day going west. Sanburn and Allen say that Judge Cox had a little bundle, an overcoat in a shawl strap; Mr. Allen testifies that he saw a bottle of whiskey in that bundle; and it was put in what is called the kitchen of the business car, that the party passed into another car; that shortly afterward Judge Cox and Mr. Whitney

came back into the business car and then went forward to the other car; that afterward there was a little smash in the kitchen, and they went in and discovered that this bottle of whiskey had fallen out of the overcoat and upon the floor. Now I don't know that it was a very serious crime for a Judge of the district court, or any other gentleman who is traveling, to carry a bottle of whiskey. I rather think that the crime would consist in denying that he had it, but it shows the practice of this man whom we find traveling through his district, carrying a bottle of whiskey in his overcoat pocket, having it drop out and break so that everybody in the car could smell it. Now there is no denial on that point you understand, there was no denial at all that this was a fact, that he did have a bottle of whiskey, and was carrying a bottle of whiskey around with him during these terms. It is also in testimony in this case that at another time Judge Cox had a bottle of whiskey with him in the court room, that he had it in his coat pocket and after court treated some of the attorneys. These are not impeachable offences, but these are things which the senate should consider in making up its mind where witnesses differ, as to the truth of these other charges as to the condition of Judge Cox. One of these wstnesses, Mr. Andrews, who was on board this train, testifies that Judge Cox had been drinking some, he admits upon cross examination. He is their own witness, and you will remember how he squirmed when upon the cross examination, he had to admit that Judge Cox had been drinking some before getting on that train.

The train arrived at Marshall, and the Judge, taking his little gripsack, or the bundle he may have had, started to town over the bridge, in company with others, over to Hunt's hotel. One of our witnesses testified that he saw Judge Cox as he came across the bridge, and immediately there was a consultation amongst the counsel. They seemed pleased with something. Upon cross-examination they asked him if he was sure the bridge was built at that time. "Yes, it was the wagon bridge." "Wasn't it a foot bridge—a couple of planks?" "No, sir, not a bit." And they put their witnesses on to show that the bridge was not built at that time; that Judge Cox crossed on a few planks, in the way of a foot bridge; they are as positive about that as they are about anything; and even Judge Weymouth goes down there to meet his friend, Judge Cox, and it is such a terrible bridge that he does not dare to trust himself upon it. I don't know what in the world was the matter with him; he didn't claim that it was a natural infirmity, but there was something wrong with Judge Weymouth; he sat and looked at those two planks, and he didn't dare to go over it to meet his old friend Judge Cox. They describe it, every one of them, as a mere foot bridge, while we produce the man who built the bridge, who has a written memorandum, which they would not allow in court, showing that the wagon bridge was constructed and completed the morning that court opened there, and constructed and completed for that purpose. Now I say that sort of testimony, taken in connection with the testimony of other witnesses about that bridge, shows that these men might have been mistaken as to the time. It shows the impossibility of witnesses swearing to circumstances occurring on a certain day, unless the circumstances are of sufficient importance to impress themselves on their mind for all time.

Things occur upon a day about which there can be no question. Mere

events a man can testify to, but when he attempts to say that on a certain day in June they were building a bridge down there, that he stood and saw Judge Cox come across those planks, and he knows it was that day, he is certain as to the day, why, he is just as much mistaken in that as another man would be who testified that he saw him cross a wagon bridge on a certain day without having the day fixed in his mind by any circumstance, but when a man comes here who built the bridge and shows you that he completed it so that the 'bus crossed on it that day, another man who testifies that he took away the plank of which the foot bridge was made the day before and sold it, and the reason he knows is that his books so show, that is the sort or testimony that it is impossible to get away from. Now, I don't suppose that these men, Seward, Main and Mathews, who are old friends; Webster, who was a drummer in my regiment, (although I see the counsel calls him captain here,)—I don't say that these men are wilfully mistaken about this matter; I say that they are simply mistaken about the time. Mr. Webster testified, for instance, that he met Judge Cox on the sidewalk, that he knows it to be that day because the foot bridge was there, while the foot bridge was not there at all, and consequently Mr. Webster's testimony looses its weight. It was some other occasion when he went down there and met Judge Cox and found him sober.

Well, Mr. C. E. Patterson tells you of Judge Cox's condition. He tells you of the action of the grand jury; he tells you the mistake that Judge Cox made in attempting to find the place where the witnesses in cases of naturalization should sign papers, and several of these details. He tells you there was no preliminary call of the calendar. There is no law requiring a preliminary call of the calendar, but there is a rule of court requiring it.

All these things show there was something wrong there. Mr. Hunt, although he was not in court, testifies that Judge Cox came to his house intoxicated, remained there two days and then went away, that his bill down there at his saloon,—one saloon mind you, and there are three or four others there, and it appears that he visited them all,—his bill for whisky at that time was $17.70! A bill for whisky of $17.70, and yet these gentlemen, these attorneys who had part of that whisky,—"had some of them hams" as the thief said, all testify that the Judge was sober! At last the condition of the Judge became unbearable and the grand jury took action and presented some resolutions. Now, these resolutions are in testimony, one of the witnesses testified that there was nothing in those resolutions, nothing at all concerning Judge Cox's drunkenness at that term of court. I have forgotten just now who it was, but I think it was our friend Seward.

Mr. ARCTANDER. I think it was.

Mr. Manager COLLINS. Yes, it was our friend Seward who testified to that.

The PRESIDENT *pro tem.* Mr. Collins, it is now six o'clock; do you care to continue longer this evening?

Mr. Manager COLLINS. This is a very long and important article, Mr. President, and I shall take considerable time in its discussion. I shall endeavor to close in the morning in a very short time.

Senator CASTLE. Mr. President, before we adjourn, I desire to say that I am informed by the managers that they desire to have more than the two speakers allotted to them under the rules.

Perhaps it would be well at this time to arrange that matter, so that the gentlemen who are to speak will understand what they may expect. I believe that they desire to have three speakers. I looked, to-day, over

the proceedings in the Page impeachment case, and I find that there were three speakers on the part of the Board of Managers, namely, Messrs. Clough, Gilman and Hinds. Messrs. Gilman and Clough first spoke, and were answered by Gov. Davis, and Mr. Hinds closed the argument. If it be in order, I would move that the managers be allowed three speakers; that one of them shall follow Mr. Collins, then one or two of the counsel for the respondent shall address the court, and then the managers to have their third speaker to close the case. I presume that it will not take very much more time than it would if only two were to speak, and as there are three who desire to speak, I am disposed, so far as I am concerned, to allow them that latitude.

The PRESIDENT *pro tem.* Is the motion of the Senator seconded?

Mr. Manger COLLINS. I do not know what view the counsel for the State who are to follow me may take of the matter, but I desire to say that I find a great deal of difficulty in speaking here, because I cannot possibly anticipate what line of defense the respondent may pursue. It seems to me that it is asking too much for the counsel of the State, who is to conclude this argument, to reply to two speakers—to reply to the entire argument; and it is unfair to the counsel for the State who is to follow me, to expect him to argue the case and travel over the ground I have traveled over, without having any opportunity to know what position the counsel for the respondent will take. I think it would be altogether fairer and juster to all parties to have the counsel for the State follow the first speaker for the respondent.

The PRESIDENT *pro tem.* So as to speak alternately?

Mr. Manager COLLINS. That is a matter which I think ought to be done, although it is a matter that I am not personally interested in.

Mr. BRISBIN. Mr. President and Senators, we were content with the order of the court as made, and we were content also to have the order modified in correspondence with the motion of the Senator from Washington, but we are indisposed to accept, without protest, any other modification, and I will state frankly the reason why. It is a matter notorious to all the Senators that the great burden of this protracted, tedious and exhaustive investigation has fallen upon Mr. Arctander. It is notorious to all the Senators that Mr. Arctander has been engaged until nearly the last minute, not merely in court, but in the inquisition of witnesses, etc., and he has not been able to fully prepare himself, although he is willing, if the prosecution is restricted, to follow Mr. Collins immediately. Otherwise we prefer that the two speakers of the State should precede the remarks that will be offered in behalf of the respondent. And for that reason I hope the order will not be modified, unless it is modified in strict accordance with the motion. So far as I am personally concerned, it is arranged that I shall close the case on our part, and my own preference would be to have alternate speaking, as has been suggested, but I feel it is a duty I owe to Mr. Arctander to accord him that preference, and it is something that ought to be done under the circumstances. So far as the statement of propositions is concerned, in a very few minutes a statement can be made such that counsel can be prepared for the general line of argument which will be followed.

The PRESIDENT *pro tem.* The question will be upon the motion of the Senator from Washington.

Senator CAMPBELL. Is there any objection to allowing the matter to lie over till morning? I think it is possible that the counsel might arrange in the mean time.

Mr. Manager COLLINS. I think it would be difficult to arrange it. We are perfectly willing to take the two closing arguments, but to ask

that one counsel shall not reply only upon the facts to two arguments of counsel for the respondent, but shall reply also upon the law, is asking too much. It would be imposing too great a burden, and would be quite unfair, it seems to me, to the counsel for the State.

Senator RICE. It was my understanding, Mr. President, at the time of the adjournment last Friday, that this matter would be arranged between the counsel themselves, and in looking over the journal I find I was correct. I read from the journal of last Friday.

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.

And then previous to that Manager Collins says:

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.

Now, the matter was left in such shape that the managers and the counsel could agree as to the order of speaking.

Mr. Manager COLLINS. We cannot agree. [To Mr. Brisbin.] Have you any objection to our two arguments being together at the close?

Mr. BRISBIN. Yes, sir; a most decided objection to it.

Mr. ARCTANDER. I desire to call your attention to one fact, which is that my associate, General Brisbin, who is to make the final argument upon our side, will probably not advert to any extent to the facts in the case, but will confine his remarks to the law, and the general principles underlying an important case of this nature. To me, as one more familiar than my associates with the evidence that has been introduced, has been assigned the task of making the argument upon the facts. The counsel for the state will have nothing to answer except my argument upon the evidence. I desire also to say that if the argument of Mr. Gould is sandwiched in between the argument I shall make, and that to be made by my associate, Mr. Brisbin, in the manner proposed by the managers, I shall be deprived of what I think (since I am the only one on our side who is assigned to the duty of commenting on the evidence) it is only fair I should possess,—the right of replying to his argument on the facts, because my associate, less familiar than myself with the evidence, might not be able without preparation, to properly answer the arguments presented.

I think it is a rule of law, where more than one speaker is allowed, that the State shall open, that the defense shall follow, and that the State shall have the closing. It seems to me that is the natural course to take. If the State wants more than the code allows it, if the managers desire to ask any special favors from the senate in this matter, let them ask for them in conformity with the well-established rule. In the Page case the rule was correctly laid down; the same rule is laid down in the Hubbell case in Wisconsin, and I do not believe an impeachment case can be found in the United States where the rule has been otherwise. I remember some cases in which three or four managers have spoken, but they have all been heard before the defense, for the reason that they can reserve points for their final argument. They have the advantage, anyway, in being able to answer finally anything that we

have to say. They can reserve points that the counsel for the respondent is entitled to answer; and that is why the opening should inform us fully of all the points upon which they expect to rely. That has been the invariable rule where more than two managers have spoken,—the managers have come in and opened their case fully, and only one has closed. That was the bone of contention in the Hubbell case, and it was there decided in the same way that it is now sought to be decided in this case by the motion of the senator. It seems to me that it is the only fair way under the peculiar circumstances, this case being so long, and the record so voluminous, and only one of the counsel for the respondent having been able to hear it all.

The PRESIDENT *pro tem.* My recollection is that after the Senate took the action referred to in the extracts from the journal read by Senator Rice, that is it was finally decided that there were to be only two speakers on a side.

Senator CAMPBELL. The rule was adopted with the understanding that if there was to be any change they would arrange the matter between themselves.

The PRESIDENT *pro tem.* But I think it was finally arranged that there were to be but two speakers on a side. The question will be on the motion of the Senator from Washington.

Senator CASTLE. In reference to this matter, Mr. President, I will say that my reasons for this motion were these: First, I looked through the impeachment case, and I saw that that was the rule, and it struck me that it would be eminently fair to all parties, that if the State asked for any additional speakers, that they should use them as one—that two men should make the argument instead of one.

The PRESIDENT *pro tem.* Are you ready for the question? As many as favor the motion made by the Senator from Washington will say aye; the contrary no. It is adopted.

Senator GILFILLAN C. D. Mr. President, I don't know exactly the order in which these parties are going to speak. I do not fully comprehend what action the Senate has taken in the matter, but I rise to inquire whether it is not possible to arrange to hold an evening session. For instance, Mr. Collins is about through now, and I would like to inquire whether the gentlemen who is to follow him cannot arrange to proceed this evening.

We cannot, of course, expect that a gentleman will speak all day, and again in the evening; but if it is so arranged that one speaker can occupy the attention of the Senate during the day, and another speaker occupy the evening, we can do almost all the work this week. I think it is very desirable, if possible, to get through this case by Friday night, and I think it can be done if the speakers can arrange between themselves to speak both in the day and in the evening. I desire to ask Mr. Arctander how long he will be in summing up?

Mr. ARCTANDER. It is very difficult to tell; but I apprehend from the length of the case that the two counsel on our side will occupy about three days. I do not apprehend that it will be any less.

The PRESIDENT *pro tem.* Does the Senator from Ramsey move that the Senate hold an evening session?

Senator GILFILLAN, C. D. I do not think, Mr. President, there is any object in having an evening session, if it is going to take two men three days to make their speeches.

Senator CAMPBELL. I move that we adjourn.

The PRESIDENT *pro tem.* The Senate now stands adjourned until to-morrow morning at ten o'clock.

FORTY-THIRD DAY.

ST. PAUL, MINN., Wednesday March 8th, 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., Campbell, Case, Clement, Gilfillan, C. D., Hinds, Howard, Johnson A. M., Johnson, F. I., Johnson, R. B., McLaughlin, Miller, Morrison, Officer, Perkins, Peterson, Powers, Rice, Shaller, Shalleen, Simmons, 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 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.* Mr. Manager Collins will proceed with his argument.

Mr. Manager COLLINS. Mr. President and gentlemen, I find that the position assumed yesterday, concerning the removal of this term of court, or the place of holding court, from Marshfield to Tyler, was not fully understood, and I desire, this morning to again call the attention of the Senate to the statute; paragraph 16, page 634.

Whenever the court house, or place of holding court, in any county is destroyed, unsafe, unfit or inconvenient for the holding of any court, or if no court house is provided, the Judge of the district court may appoint some convenient building in the vicinity of the place where the court is required to be held, as a temporary place for the holding thereof.

I assume that the Judge when he decides to remove the place of holding court may appoint some other convenient building, and the observance of this statute would require, in the interpretation given to it by a man wholly in his senses, fully possessed of his facilities, the appointment of a building in the vicinity at the county seat, not an order of the character given here to the clerk, to pick up his records and remove to another town, the town of Tyler.

At the adjournment last evening we had under consideration article fifteen, and the testimony of the witnesses for the defense who were duly sworn as to the sobriety of the respondent upon that occasion, was commented upon,—their positive assertion, their positive declaration, their unqualified statement that this bridge which has been talked about was not completed at the time the term of court was held; that

the Judge, on approaching the hotel that day, walked across the foot-bridge they have described so clearly here.

Now, it is not material what bridge he used. Judge Cox could have arrived in town just as well by means of the foot-bridge as by means of the wagon-bridge, or any other bridge, but it affects the credibility of the witnesses who go upon the stand and swear to a thing of that sort so positively and so unqualifiedly. If we find they are mistaken we may readily come to the conclusion that they are mistaken upon other matters, and that when they allude to this term of court,—a term of court which they have fixed by means of this foot-bridge,—that they are mistaken as to the time, and it is some other term of court to which they had reference. This is particularly so as to one or two of these witnesses. Now we have already shown the transaction in court. We have had the hotel keeper, (the man who kept the hotel and who was attacked vigorously by counsel as to his character, or rather as to his alleged crimes),—we have had him here to describe to you the condition of the Judge. He has told you of his drunken habits there, as noticed by him at the hotel. It seems that after two or three days the Grand Jury acted upon the matter and presented some resolutions which we find on page 1079 of the journal. These resolutions were objected to at the time they were offered in testimony; in the first instance, as immaterial, and not tending to prove the offense of drunkenness. They do not directly tend to prove that, it is true; they do not directly tend to prove it; upon these resolutions I should ask no body of men to convict a person of intoxication, but I do say that they have a material bearing upon this case.

It is the opinion, the solemn opinion, an opinion really given under oath of the grand jurors. It is an opinion that is ventured by them,—resolutions of censure offered by the grand jury to the very Judge who was presiding over that court. Is it possible that those resolutions were without foundation? Is it possible that a body of twenty-three men unanimously signed those resolutions without knowing something about the alleged derelictions. While it is not material testimony, and is not testimony of a kind that a man ought to be convicted upon, yet to my mind, it is amongst the strongest testimony which has been introduced here. These resolutions were testified to before they were finally put in evidence. It was said by one of the witnesses who spoke of them, that they said nothing about Judge Cox being drunk at that term of court. For that reason, and for another reason which became apparent after the counsel had got in evidence the resolutions adopted by this bar meeting, we finally got these resolutions, this action of the grand jury, in evidence, and it is as follows, on page 1080:

Whereas, we, the grand jury of the June term, 1881, and of the ninth 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

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 though 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 cou t 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.

These resolutions were signed by every one of the grand jurors. It would take considerable time to read all these names—twenty-three persons—and you will find them printed on page 1080 of the Journal. Endorsed:

Copy of resolutions adopted by the grand jury on the 22d day of June, A. D. 1881.
J. F. REMORE, Foreman.
M. SULLIVAN, Clerk.

These resolutions. you understand, were the solemn action of the grand jury taken after personal knowledge of the matter, and taken, it seems, by them after they had examined six witnesses.

I say there is no evidence which will convince a man, outside of the evidence which ought properly to be brought into court, of the drunkeness of this Judge stronger than these resolutions. I say to you gentlemen who reside in the district that has been presided over by Judge Mitchell or by Judge Lord in his lifetime, presided over by Judge Stearns, or by Judge Start, or by Judge Dickenson when he was district Judge ; I ask you what would you say if resolutions of this detrimental character were presented affecting the reputation of the Judge of the court in the district in which you live. I say it would create a torrent of indignation against the members of the grand jury. It would be an insult quickly resented by your citizens ; they would rise *en masse* and denounce the perpetrators of such an outrage simply becanse such charges would be untrue. But this jury dared to present them to the Judge. Counsel will say that it was the Rev. Mr. Rodgers who did this; that the Rev. Mr. Rodger s is the man who managed this. They attacked the Rev. Mr. Rodgers as no other man has been attacked here, simply because he dared to send up a communication to the House of Representatives concerning this respondent, and asking action. I know nothing about his character ; he seems to be a minister of the gospel. But there is a disposition on the part of the respondent to attack men because they are ministers of the gospel.

I have no more respect for the cloth than I have for any other profession, or any other class of men,—no more, but exactly as much. The counsel knows no more of his character or standing than I, but he grossly insults him because he moved in a matter he considered of great moment to the community in which he lives, a matter of temperance, of morality. There is no question but that this matter of temperance is one which more ministers of the gospel ought to be exercised upon. There is an illustration right in this State of a minister who has devoted himself to the cause of temperance,—I refer to Bishop Ireland, who has stood up and said to the people of his own race, "You must be temperate;" has made temperance his life work, has endeared himself to the people of this State, has done more good to his people, brought himself and his parishoners nearer his God by devoting himself to the cause of

temperance than he could in any other manner, in my opinion. It is time that more ministers devoted themselves to reformation in this direction; we want more Bishop Irelands. I wish we had men of this stamp in the churches of protestant denomination, devoting themselves as Bishop Ireland has done, to a class of people greatly given to intemperance; taking drunkard after drunkard out of the gutter, lifting them above their degradation, their terrible vice and making men of them, manly men, men we may be proud of. I wish we had among the ministers of Protestant denominations in this State examples of like character. I wish I could not say that the only man who has devoted himself to that commendable work is a Bishop of the Catholic church. The Rev. Mr. Rodgers took hold of this matter as every other in that district should and presented it before the House of Representatives. He is guilty of that only, a crime in the estimation of counsel.

I may as well speak here of one or two matters which counsel for the respondent has mentioned. He has inquired who is prosecuting this case, and has told you that Mr. Tyler, a land officer, whom he said had been provoked by the remark, an accusation by the respondent, who accused him of robbing the people on the frontier, and a minister, whose name I have forgotten, were alone the prosecutors. Who is that clergyman, Mr. Arctander?

Mr. ARCTANDER. It is the same Mr. Rodgers.

Mr. Manager COLLINS. All the better for Rodgers. I honor him more than I did before I knew he was the man who presented this petition. Counsel asks, who is it that comes before the House of Representatives and asks for the impeachment of this Judge? I will tell him who it is. It is the people of the ninth judicial district, who have suffered from the whims and caprices of this drunken man on the bench; who have been outraged by his conduct until they have no respect for the man or for the judiciary; a people who laugh at his decisions and blush for shame at the mention of his name. It is the people of the State of Minnesota who have been insulted, degraded and cursed by the spectacle of a sottish and contemptible rowdy upon the bench until they rise as one man and *demand* his removal. Woe to the juror, to the jury which disregards that demand. It is not true, as counsel says, that the citizens of the ninth district are alone interested here; the whole State is affected; and if the ninth judicial district elects a man of this character a thousand times over a thousand times again will the people of the State arise, impeach and remove him. The entire judiciary of the State is dragged down and degraded by a Judge of this character, and the entire people of the State suffer thereby—not only the entire people of the State, but the people of the United States.

The people of the entire country are affected by his indefensible conduct, his repeated violations of the rules of decency and morality.

Well, it seems that the Rev. Mr. Rodgers and Mr. Tyler sent up the request that this conduct be investigated. The counsel says that this district had its representatives on the floor of the House. Neither one presented this petition, but it was introduced by the attorney of this corporation, about which we have heard so much. There is nothing in this case indicating that this railroad corporation has any particular interest in the result here. From the testimony it seems it has had four cases before this Judge. In two of them they were successful, and in two of them they were defeated. If there is to be any comparison in-

stituted it would seem that Judge Cox is a friend of theirs, for I do not know of four railroad cases tried in my own county or district where the railroad company has been successful in half of them. If we judge from these cases the corporation has no cause for complaint, and the charge made that the railroad corporation is desirous of conviction has long ago fallen to the ground, will have no effect upon the minds of the members of this Senate. There was a reason why Mr. Wilson presented the petition, which does not appear in testimony. You will find, upon an examination of the records of the House, when the vote was taken upon the articles of impeachment that neither one of the members from the ninth district voted to impeach.

Those gentlemen hesitated about voting to impeach. They disliked, no matter what their convictions were, to be the instruments by which this prosecution would be set in motion, because they live in the district, and this same feeling has troubled the managers in the preparation for this trial. It compelled part of the managers to visit the scene of these drunks to hunt up evidence upon each of the articles. Witnesses living in that district objected to come in as witnesses. They knew the power of this man in case he was acquitted. Every man on this floor, equally the attorneys, knows the power in the hands of a Judge, and every attorney is anxious to be friendly with the court. He dislikes to put himself in an attitude which may be considered one of enmity, no matter what may be his private opinion. Speaking of this reminds me that we were threatened upon the opening of this case with a petition. A petition was shown here. It was held up once or twice, and he said he should attempt to introduce it in evidence. I do not think he meant what he said, for two reasons; first becauce he knew it would not be admissible; and secondly, because he knew it would not serve his purpose. I do not know but some members of this Senate have read that petition. It is very long, I have been informed, and asks this Senate to do justice to Judge Cox. They did not present it, and there may be a reason for it.

I remember the story of an Irishman who was accused of some crime, and a friend said to him, "Now Pat, you just keep quiet, and we will see that justice is done." "Be gob," says Pat, "that is exactly what I am afraid of." That is just what ailed counsel,—this fear that justice would be done by the senate. The spectacle of a man circulating a petition through the ninth judicial district requesting signatures, that it may be presented to this senate, asking them to do justice to this respondent. Is it to be supposed that this senate intends to do injustice to him? I do not think those men thought what they were about when they signed that petition; I suppose they signed it as men frequently sign such a paper, without reading it. We all know how that thing is done; we all know how a petition is circulated. I remember down in the town in which the senator from Dakota resides, a few years ago, while I was studying law, there was an old fellow by the name of Pitcher, sawing wood. The postmaster, Skinner, got up a petition to have Mr. Pitcher appointed corporation sawyer, and impressed him with the magnitude of the position, and the salary attached to it. Skinner was most prominent in this scheme. He circulated the petition very industriously,—the senator from Dakota I see remembers the affair, and he obtained a thousand signatures for it. The object was to have a little fun with our friend Pitcher. When Mr. Skinner got his

petition complete, and was on the eve of presenting it, it came into the hands of Lou Smith who was the city clerk. A few of the boys thought they would turn the tables on the industrious postmaster, so they cut off the head of the petition and substituted a request to have Mr. Pitcher appointed post-master in place of Mr. Skinner, who was represented as about to resign, sent it on to Washington, and Mr. Skinner had a good deal of trouble in explaining how he happened to be up mainly instrumental in getting it, and why his name headed the long list of names. This illustrates this matter of petitions; you all know how this thing is done.

I do not believe any sensible man in this district would make such a request of this Senate. We must pre-suppose if they do that they believe justice would not be done. There is not a Senator on the floor who has not, all through this trial, and does not now hope and intend that justice shall be done. I say it would be an insult to offer a petition of that kind; it is an insult to circulate it. But to return to the resolutions. They were presented to the court by the grand jury. What was done? Just imagine what Judge Mitchell or Judge Dickenson, or Judge Sterns would have done under such circumstances. Just imagine a petition of that character being presented to either of those men. Such a proceeding would not be thought of in either of those cases, because those men are above suspicion, and that is precisely where the judiciary of this state should be. They should be above the slightest suspicion of reprehensible conduct.

The person who occupied that position should so hold his high place as that no one should even suspect him to be guilty of wrong doing, so that no one could point a finger at him or raise a doubt as to his integrity, his morality or his complete sobriety on all occasions. That is the kind of judiciary we ought to have, and I say if we can not get it any other way let the judiciary be appointive,—let the selection be taken from the hands of the people. Well, what is done? Judge Cox announces to his friends—and you have seen them here on the witness stand,—these lawyers that I said yesterday were lawyers by trade and not lawyers by profession—that there would be a bar meeting at his rooms at the hotel and pockets the resolutions—the files of the court, the records of the grand jury which ought to be there to-day instead of the pocket of the respondent. He invites the attorneys to meet at his rooms at the Bagley House at once for consultation. Arriving there the Judge suggested that they take cognizance of these resolutions and he makes the farther suggestion that Judge Weymouth, being the oldest member of the bar present, occupy the chair. Now that was very unbiased action. He suggests that Judge Weymouth, whom he knew to be his boon companion, his champion, should occupy the chair, and he made some statement that if those resolutions were warranted he felt he ought to resign.

I suppose he was like the other fellow, who, when asked whether he plead guilty to the indictment, stated that he didn't know,—he could not tell until he had heard the evidence. That is the position of the Judge. He wanted the bar meeting to say whether he had been drunk or not; and if they said he had he would resign. The resolutions, the conclusions of these lawyers are in evidence, (page 1124,) and were made part of the records of that court, while the original resolutions were not. I read the report of these worthies:

ORDERED, That the following resolutions of the members of the bar, be spread upon the records of the court.

Judge Cox presiding, giving himself a certificate of good character.

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.

Then follows the names of others who voted in the negative, simply because they believed the issue presented was not fairly met.

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.

Now, that is the minority report, and like many other minority reports, it is exactly true. These lawyers, many of whom confess that they have been drunk with the court, did not meet the issue. So they say that Judge Cox was not drunk? So they resent the imputation that it cast upon him by those resolutions of the grand jury? So they resent the imputation as men would if charges of this kind were made against a sober man? Not at all. They dodge it. They have "undiminished confidence in the eminent ability and integrity," &c., and they "hope he may long continue to do honor to the bench." Undiminished confidence in his integrity and ability. I suppose no man accused Judge Cox of a want of official integrity or of lack of ability when he is sober. Those members of the bar did the very worst thing they could have done, especially if this charge was not true, in dodging it. It seems that they did not want to meet the issue; they had no investigation to ascertain whether this charge of drunkenness on the bench was true or false. Not a bit of it. The fact is, gentlemen, they knew it was true; they desired to whitewash, to dodge it, and they did dodge it in a manner which brought the indignation of the community upon them, and there was a public meeting held, as has been here testified, to express this justifiable indignation.

The counsel says it was attended by the women and children. I trust in God it *was* attended by the women and children. I hope the

women and children in the community had sand enough in them, if the men had not, to stand up there and say to these contemptible practitioners, who feared the court, that their conduct should not be tolerated. All honor to the women and children of that little village if they were in attendance, but I pretend to say that this meeting was also attended by the respectable citizens—the men of that community. I do not mean those who go dodging on these questions, but the men who believed that intoxication in high places is wrong, and desire to put a stop to it. I say that this meeting was attended by that class of men, as well as by the ladies of that community. This meeting, presided over by Judge Weymouth, at the chambers of Judge Cox, in the Bagley House, reminds me of one of the characters in Othello. The Judge going to the members of the bar, calling them to his room to examine into the matter of these resolutions and report on them, reminds me of that part of the play where Cassio, on a certain occasion, says:

"Do not think, gentlemen, I am drunk. This is very ancient;—this is my right hand and this is my left hand. I am not drunk now. I can stand well enough and speak well enough!"

And those to whom Cassio addressed himself answered in unison, "Excellent, well." That was the reply of this bar. "Excellent, well." That was the reply of this bar. After this certificate the business of the court went on; the Judge had sobered up. He saw that these resolutions reflected upon him very severely.

He felt the effect of them, and after he had received a whitewashing from these members of the bar he held his term of court in a better manner. In behalf of the respondent on this article we have Judge Weymouth as a witness, the gentleman who presided over this bar meeting. He saw Judge Cox cross the bridge, and he is as positive that it was the foot bridge as he is about anything he testifies to. He states that he went to the hotel with Judge Cox, and that Judge Cox looked tired, worn and wearied, the same appearance we find nearly all of these witnesses testifying to; nearly all of the witnesses testify that he was not drunk, but he was worn and tired looking.

I have no doubt about it at all. A man who has a prolonged spree will naturally look tired, worn and wearied, if nothing worse. Judge Weymouth further tells you, as a reason for the appearance of the Judge the first three days there, that he was troubled by the reflection of the sun from the building opposite. Well, perhaps it was true; there was a saloon right across the street. He says he was troubled by the reflection from the building opposite. In other words, a man sitting at the end of a large room is troubled by the reflection of the sun's rays upon the building across the street, and the witness accounts for the appearance of the Judge for two or three days there, in that manner. You will find that on page 709. It is useless for me to take the time of the Senate to comment upon that excuse.

Mr. Seward says (on page 712) that the Judge was perfectly sober. I desire to call your attention to a little bit of evidence from our friend Seward in regard to the admission of testimony in the case of Bradford against Bedbury, which indicates the character of the man pretty well.

Bradford, as I understand the case, brought an action of replevin against Bedbury for personal property—a piano, I think—and the only evidence which Bedbury had of title was what is known as an iron-

clad note, a machine note; you all know what they are; there is a clause in them stating that the ownership of the property which is sold, and for which the note is given, is not to pass until the note is paid; that was the only evidence of ownership which the plaintiff had. Messrs Forbes & Seward, the same Seward were attorneys for the plaintiff, and rested his case after introducing the note, or attempting to introduce it. Judge Cox held that it was not evidence of ownership. I think that Mr. Seward is mistaken in his statement here.

I read:

The complaint alleged 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 come in I should certainly have thought he was drunk.

It is very clear that the note was put in evidence, and the question of ownership arose. Here is an attorney who attempted to introduce this parol evidence of ownership in testimony, the only evidence he had, and yet he says that if Judge Cox had allowed it he would have thought him drunk. It is safe to say that Seward never discovered until Judge Cox ruled upon it that there was anything wrong with his note. It is not fair to suppose that he would go into the trial of a case without any evidence of ownership, without anything at all to base his case upon if he knew it, and yet he tells us that if Judge Cox had received in evidence the testimony he relied upon he would have certainly thought him drunk. It does not cut very much figure in the case, but it indicates his insincerity, either here or in that trial.

Now Mr. Seward is one of these attorneys who did not notice this look of weariness, did not notice that the Judge was tired as has been testified to by Judge Weymouth, did not notice anything of that kind. He says the Judge looked natural as ever. On page 733 of Mr. Seward's testimony the foundation was laid for impeachment by asking him this question:

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.

He answers that he did not and then goes on with his explanation, upon which I suppose the counsel will comment. Mr. Seward attempts to get out of this affair by saying that the question was under discussion as to how the grand jury could proceed concerning the Judge; that he came up there and said to the gentlemen named that in order to do anything they would have to indict this man Mahoney for selling to an habitual drunkard. The question of prosecuting somebody or of taking some steps in relation to the drunkenness of Judge Cox was under consideration; that he said they would have to prosecute this man Mahoney for selling liquor to an habitual drunkard, and that his remark was merely intended to show them what would be the practice.

Now, gentlemen, do you suppose that if a number of men were discussing the impeachment of Judge Stearns, or Judge Dickenson, or any

of our Judges for drunkenness, and a member of the bar who knows that these men are not guilty of that offense, should happen to come along, he would discuss the question of practice, as to the manner of proceeding? Not at all. He would discuss in very decided language the truthfulness of the assertion; would denounce it as false. There is not a man among you but would feel it incumbent upon him to denounce such a charge as malicious, to assert that there was not a word of truth in it, and yet this man Seward admits that he stopped there and talked with them about they way to get at it. Did he resent the assertion any way? Did he say it was false,—that they were accusing an honorable man of a dishonorable thing? Not a bit of it.

But, according to his own testimony, he discussed with them the manner in which they could determine its truthfulness. Until the trial of this case I had not supposed there was much difficulty in distinguishing a drunken man from an apostle of temperance, but I have changed my mind, at least within the limits of the Ninth Judicial District. We put upon the stand Mr. Sullivan, Mr. Burchard, Mr. Forbes and one other witness, whose name now escapes me, and they testify that Seward came up to them, and in an indignant manner said that "E. W. Mahoney ought to be indicted for selling liquor to an habitual drunkard, to-wit, E. St. Julien Cox." One of the witnesses says he noticed the peculiarity and significance of his language, because it was a partner of the county attorney addressing the foreman of the grand jury, then considering the accusation. Four men testify as to the language Seward used and effectually impeach him.

We have no doubt but that Mr. Seward had suffered from this drunkenness, that he felt insulted and hurt, and thought that any man who would sell whisky to Judge Cox ought to be punished, and that during his indignation he expressed himself unequivocally and truthfully. This same Seward, you will remember, made some remarks at that bar meeting. I want to call your attention to what he said on that occasion:

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 let me 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 only of the opposition—

Opposition to what?

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;

They wanted to dodge it; that was what they were desirous of doing. They would have nothing to do with an investigation.

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 that we had nothing to investigate, and our desire was to get it so unanimous that they would join.

One side desired an investigation, which was the thing Judge Cox

ought to have demanded, and the other side, the side to which Mr. Seward belonged, saying that they would have nothing to do with the matter at all.

I asked one of the members of the opposition, says I, "have you never been on a drunk with Judge Cox?" and, I guess, mentioned at the time that I had; says he, "yes, but," says he, "if the grand jury passed a resolution censuring me, I should get away." "Well," says I, "if they had passed a resolution censuring you, we should all stand by you, and now we want you to come around and stand by Judge Cox."

This man Seward who asked the question "Have you never been drunk with Judge Cox?" and stated that he had, and further said, "if the grand jury passed a resolution censuring you we would stand by you, and now we want you to stand by Judge Cox," did stand by Judge Cox; stood by Judge Cox on the witness stand here and disgraced himself. Of the witnesses in this case who have committed perjury the rankest perjury is that of this man Seward.

I believe that is evident from his testimony here, the manner in which he gave it, and his behavior on the witness stand,—the man who, in the course of that meeting, talked about standing by Judge Cox. Does he stand by Judge Cox because he is a sober man, because he has been improperly attacked, because he has been outraged, because the people of the Ninth District and the State are slandering him? Not at all. But he stands by him because he had been drunk with him; that is the reason he urges, and that is why he wants other people to stand by him,—because they had been drunk together. That is a forcible reason with some people, but it is a reason which will not commend itself to this Senate. Were it worth while I would devote a few minutes to a consideration of the moral character of Seward and others, who, knowing this respondents appetite, have frequently encouraged and countenanced his excesses with a purpose, no doubt, but it is of too little consequence. A man who will drink with the habitual drunkard is beneath notice. Mr. Main, an attorney, and Mr. Gley, a book-keeper, testifies. Each is positive that the wagon bridge was not built; is certain that at this time the foot bridge was used by all.

Mr. Matthews, witness for the respondent, testifies (page 768) about the motion in the Bedbury case, and I have no doubt that counsel will comment upon it. It seems that when the plaintiff rested his case Judge Cox asked the counsel if he had rested his case, if he was sure he had rested his case, and the counsel replied that he had, that he was positive that he had, and then the Judge dismissed it on the motion to dismiss made by counsel for the reason that they had no proof of ownership. It is upon this point, I say, that Mr. Seward is mistaken when he says that Judge Cox would not allow this note in evidence. It was undoubtedly received. Mr. Matthews tells you that more than two months afterward, when they came to settle the case which had been prepared by the plaintiff, the Judge remembered his exact language, consequently he must have been sober. I might explain here the method in which a case is settled. The party who proposes to move for a new trial writes out and submits, under the statute, to the attorney on the other side what he considers a full statement. The attorney upon the other side proposes amendments, or, if the case is satisfactory, stipulates it to be correct. If he proposes amendments the matter is brought up before the

court for adjustment. Now, in this matter, I understand that a case was proposed; that counsel went before the Judge to settle it; that after some discussion the Judge mentioned this matter of which counsel has spoken and of which the witnesses speak. The witness is asked:

Q. What was the peculiar thing that the Judge remembered there at this time when you were trying to make up that case?
A. Mr. Forbes and myself got into a dispute about what took place in court; I claimed that I spoke to him or Mr. Seward, his partner, and asked them if that was all they had, or in fact, I turned round and told him to go ahead, or something of that kind across the table, and he didn't do anything, and I says, "Is that all the evidence?" and he says "yes." He and his partner seemed to be discussing something there, and then I asked him if he rested his case; he told me he did.

This was the attorney who did this; not the court.

I got up and in order to have this matter distinctly understood between counsel and court, I made the statement to the court that I understood that the prosecution, or the plaintiff, had rested his case. I wished to have that understood before I made my motion. The court then asked Mr. Forbes, or Messrs. Forbes and Seward, who were there together, if they had any further evidence, and they said they had none; he asked them if they rested their case, and they said they did. I then made my motion, which was granted.

Now that was the occurrence in court. Mr. Mathews, anxious to clinch this point, anxious to put it beyond any question, insisted upon knowing whether they had rested their case. They rather evaded it, and he then had the court ask them, and the court received a definite answer. Now, Mr. Forbes and himself, he testifies to you, got into a dispute as to what had taken place on trial.

He is asked:

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?
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.

That is, they had discussed the occurrence before the Judge, upon the settlement of that case long before there was anything stated about it by the Judge. That is the evidence of Mr. M. E. Matthews, who tells you that before anything was said by the Judge about his question to the plaintiff's counsel upon trial, he and the counsel had disputed as to exactly what took place—what was said by the court and counsel; so that the fact that the Judge remembered what took place there, had no broad significance.

He never suggested it. His memory had been refreshed by counsel. Mr. Arctander would have you believe that the attorneys were making up that case without the language of the court in it, that when they

came to Judge Cox with it everything was satisfactory between them. The Judge on examining the papers discovered this omission, remembered some two months after he tried the case, drunk as he was at the time, the exact words he used in addressing counsel and insisted upon it going into the case; when, as a matter of fact, it was the bone of contention between the attorneys, and they disputed about it, until the Judge told them what he had said. I have no doubt the Judge remembered it.

We do not claim that the Judge was so drunk at any time that he was insensible or beyond remembering ordinary events. Not at all; but we do say that he was so under the influence of liquor as to be disqualified from exercising his faculties properly. I suppose a prominent and salient point in a case of that kind would be remembered by the Judge even if he was very drunk, especially if brought to his attention. The fact is, that very many men remember things more distinctly when drunk than when sober; other men lose all recollection and remember nothing that occurs. No two men are affected alike by spirituous liquors. Mr. Matthews testifies that there was a difference between Judge Cox on the bench at Marshall and Tyler, as follows:

O. Was there anything different 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 here objected, but further on this question was asked:

Q. You say he was different at this term from what he was at Tyler; in what did 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?

He attributes the difference to the weather, and the size of the town had something to do with the condition of Judge Cox and caused him to act differently. Possibly there were more saloons in one town than in the other. Matthews is the man who declares that he did not write the letter which has been put in evidence here, see page 774.

He is also asked:

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.

This witness makes a distinction between drunkenness and intoxication.

Q. You have seen him intoxicated?
A. Yes.

Here is another witness, who like many other witnesses for the defense, has seen Judge Cox drunk in the discharge of his official duty, but upon occasions which do not happen to correspond with any of those we have alleged in our articles. It seems that he was drunk at other times, and these witnesses, almost without exception, have seen

him drunk in the discharge of his official duties, but do not happen to have to seen him drunk at any of the times we have alleged.

Now, so far as this letter is concerned, Mr. Whitney testifies to it on page 1092. This is the letter which the witness Whitney has testified was sent to him by the witness Matthews, containing a slip cut from another paper. The slip was a puff for Mr. Matthews, and he desired to have it published in Whitney's paper some weeks after this letter was published and after impeachment was threatened. Mr. Matthews went to Mr. Whitney and obtained the letter. That was a circumstance of which we knew nothing at the time we had Mr. Matthews upon the stand or we should have asked him in relation to it.

The letter read as follows :

TYLER, Minn, June 15, 1881.

Friend Whitney :

* * * * * * * * *

Cox came up with me from Tracy to-day, *and is drunk as* ——— !

I suspect that blank is an omission of the printer.

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 there he, without cause, as everyone says, and against the desire of everyone, adjourned court to this town. The fact is, the people are —— mad over this drunken move.

Yours, truly.

Now, that letter was published in the newspaper. and in that way we got hold of it. After these impeachment proceedings were commenced, Mr. Matthews went to Mr. Whitney and procured the original letter, and immediately destroys it. He can deny it with safety ; but it happens that Mr. Sullivan saw the letter. Now, neither of these gentlemen know the handwriting of Mr. Matthews, but they say it was signed "M. E. Matthews," that it enclosed a puff for Matthews, which was afterwards published by Whitney, and its publication paid for by Matthews.

Matthews went to the office to pay for the puff and then asked for the letter and got it. You will have to decide which of these two witnesses are telling the truth. There is a square contradiction between this witness Whitney and Matthews. How far it may be helped out by Mr. Sullivan is a matter for you to consider. Mr. Sullivan says that he saw the letter and that it was signed "M. E. Matthews." There was more to the slip cut from the paper than appears in the record. There were some remarks which have a bearing upon it, may aid you in determining which man is truthful.

Mr. Manager DUNN. That was not put in evidence.

Mr. Manager COLLINS. It was not put in evidence, but I suggest that if I had that printed slip here in court I could give you other evidence that Matthews or some other friend of the respondent wrote the letter. You will recollect that Whitney testified that Col. McPhail had been making a defense for this wholly temperate Judge in the "Lake Benton News."

I think that is the name of the paper—and this letter was published in reply to the defense. If we had the article here I have no doubt it would show you that it was a friend and defender of Judge Cox, who

wrote it, for Mr. Whitney stated so in his comments upon it. Mr. Whitney is one of the gentlemen who were present when Mr. Seward made his statement in front of the Lyon county bank, concerning Mahoney. I think I alluded yesterday to the testimony of Charles Butts, the attorney, one of the attorneys who desired an investigation of the charges made by the grand jury. He also testifies positively as to the bridge.

Mr. James Morgan was another witness who had known Judge Cox for twenty years and testifies that he never saw him drunk in his life. Now, I ask a question here, which I have asked repeatedly before, why is it that some of these jurors are not brought here; why is it they call men who are only occasionally in court as witnesses? Why do they not bring some of these jurors here? Why do they not bring some member of the grand jury here, to show how those resolutions came to be adopted if untrue.

I now pass to the specifications under article seventeen, taking up first,

SPECIFICATION NUMBER ONE.

I discover that my time is limited. I want to close before noon. That is the case of the supplementary proceedings at Marshall. It seems that Robinson and Maas, hardware dealers—you have had one of them upon the witness stand—had disposed of their property, as was claimed by their creditors, in an illegitimate way. The creditors desired to bring them up on what are known as supplemental proceedings in aid of the execution. An execution is issued and returned unsatisfied, an affidavit is made alleging these facts and alleging that the parties have property and demanding that they be brought before the Judge to answer under oath concerning that property. That was this proceeding.

You will recollect that one of those gentlemen, Mr. Langworthy, I think his name is, testified that he went to St. Peter to get Judge Cox to sign the order, and brought him down to Marshall to take the disclosure; that he had known Judge Cox many years and testifies to being with him all during that proceeding. Mr. Maas testifies to the same thing; Mr. Andrews speaks of the same matter. Mr. Langworthy, Mr. Maas and Mr. Whaley are the only witnesses upon the part of the defense, while upon the part of the prosecution we have Mr. Forbes, who is one of the attorneys; Mr. Hunter, the sheriff, and Mr. W. G. Hunter, his brother, the deputy sheriff now. Mr. W. G. Hunter testified to you that Judge Cox was under the influence of liquor. He testified that he met him on this bridge about dark and that Judge Cox told him several times to open that door of the office in which they were taking testimony or he would kick it in, using some profane language. That is contradicted by Langworthy and Maas.

Mr. Langworthy it seems was particularly interested; he went to St. Peter, got the Judge to return with him, and he would have you believe that he was with him all the time when at Marshall. Now, I know nothing about Mr. Langworthy, but his face indicates that if there was any whiskey in that town he had some of it; his face indicates that if there was anybody drunk about that time he was the man. I may be wrong about this, but the sign is in bold relief. It would require a good many years of total abstinence to take it in, also.

Mr. L. is certain that Cox was not intoxicated, for he was around with

him. Mr. Maas testifies to the same thing. Now, on one of those occasions, I have forgotten when it was, it seems there was a party in which the Judge figured. Mr. Seward admits to being there, and it seems that John E. Maas was another, and all got drunk. It was termed by Seward a democratic party, where no republican was admitted. Mr. Maas was of the opinion that the court was not intoxicated at all during these supplemental proceedings. Mr. Forbes, Mr. Hunter and his brother testified that he was. Now, you will observe right here, that Judge Weymouth was one of the counsel for some of the parties in that proceeding. Judge Weymouth was one of the attorneys and in court during that proceeding. When on the stand here a question was asked Judge Weymouth to which I desire to call your attention. Page 794.

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 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.]

Very funny.

Manager Dunn offered to show when and where this occurred, but was not permitted by the court. Now, did the counsel ask Judge Weymouth if Judge Cox was sober during these supplemental proceedings? Judge Weymouth, who was one of the attorneys, who was present on that occasion—did they ask him if the Judge was sober? Not a bit of it. They dodged it, as a man would dodge a case of small-pox. You may put that with the testimony which they objected to, calling for the time and place Weymouth mentioned and which was kept out. I think that Judge Weymouth would have said, had he been permitted to answer the question, that Judge Cox was in such a condition on this occasion they had to stop work before 9 o'clock at night. But Langworthy testifies that they got through by 9 o'clock, except the argument. By two of their own witnesses we have shown that the proceeding lasted three days,—that night and two days afterwards.

Mr. Whaley testifies to it for one, and there were two others. Mr. Andrews testifies that he was at the office when these proceedings were being considered and later he went to the Judge's room at the hotel and found Langworthy there. I do not doubt it. Langworthy was interested and I have no doubt but that he was wholly responsible for the condition the Judge was in at the time. Andrews noticed that the Judge was sober both times he saw him. Mr. Maas is also certain he was sober.

SPECIFICATION TWO

is the Caster against Caster case. This is revolting and disagreeable to

consider, but it is, perhaps, more ludicrous than disgraceful. It seems that an action of divorce had been brought in Brown county by Mr. or Mrs. Coster, I don't know which, and an order for the payment of alimony, or suit money, had been made by the Judge.

Mr. Caster refused to obey that order, by paying over the money, and Mr. Kuhlman desired to get him before the court, and compel him to either pay the money or go to jail for contempt, or rather, by means of threats of imprisonment, compel him to pay over this suit money. That was the object of the proceeding. They met at New Ulm on that day; a special term on the 1st day of August, 1879, at the court house; Judge Cox was in town. The attorneys were at the court house, but the Judge was not there. Young Kuhlman, a son of the attorney for one of these parties, (the plaintiff, I think,) went down to the hotel and found Judge Cox, who refused to come. He was drunk and refused to go to the court house. It was not a sick head ache that day, but it was too hot for him to walk. Then they got deputy sheriff Eckstein to go down for him with Kuhlman.

Judge Cox was urged by them to go to the court room, and after some discussion, went out upon the street. He then refused to walk, but a butcher's swill cart came along—the cart that they haul the offal in—which Judge Cox hailed, climbed into and was driven in state up to the court house. I don't know as there is anything particularly wrong in riding in a cart of that character. It is simply a matter of taste, but the counsel dwells upon the belief that we think there is. He has had the butcher down here to testify that there was no occurrence of that kind. The owner of that cart, and the young man who drove the horse attached to the cart on that occasion, testified that neither ever had the honor of Judge Cox's company on any such occasion. It is not very material. I do not know that it is beneath the dignity of a judge to ride through the streets in any kind of a cart if he wants to. It might be criticised, but still it is not ground for impeachment. But I do not believe there is any member of the Senate who would do it.

When they reach the top of the steps in front of the building, the Judge said, it is too d—d hot up stairs, and did not propose to go any farther. They then attempted to try the case. One attorney attempted to read a paper, and is stopped by the court. Another attorney on the other side, attempts to read a paper, and he is also stopped. Finally the Judge said to the defendant, (whom he has known a long time), "John, I want you to go and get some beer." A man said this to the man who was up for contempt of court! Great God! I don't blame him for having contempt for that court; most any man would have contempt for a court under such circumstances. He was brought there under arrest for having contempt of court, and the Judge said to him, "I want you to go and get some beer." "Your Honor," says the old German, "I haven't any money." And his Honor says, "John, I will furnish the money, and you furnish the beer."

Was not that a fine spectacle of judicial dignity? Was not that a fine incident in the history of the case—to stop the attorneys in their attempts to try the case, to send one of the parties, the man who was before him for contempt of court, for a quart of beer, furnishing the money if he would go and get it? John went off and got the beer and it is in testimony that he and Judge Cox drank it, and Judge Cox, after drinking it, would make no order of any kind, and the attorneys staid

there, tried to get him to make his order, and finally went away in disgust. That was not a term of court; there were no jurors there; there was none of the paraphernalia of the court by any means, but the Judge was in the discharge of his official business and should have been as dignified at that time as if trying the most important murder case.

During these proceedings, the Judge says: "John, I will have to lock you up. I am sorry for it; too bad, John, you and I have been boys together—grown up together; we have drank beer together; to-day and at other times; I have furnished the money and you have gone for the beer; but I have got to lock you up. "Then he addressed the deputy sheriff in his maudlin tones, saying repeatedly, "lock him up; Joe, put him in the cooler, take him to jail." Eckstein did not take him to jail; he took counsel with the county attorney, who very properly told him not to put Caster in jail unless there was a written order given by the court. The result was Caster went off, after more beer, I suspect. It is in evidence that the court did at any rate, and that because of his inebriety there was nothing done in the case.

Now, I say that was one of the most flagrant cases we have had detailed in this trial, but perhaps it is not as disgraceful as some.

Yet it is one of the most outrageous that could be thought of. Gentlemen, what would you think to read in a newspaper of a proceeding of that character? What would you think of the court? What do you suppose the people of the State will think of the affair when they read it in the newspapers as it has been detailed here? Will they not agree with those who assert we have not proven this a very gross case of intoxication?

The next we see of the Judge that afternoon is in the office of Kuhlman, the attorney in this case. His first performance is to abuse Kuhlman—always his friend—calling him a liar, a thief and everything else he could disgrace his tongue with,—so drunk that he rolled off the lounge like a dog, laid upon the floor in a drunken stupor and is left in the office in that condition at 9 o'clock at night. God knows when he recovered sufficiently to go to his hotel, I suppose when he was reasonably sober.

This model Judge, this terror to all violaters of our liquor laws, laid drunk on the lounge, rolled off it, and slept on the floor of a public office in the city of New Ulm. This is testified to by Mr. B. F. Webber, by Mr. George Kuhlman, by his son, Ed Kuhlman, by Mr. J. A. Eckstein, the deputy sheriff, and it is not contradicted in any way, except by P. Manderfeldt, Jr., (page 359.) Now I do not suppose young Manderfeldt meant to lie in this matter; I suppose he must have been, at that time, in the neigborhood of nineteen or twenty years of age. He was a boy around the court house; the sheriff's son; his father had gone away and had told him to take care of the court house; that the Judge was coming there on a special term that day. He testifies that when the Judge came, he walked up from town and into the court room, and that these proceedings were not out doors at all. That is his testimony.

He is undoubtedly mistaken as to time, and that is all there is about it. He can be very easily mistaken as to time, as you will remember it is in testimony by Mr. Webber that Caster vs. Caster was not a new case; that Mr. and Mrs. Caster had three or four divorce cases. I suppose the young man had got this occasion confounded with some other

time when the domestic differences of the Caster family were under consideration. He states that he never met Judge Cox when he was under the influence of liquor, it seems.

Q. Did you ever see Judge Cox when he was under the influence of liquor?
A. I never did.
Q. Any time?
A. I never did.

Now, Mr. Alfred Seiter is another witness. Mr. Seiter keeps a hotel and testifies that it would be impossible for young Kuhlman to get up to Judge Cox's room, or rather, he testifies that Kuhlman did not make any inquiries of him as to the location of Judge Cox's room.

The young man who had lived in New Ulm nearly all his life undoubtedly knew what room the Judge had, as the Judge has on all such occasions what we call in the country the bridal chamber. Kuhlman says he went to the Judge's room that day and they bring Seiter down to testify that they did not see him there. Probably he did not. It is testimony that he and his son kept the hotel together and that every room in it was known to this young man Kuhlman. That is the testimony of the defense upon that point.

ARTICLE SEVENTEEN, SPECIFICATION FOUR,

is the motion for a new trial in the case of Tower vs. the County Commissioners of Redwood County. This is testified to upon the 20th day, page 4, by F. L. Morrell.

In the case of the Board of County Commissioners of Redwood county vs. Amasa Tower and others, I think I testified that Mr. Wallin had stipulated upon a case to be settled as a basis for a motion for a new trial in that action. I had confounded that with another case. We had not stipulated and agreed upon a settled case, but the status of the matter was that Mr. Wallin had served a proposed case; I had served upon him proposed amendments in the same case, and we were there before the Judge at New Ulm, under an order to appear there at 10 o'clock that day, for the purpose of arguing the question of the allowance of the proposed amendments to that case, and to have the case certified to and allowed by the court; and ascertaining the condition of the Judge upon the street before going to the court house, we did not, for the reason of his condition, submit to him that question that day. We had stipulated that we would argue the question as to the settlement of the case, and for a new trial at the same time, but neither was argued.

That is the testimony of Mr. Morrell. Mr. Wallin testified to the same thing. (Journal of the 25th of January, page 4.)

A. Well, we had a short conversation on the street, and separated with the understanding that we would go before him when court convened.

That was a conversation between Morrell and the witness.

I don't remember the hour—nine or ten o'clock; that was the understanding when we separated. Counsel on the other side and myself were there at the time. The Judge did not get in until an hour or two after the time set. He came in there and took a seat upon the bench. Court opened—
Q. What was his condition at that time.
A. He was very much intoxicated.
Q. What proceedings were had, if any?

A. Counsel and myself had agreed, after seeing him in the morning, that he was then in no condition * * * * * * * * We did not submit our papers, or our case, for the consideration of the court at all, on that occasion

Q. Why did you not do it?

A. He was, manifestly, in no condition to undertake to do the business.

That case was afterwards settled by correspondence. Now, it is testified here by Mr. Morrell and Mr. Wallin that court was opened, but that they did not submit this motion, simply because the Judge was drunk. What is there on the defense? Nothing, under God's heavens, except the attempted impeachment of Mr. Morrell, and the fact, admitted that Mr. Wallin has an ambition to be judge in case there is a vacancy, and for that they ask you to disregard his testimony.

Now, so far as the impeachment of Mr. Morrell is concerned, it seems that Mr. Morrell is a very bad man politically. It seems that he has had a little difficulty with the church down there, and that is about all there is to it. I know that Mr. Morrell is not impeached. I believe that the counsel will not be so indiscreet as to attempt to argue in any way that he is impeached, because all of these witnesses, when we get the facts, only show that two or three of the politicians, two or three of these land officers, have said that Mr. Morrell could not be relied upon politically. Now, I apprehend that every man in this room has been accused of being a "little off" politically. I presume that every man who is in politics is accused of that characteristic by his political enemies, sometimes justly, more frequently unjustly, as a distinguished statesman of this State once said while speaking of this same subject, "I have been accused of it myself."

I do not think that any man is justly charged with political unreliability very often, but it is a fact that nearly all who engage in politics, and it is immaterial whether they run for pound master or President of the United States, are accused of being unreliable. Morrell had a little difficulty in the church down there, and one preacher said that he was guilty of the heinous offense of taking a glass of beer and then attending the sanctuary. I regard that charge against Morrell as having been sustained, and so has our specification four.

SPECIFICATION FIVE, ARTICLE SEVENTEEN,

relates to the special term at Marshall, September 30, 1881, in Blake's office, and is testified to by C. E. Patterson and M. E. Drew. It was the time that the McCormick against Peasely, and French against Minick cases were under consideration; the time when the court adjourned to accommodate some of the attorneys who desired to attend a Republican convention—a very laudable purpose, of course.

It does not cut any figure, however, as to the drunkenness of the Judge, and we are not supposed to discover the usual dispute between these attorneys as to whether he was drunk or not. Patterson and Drew testified that he was intoxicated. Andrews and Seward testified that he was not. Seward admits that they did get "full" that night; that was the time they had the party at which no republican was allowed. It appears from the testimony that our friend, John Maas, was one of that party; Judge Cox, John Maas, Seward and a few others, engaged in a little beer that night. Seward, frank and open-hearted fellow, admits

they were hilarious at night, but he did not see the Judge drunk during the day.

I now come to one of the most important of these charges,

SPECIFICATION SEVEN, OF ARTICLE SEVENTEEN.

The Brown county term of court in May, 1881, the time at which the cases of Howard against Manderfeldt, and Wilt against Wilt, were tried. Mr. Lind, Mr. Summerville, Mr. Blanchard, Mr. Thompson, Mr. Casey and Mr. Clancy testify that Judge Cox was under the influence of liquor at this time. Mr. Peterson, Mr. G. W. Sturgis, Mr. Baasen, Mr. Subilia, Mr. Wright, Mr. Seiter, a barber, one juryman, Mr. Currant and Mr. Brownell,—I beg the pardon of Mr. Brownell—last, but not least,—all testify that he was sober. Now the testimony of these witnesses for the prosecution is that during the trial of Howard against Manderfeldt and Wilt against Wilt, the Judge was drunk. They also testify that on the morning court opened he drove over from Sleepy Eye, and that he was intoxicated when he came. Now, we have put upon the witness stand here the man who drove him over; it seems he keeps a livery there, and is also engaged in the hotel business.

In the morning he found somebody occupying a bed in the parlor. Some one had been put there after he had gone to bed the night before. He asked his partner who it was and was informed it was Judge Cox, and that he had to go to New Ulm, twelve miles away, to hold a term of court, and to wake him up It is in testimony that the Judge had no breakfast that morning. He got up and, without waiting for breakfast, started for New Ulm in a buggy. While the Judge forgot his breakfast he did not forget his whiskey. It is in testimony that the livery man got a bottle of whiskey, and that they took several drinks on the road, and that the Judge was under the influence of it when he got there. The liveryman admits that he drank himself as frequently as the Judge, and I believe myself that he was as much under the influence of liquor.

I have no doubt about it; but there is a difference between a liveryman getting under the influence of liquor and a Judge who is about to hold a term of court; a difference which was undoubtedly appreciated by this liveryman from the manner in which he gave his testimony. In the course of the afternoon they commenced the trial of the case of Howard against Manderfeldt, in which Mr. R. A. Jones, of Rochester was one of the attorneys, and Mr. Brownell was there as an interested party. I could not help noticing the difference in the testimony of those two men. Mr. Brownell tells you he went up there to take part in that case. He testifies that Mr. Jones tried the case all the way through, and, in fact, it was Mr. Jones' case. When we get Mr. Jones upon the witness stand he very modestly remarks that he assisted in trying that case.

He did not care to take any of the laurels or honors of that case away from Mr. Brownell. There was a very marked difference between the witnesses on that point—more in their manner than in their words; Mr. Brownell being inclined to crowd himself forward, making himself prominent, and Mr. Jones modestly occupying the back ground and saying he assisted in trying the case. Now Mr. Brownell tells you that at the time Judge Cox came into court there he seemed fatigued, he seemed to have this same worn, wearied appearance about him. He saw

no indications of drunkenness. day or night, "in the day time or evening." (Pages 370 and 371.) Lewis Brownell says he saw no indication of drunkenness about the Judge. He does say upon cross-examination that he was perfectly sober upon one occasion. He says that there was no talk about the Judge, that he and Mr. Jones had no conversation whatever about his condition and that the question of his sobriety was not raised. Page 377.

Mr. Robertson says, (page 383)—a witness for the defense, you understand,—an attorney.

Q. State the times that you saw him under the influence of liquor.
A. I think he was under the influence of liquor the second day of the term of court.
Q. Of that term of court?
A. Yes, in the evening.
Q, When was the other time?

That was objected to and the objection sustained. Mr. Robertson testifies—although he had very little acquaintance with Judge Cox—that he saw him under the influence of liquor there once during the evening of the second day. He was not permitted to specify the other occasion.

Mr. Patterson was in court but a short time; Mr. G. W. Sturgis was in court the third day only in the afternoon; Mr. Baasen was in court the forenoon of the first day. He had heard of the Wilt cases; he had heard that the Judge was drunk during its trial. Mr. Subilia was present from five to ten minutes only. He testifies that he never saw Judge Cox full. Mr. Wright, the liveryman, testified that he saw Judge Cox full, the second night. Mr. Seiter, the barber, testifies that he shaved Judge Cox once during that term of court, and that his brother shaved him at another time, that he did not notice his condition particularly. And we have Mr. Blanchard with the calendar on the part of the defense. Mr. Currant, a juror,—the only juror in the forty-six men who were there at that term of court whom they have brought here, and Mr. Currant was excused the very first day of the term; the very first day of the term he was excused, and he is the only one of either the grand or petit jury whom they dare to bring here to testify. And that is the testimony they rely upon to defend themselves from the chaage of drunkenness at that term—one of the strongest of the charges in the opinion of the managers.

Now, it is hardly necessary for me to add anything to the discomfiture of Mr. Brownell. When he sat upon the witness stand and saw R. A. Jones come into the door he realized his unenviable situation—when he sat in that part of the hall and listened to the testimony of Mr. R. A. Jones, he knew that he was believed to be a falsifier. His subterfuges had been exposed, his character shown, and his reputation damaged beyond all hopes of repair. He knew that whatever R. A. Jones said upon the witness stand would be received as law and gospel by this Senate. Now, what does Mr. Jones say in answer to the questions put to him as to what Mr. Brownell stated, as to what was said between them at New Ulm. Let us read it. Mr. Brownell denies, as he had denied before, that he had ever made any of these statements—denying right straight along that he had ever made the condition of Judge Cox at New Ulm, the subject of a conversation with Jones; denying that the question was ever discussed by them.

You will remember that Mr. Jones' testimony was taken by deposition for the defense, taken with great parade and flourish of trumpets. They announced that they desired to take his testimony, not only because he was present at that term of court, but because he was a well-known and reliable citizen, and finally they obtained permission to take his deposition while he was absent in New Mexico. The deposition came back. Has anybody seen it? Has the counsel alluded to it? Has he offered to introduce it? Not at all. If you had examined this deposition, gentlemen, you would know why they did not want to introduce it. They had mistaken their man when they attempted to take the testimony of Mr. Jones to sustain Judge Cox in his disorderly behavior during the trial of the Manderfeldt case, and during that term of court. The deposition, I say, is a great deal stronger than Mr. Jones' testimony, for reasons which will occur to us all.

Mr. Jones says, (page 1151):

The Witness. The conversation occurred in consequence of the fact that Mr. Brownell and I arrived there on the morning of the first day of the term of court. The Judge was not there, and we began to make inquiries where he was, and we heard certain reports about him and consequently were a little anxious to know some certain matter, as we had a case to try. The Judge arrived there, at exactly eleven o'clock, in a buggy. I only know where he came from from his own statement. He came into the court room and his appearance was the first cause of the conversation we had. Another attorney said, "the Judge is drunk;" and if he was, it was the first time I ever saw him drunk. My acquaintance with him is, however, very slight.

Mr. Jones does not say he was drunk, but he intimates it clearly.

Mr. Brownell and I were sitting together and the Judge—the morning session didn't last more than thirty minutes I think; there was no grand jury and there were only nine cases on the calendar, if I recollect aright; and they were called and we adjourned until after dinner; and my recollection is Judge Cox walked down town towards the court house with Mr. Brownell and myself, and I said, referring to the other man who said that the Judge was drunk, "He isn't drunk." Mr. Brownell said, "No, but he has been drinking some." I replied myself that it was probably true, from his looks, but that he didn't seem to me to be intoxicated. That was before dinner. Judge Cox took dinner with us that day at our hotel.

I have no doubt they desired him to take dinner with them,—that they wanted to keep him out of saloons. They had a case there, which they had come a long way to try, and they wanted to sober him that afternoon.

He didn't stop at the same hotel where we did, but he took dinner with us. In the afternoon the case of Howard vs. Manderfeldt was the first case to try, and the jury was empaneled very quickly; there may have been a juror excused, but, if so, I have forgotten it; there was no special objection to anybody, and all went off quick. Mr. Webber read the pleadings for the plaintiff and talked, I should say ten minutes—not more than five or ten minutes, and called his client as a witness, Mr. Howard; he was sworn and he probably testified for may be twenty minutes.

Mr. ARCTANDER. We object to the witness going over the whole term of court there. I understand the question is as to what Mr. Brownell stated.

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 Mr. Webber said to Mr. Brownell and myself, "You can take the witness." Thereupon,

Judge Cox and Mr. Webber had quite an argument before we cross-examined at all, or before we said a word, and Mr. Webber got somewhat excited. I don't mean to say excited in his speech but he was aroused, a little out of temper I thought myself, and I said to him,—I said to Mr Webber myself, "what is the matter with the Judge?"

Now what led to that remark?
Mr. Jones asks, what is the matter with the Judge?
The witness continues:

And he used the word that Mr. Gould put into the question.

I suppose meaning that he said the Judge was drunk.

Mr. Brownell sitting beside me and I said "I guess not." Mr Webber says, "You don't know him as well as I do;" and Mr. Brownell said, "No, I guess he don't; he didn't see him down at Waseca."

That was the language of Mr. Brownell. What did he mean by it? Why, he meant by it that he had seen Judge Cox drunk at Waseca, knew his drunken peculiarities and knew him to be drunk on that occasion; and yet Brownell comes here to tell this court that he does not know that Judge Cox was under the influence of liquor at Waseca. He also tells you that there was no conversation between Jones and himself at New Ulm about the condition of the Judge. No wonder that the man looked pale and frightened at Jones' appearance here. No wonder he felt stupified at the entrance of a witness whom he supposed was in New Mexico. He felt disgraced and degraded when he was exposed, and slipped out of this court room and back to Waseca as soon as possible. I say it is no wonder that he hid himself in shame. Mr. Jones resumed his narative:

"No" said I, "I never saw Judge Cox in court but once before, and that was here in this town and for a very short time." And this occurred 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 similar to 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 occurred at this time that I can remember.

There was a difference of opinion between these lawyers as to whether he was drunk or not, but there was no difference of opinion as to whether he had been drinking or not. Not at all. That was beyond the ghost of a dispute.

Mr. Jones then says:

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 defendant;" 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 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.

Now let us get at that conversation. You will remember that this verdict was received after 7 o'clock at night.

Judge Cox came into the hotel that evening and his condition was 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 office of the hotel together, but some one said, "the Judge has been on a spree again," and I made a remark about it. Some one there, that represented the house, made a remark about it, in reply to the remark that I made. Mr. Brownell then said, "Well, he ought to go to bed," and that was in reply to what the person representing the house said.

Senator BUCK C. F. What did he say?

The WITNESS. Mr. Brownell said he ought to be got to bed, referring to Judge Cox, and I said, "I will take him to bed," and after perhaps five or ten minutes—another matter having intervened—on my return to where Mr. Brownell was, he said it was a terrible disgrace or misfortune and I won't be sure—alluding to Judge Cox's condition; he used one of those words, and others made the same or similar remarks, my own, perhaps, was the strongest—the remark that I said, that it was a disgrace to Judge Cox and to the judiciary as well.

The verdict of the jury was returned after 7 o'clock in the evening; this conversation was between half-past eight and nine o'clock. The Judge's condition at that time was exciting comment. Such as to cause Mr. Brownell to suggest, and Mr. Jones to put him to bed and characterize his condition as a disgrace to Judge Cox and a disgrace to the judiciary of the State of Minnesota. Did he use words that were too harsh? Is there one who does not say amen to his remarks? I do not believe there is.

Brownell would have you believe that he did not talk about the condition of Judge Cox at all with Mr. Jones, that there was nothing to excite remark. Now, if Judge Cox was as drunk as that at half past eight in the evening, he must have commenced his spree earlier than the hour fixed at which the verdict was received. This incident not only proves our case, it not only clinches our case, but it shows that Mr. Brownell is a man who can not tell the truth, or if he can does not want to. Mr. Brownell excuses some of his remarks to other gentlemen meaning this and the Waseca term in a way which will strike us all as being an invention of this remarkable falsifier. He admits that he told Judge Start and Mr. Taylor that Judge Cox's charge in the Howard Manderfeldt "case was drunk clear through" and admits that he has stated that Judge Cox was drunk in Waseca. He explains his remark about Judge Cox being drunk at Waseca by saying that he made that statement purely upon heresay and knew nothing about it himself. Now, I apprehend that if any man ever made a statement in court which did not correspond with a statement made previously, he could get out of it, if at all, in precisely that way. Brownell said that Judge Cox was drunk in Waseca to two reputable witnesses.

When we put him on the witness stand he admits that he spread the

story, but says he did so upon hearsay only. If there is anything needed to indicate what Lewis Brownell is, that, I think, is enough. I think he condemns himself when he attempts to impose upon the intelligence of the Senate by claiming that his assertions as to Judge Cox's condition at Waseca was based on hearsay. What sort of a man is he, if he is truthful about that. Spreading that report all over the, country upon hearsay—telling Robert Taylor and Judge Start that Judge Cox was drunk at Waseca, upon hearsay. It is an excuse so manifestly untrue that it is not necessary to say a word more about it. But we go further with this man Brownell. He admits that he did say that Judge Cox's charge in the Howard vs. Manderfeldt case was a drunken charge, "drunk clear through." But he excuses that remark. Why, he says, it is a remark he frequently makes; that when a Judge delivers a charge or the Supreme Court gives an opinion it is a frequent thing for him to say the charge is drunk or the opinion is drunk, meaning that it is bad law. Shall we believe such a statement. Does it strike you as being true or false. Did you ever hear any one make a remark of that character unless they meant it!

Did you ever hear a man say he had been to hear a political speech and the speech was drunk clear through? that he had heard an attorney addressing a jury, and that his remarks were drunk clear through? that he had just read an opinion of the supreme court, and the opinion was drunk clear through? that he had just heard a minister preach, and his sermon was drunk clear through? Did you ever know of that form of expression except where it was deliberate? Should you listen to such you know what the man meant. Brownell—gifted monumental liar as he is shown to be—meant that the man was drunk; that and nothing else. When he attempts to explain his words, to impose upon the patience and common sense of this senate by undertaking to make you believe that he simply referred to the incongruity or bad law of the charge, he is entitled to a front rank in the numerous body of witnesses who have attempted to defeat the ends of justice here by most damnable perjury.

I greatly regret, gentlemen, that, without a breach of confidence, we could not have in evidence the letter written by Lewis Brownell to Jones & Gove, which Mr. Jones very properly said he did not propose should go out of his pocket. Under the circumstances we did not feel as though we ought to compel him to produce it. I doubt whether he had the right to do so. It was a private letter, written in the course of business.

It would not have been heard of but for the testimony of Brownell, and then its contents were made known. Mr. Jones did not want to have it produced in testimony, nor did the managers feel like compelling him to disclose its contents. I regret that we were placed in a position which prevented its production, for that letter would thoroughly settle and condemn Lewis Brownell. But anything further in that direction is wholly unnecessary, for, if ever a man was self-condemned, self-debased and self-degraded it was Lewis Brownell when Mr. Jones finished his testimony. He was the last witness for the State upon the stand. We had two or three more upon immaterial points but we do not propose to take up time by attempting to add to testimony so convincing and so clear. Testimony which showed to this court the behaviour and condition of the Judge in the trial of the Howard against

Manderfeldt case to be as we claimed it, as Jones characterized it, disgraceful to Judge Cox and to the judiciary of the State.

I do not care to spend any time in the further discussion of this specification or in a consideration of Wilt vs. Wilt. Other managers, I have no doubt, will do so. It is for the court to say, from the testimony, and without any discussion by me, whether the actions of the court in Wilt vs. Wilt, when he imposed these outrageous fines upon a poor devil who had not only had a row with his wife, but had been dragged before the court in a divorce case, indicated sobriety or drunkenness.

The defense has attempted to show you that the Judge simply said that he could fine Weilt from $50 to $1,200. The witnesses all disagree as to exactly what was said. One witness for the defense fixes the words as from $50 to $1,200; one of them fixes it from $100 to $150. The clerk shows his record here, but there is no doubt at all from the testimony that Judge Cox in his drunken condition assessed the fines on the old fellow from $50 to $150, to $250, to $500, to $1,200, and then, generous soul, remitted each. Of course he could fine him $1,200; he could fine him a million dollars if he chose to; but consider the conduct of a Judge who, because an ignorant half-witted foreigner disobeys an order in a divorce case directing him to pay suit money, fines or threatens to fine him $1,200. It can not be accounted for on any other assumption or any other ground than that the Judge was drunk or crazy.

The respondent has attempted to impeach Mr. Coleman. I assume that it is not necessary for me to talk upon that a moment. I think the Senate very well understand that Mr. Coleman has not been impeached; that while they have had two or three witnesses who have testified that his reputation for truth and veracity was bad, yet it seems to be a presumed matter with the witnesses.

He has had a little political difficulty, perhaps some financial trouble, and these men say that his character and reputation is bad, but upon cross-examination it seems it was not so. The State, to sustain him, has required four witnesses here, and had more to examine the evening the order was adopted closing this case. We had four witnesses who arrived that night; but we did not choose to take the time of the court, believing that so far as the impeachment of either Coleman or Morrell, or, we might say, Megquier, was concerned it had not been successful, and that the senate would not listen to any further testimony upon the point.

Gentlemen, I have very few minutes more to use in the discussion of this case. I have endeavored to be very brief. I have taken more time than I thought. I always endeavor to be as brief as possible in addressing a court or a jury. Few realize that

> "Words are like leaves, and where they most abound
> Much fruit of sense beneath is surely found."

I will now consider briefly the remaining

ARTICLE EIGHTEEN,

in which the Judge is charged with habitual drunkenness. Judge Severance testifies as to one prominent case, and he is met by reputable citizens of Mankato, who were present at the time, and who say that

Judge Cox was not under the influence of liquor. I can not now account for this difference of opinion, except in one way. I cannot believe that Judge Severance is mistaken; I know that he would not willfully misrepresent; I know that his friendship for Judge Cox would lead him to act as fairly as he possibly could under his oath. I can only account for it by believing that Judge Severance, or some of the witnesses for the respondent, are mistaken as to time. It is a case which was up two or three times, and I am very much of the opinion that the witnesses who claim to have been present at the time Judge Severance refers to, are mistaken. Judge Severance does not testify that Judge Cox was drunk at that time. I think his language was that he was somewhat under the influence of liquor. With the broad proposition that no man has any right to be upon the bench, or engaged in the trial of a case of any kind, while under the influence of liquor, we have that particular branch of article eighteen.

Mr. Seward speaks (page 819) of the December, 1879, term at Marshall, in which he testifies in his opinion Judge Cox was perfectly sober. Mr. Todd, on page 822, speaks of the same occasion and this is the term of court Mr. Hunt, hotel keeper, testified about where he kept Judge Cox outside of the hotel late at night, kept him sitting out there because he discovered he was drunk and thought it would do him good to keep him in the open air a while. I desire to call attention to one remark of Mr. Todd, who is a very knowing young man; no wonder he left the newspaper business and went to selling lumber. He knows too much for an editor. He gives you an illustration which illustrates and illuminates Mr. Todd. The presiding officer asked Mr. Todd this question:

I would like to have the witness define his idea of the terms intoxication, drunkenness and under the influence of liquor.
A. Well, sir,—

And you can remember the unction with which he said "Well, sir," how he drew himself back in the chair, and from his manner I thought he would give us a definition which should go down through all ages, as a definition of the words, drunkenness, intoxication, and the phrase, under the influence of liquor.

Well, sir, I can illustrate better than I can tell in any other way, what I think about it. If I were to pass along a road, and see a thing that 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.

Just think of that illustration! I have been puzzling my brains since then to discover, the application of his illustration. "If I were to pass along a road and would 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." Just where that gentleman would place a mule I have not been able to discover [Laughter;]—the animal of which the minstrels, in their parody on "Old dog Tray," say:

"He was gentle, he was kind;
Heavy before and light behind."

[Laughter.]

I leave the remarkably astute Mr. Todd with his illustration and definition in your hands. He is one of the respondents most ardent henchmen.

One of the sub-divisions of article 18—and I shall hurry through this because I desire to close in a very few minutes. other counsel will comment on this article— is what is known as the Bedbury dog or dog Bedbury case. On page 969 we have another explicit statement from a witness. You will recollect that Mr. Drew testified that he was once in Matthews law office in the summer of 1880, when Judge Cox was under the influence of liquor, and he pictured to us all the performances between Judge Cox and the dog—and it readily occurred to most of the senate that the dog was very much the soberest of the two. Drew told us that the Judge howled at the dog, damned the dog and damned the man who owned such a dog.

Mr. Bedbury tells you what the Judge said. It seems that Cox and Bedbury had been swapping lies about dogs, each bragging about his own animal as men are inclined. I think from the testimony that Cox's dog was a half brother to Bedbury's dog; at any rate, there seems to have been some relationship, and this, perhaps, led to the discussion. Each boasted of his own dog, and finally Bedbury took his into this office to show it to the Judge. From the testimony Judge Cox's opinion was very poor. He would not obey his Honor, but Bedbury rescues him from the charge of bad behavior by saying that the dog had been taught to know but one master. He also says Judge Cox was under the influence of liquor on that occasion, if I understand this testimony :

Q. Mr Bedbury, 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.
Q. Was this one of the occasions when you have seen him under the influence of liquor?
A. That was one of the occasions.

This dog case was one of the occasions when he was under the influence of liquor.

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.

Better import another dictionary down there, if that is the definition. It does not happen to be. Webster defines intoxication and drunkenness as synonymous. The witness defines intoxication to mean "madness to frenzy," and he thinks Judge Cox was under the influence of liquor slightly, because he was not "maddened to frenzy." I think that he and the witness Todd, if they ever spare the time, could employ it profitably by studying up these definitions of drunkenness or intoxica-

tion. No man of ordinary intelligence would insist that a man is not intoxicated simply because he is not maddened to frenzy. If one must be frenzied to be drunk, there are many men who never enjoyed that distinction and never will, although you and I have seen many of them when we thought them so. Many lie down and are more quiet and peaceable, more docile when they are drunk than on any other occasion. When we get this man's definition we know he is not competent to judge. He is of the opinion that Judge Cox was not drunk or intoxicated because he was not maddened to frenzy. Nothing short of snakes, nothing less than delirium tremens will satisfy Bedbury that a man is drunk.

Another prominent case in this Article 18, is what may he termed the trip from Sleepy Eye to Redwood. We introduced, I think, Mr. Pierce and O. P. Whitcomb, formerly State Auditor, to show that Judge Cox was under the influence of liquor; was drunk on the trip from Sleepy Eye to Redwood when he was on his way to Beaver Falls, I believe, to hold a term of court. They testify that he was drunk in the car. The defense introduced Mr. Ensign, who is clerk of the court in some one of the courts of the Ninth district, I think at Redwood, who testifies that he was on that train of cars and that Judge Cox was sober. I have no doubt that Mr. Ensign is a truthful man. I simply think from his cross-examination, that he was not positive as to the time, and that it was some other occasion. He admits that he knows Mr. Whitcomb and testifies that Mr. Whitcomb was not on the train, or, at least, that he did not see him.

We next have Mr. Ibberson, a druggist, who testifies that Judge Cox came into his place of business at Sleepy Eye, on Monday, in the afternoon; he knows it was in the afternoon or about noon, and borrowed some money; he was perfectly sober then. Now that is all very well, but about the next witness the defense put upon the witness stand was Sencerbox, who saw Judge Cox in his jewelry store at New Ulm at 2 o'clock in the afternoon of that same day. Now one of these witnesses is mistaken.

Mr. ARCTANDER. Sencerbox is a Sleepy Eye man.

Mr. Manager COLLINS. Is Sencerbox a Sleepy Eye man?

Mr. ARCTANDER. Yes, sir.

Mr. Manager COLLINS. I may be mistaken about that [consulting journal.] I beg pardon; he is from Sleepy Eye. I may be misled by this testimony, from the fact that counsel talks about a term of court in New Ulm. He is a jeweler. And says:

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 at New Ulm?
A. Yes, sir; I did.
Q. You saw him that week?
A. Yes, sir.
Q. What day of the week was it that you saw him there that time?
A. During the term of Court in New Ulm in the first part of the week. I saw him. * * * I believe it was the 19th day of the month.

Now, Mr. Ibberson and Mr. Sencerbox, it seems, reside in the same town. They testify that Judge Cox was sober upon Monday. Now, as I understand this article or, rather, this specification it charges him with being drunk upon the trip from Sleepy Eye to Redwood. Now I

do not know that because a man is seen sober about noon, or as late as two o'clock in the afternoon, at Sleepy Eye, that it is any evidence of his sobriety or proof that he is not drunk on the road from Sleepy Eye to Redwood after six o'clock at night. It strikes me that it is not. It seems to me that if Judge Cox was sober on that train of cars they could show it easily by bringing men who were upon that train of cars as was the case of Mr. Ensign, or bring men who saw him later than two o'clock in the afternoon.

Why, we have it in evidence here, if we believe Lewis Brownell and Mr. Jones, or rather taking the testimony together, believing a part that Brownell has stated, and making up the remainder out of Jones testimony, that Judge Cox was sober at 7 o'clock, when we receive the verdict in the Howard against Manderfeldt case, and at half-past eight he was so drunk that they had to put him to bed. An hour and a half it took him to get drunk that time, and yet they want us to believe that because he was sober at 2 o'clock in the afternoon in the jewelry store at Sleepy Eye that he must have been sober at 6 o'clock in the evening when the train went to Redwood. Exactly what this jeweler's testimony has to do with Judge Cox's condition on Thursday of that week I can not discover.

Mr. McGowan testifies on this. Mr. Offerman, a saloon keeper, is brought here to show that he drove out in his buggy that night and brought Judge Cox from the depot down town, and it is his deliberate opinion that Judge Cox was perfectly sober. Of course it is!

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.

Gentlemen, did you ever have any difficulty in the course of your lives to tell when a man was drunk. Did you ever assert that a man was intoxicated, and afterwards discover that he was not,—that you were mistaken? I do not believe you ever did. I do not believe there is a man in this room, who can say that he ever saw a man whom he thought to be under the influence of liquor,—what we might call intoxicated or drunk,—and afterwards discovered that it was not so.

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.

And then he goes on to tell that he drove the Judge up to the hotel. One of these witnesses, I have forgotten just now who it is, thought Judge Cox looked tired and fatigued on this occasion. I think it was Ensign. This Offerman did not notice this.

Now, Mr. McGowan was also a witness on this specification. It seems that Mr. McGowan drove over to meet the Judge at Redwood Falls the day before the May term of court in Renville county. That was the term testified to by Mr. Pierce, there is no doubt about it. Mr. McGowan says: "I met him at the Exchange Hotel; * * * went down the street two or three blocks, and Judge Cox spoke of not feeling well." Another sick headache, I suppose. "I considered him perfectly sober."

Now let us see. Subsequently it seems that Mr. McGowan called upon Judge Cox at his hotel; he found him in bed; the Judge made some remark about 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.

What is McGowan doing about that room at 11 o'clock at night?

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.

It seems Judge Cox did not try the beer remedy at this time.

He had a headache, but he was not endeavoring to cure it with beer as at Waseca. McGowen testifies that he went to the Judge's room at 11 o'clock. that the Judge was in bed, but got up and dressed himself, and he went out and got some lemonade and cracked ice for him. I suppose it would be very unsafe to say to the members of this Senate that some of them know that lemonade and cracked ice is an excellent remedy under certain conditions and certain circumstances, so I will simply say that I know it, and I have no doubt at all that the remedy which McGowan prescribed and procured for Judge Cox was precisely the remedy which would suggest itself for a man who had been on a spree. McGowan brought the lemonade and the ice to the Judge. He got up and dressed himself and they sat there and talked over the business of the term of court commencing next day.

Gentlemen, I have endeavored to call your attention to the salient points of this mass of testimony and to present the prominent facts of this case. I know I have not done it to my own satisfaction. I have not had the time to do it.

Of course in the hurry of a trial it is almost impossible for a lawyer, unless he has a constitution like a horse, to try a case all day, examine the testimony at night and place it in shape so that it could be used readily. I have felt the labor of this protracted trial severely especially

while having trouble with my eyes—serious trouble as you know. During the trial nor since have we had the time to examine this evidence in the manner in which we should examine or discuss it. But from my examination of the charges, and the strong and conclusive testimony upon nearly all, I am convinced the State of Minnesota, through its senators, must interfere for the good name of our people. The managers demand a conviction at the hands of this senate, not only for our good name, not only for the effect a conviction may have upon the incumbent of this office, the respondent in this case (who has so repeatedly sinned and who is yet unrepentant,) but for the effect that it may have upon other men occupying official positions, either high or low, especially positions of this character.

I say to you, gentlemen, that I have a personal interest here much to my regret—a personal interest which will occur to many of you senators here, why I take a personal interest in endeavoring to put a stop to drunkenness on the part of the judiciary of this State. I say that this interest, this feeling, has appealed so strongly that I have had hard work to control it during the trial of the case, and during the argument. This desire to make an example, this fear of the immediate consequences should the respondent escape from the punishment he deserves would not be greater if my own brother was the sufferer,—what I have had in my mind—from this accursed habit of intemperance. I say that this interest has been such that I have had difficulty to restrain it and keep it down during my argument. I have endeavored to do it for many reasons, particularly because I have the kindest feelings toward the respondent. I regret, as does every man who knows him, this habit, this vice, which has fastened itself upon him and has brought him to this disgraceful end, no matter what the verdict may be.

I believe I can say, notwithstanding the slurs and insinuations of the counsel, that there is not one of the board of managers who has not the kindest feelings towards this respondent, not one of us but would be glad to take him by the hand and help him up from these depths of degradation—this condition in which he has voluntarily placed himself, assist in making him a man among men, help to put him where he might be, where he could be if he would but behave himself and abandon this habit of intemperance—one of the foremost men of the State.

In commenting upon this testimony I have been obliged to do it in a somewhat negligent manner. I have felt as if I had not argued the case properly. I feel as if the strong points in the case had not been brought out, but I know that we are trying it, not to an ordinary jury, not to such men as we usually try a case to, but to men who had undoubtedly arrived at their conclusions when the testimony for the prosecution and the testimony for the defense was in, so that they would not be affected by the argument of counsel.

I know that the eloquence of the gentlemen who appear here for the respondent will be such as to move almost a man of stone, but I realize that their eloquence, so far as any appeal may be made to you, will be wasted upon men of judgment and discretion, who do not propose to be governed by any statement or argument of counsel. Therefore, I feel that while I have not done justice to the evidence, the case is in safe hands, in the hands of men who pay but little attention to the arguments, and depend upon the testimony; whose judgment is, to a great degree, already made up.

A moment ago I stated that I have had a great deal of feeling about the result here. It is well known that I am not a practical temperance man; in fact some ways from it, but the details of this case, the downfall of this respondent, seems almost enough to make a temperance man of any man who has a conscience and believes in a God; of any man who has seen this invisible spirit of wine destroying men, wrecking their lives, their fortunes, burying them in crime and their families in infamy.

"Oh, thou invisible spirit of wine!
If thou hast no other name to be called by,
Let us call thee—Devil!"

I say that the testimony, the history of this case is such as to impress itself upon every true and honorable man. It is the strongest temperance lecture I ever listened to. It is the strongest temperance lecture I ever expect to listen to, although I have seen men go down dishonored to their graves—intimate and dear friends of mine—through this habit, this vice, as has every other man sitting here. If this respondent is declared not guilty it is an invitation from the Senate of the grand State of Minnesota to all classes of men to follow in these footsteps down to a drunkard's grave. It is an invitation that will waken a tempest of indignation with a class of men not to be trifled with. I mean the cool headed, conservative element, moral men without isms. The counsel in his opening begged that all parties might be forgotten and that the creed of this respondent should not injure him or his case. If I felt it necessary, I would call the attention of another class of men here to a semi-political or social view of it, instead. I do not think party politics cut any figure here. The State of Minnesota, the people of the different judicial districts from the time of the organization of the State down to the last election have repeatedly and emphatically said that politics shall not be regarded in constituting our judiciary; they do not desire to elect Republicans or Democrats; they desire to elect men of character and ability; they want the judiciary without political bias or aspect.

That view of our citizens has been stated so often, is so fresh in your memory that it is unnecessary for me to repeat it. I know that politics will influence but few of this body. If I were to caution either of the parties, should say to either there was danger, I should caution the party in the minority in the State and not the party in the majority; it is unnecessary to caution at all, because, as I have observed, all through the case, there is not a particle of political animus in it, and I know there will not be. If a word of advice is needed to anybody or any party here it is to the anti-temperance party, or to those gentlemen who array themselves in opposition to the prohibitionists. To them I would say, be careful, whatever you do in this case, that you do not pursue a course which will array the entire temperance people, the entire moral people of this State against you, which will raise a whirlwind you can not control, a moral sentiment which will end in prohibition. It is that class of men; it is that party to whom I would talk, if I talked to anybody; it is that party I should caution to be careful that their votes prove but the beginning of a successful temperance crusade in this State. There may be need of this caution, for in all candor I can say that if your votes acquit this respondent, the moral element of this

State will be aroused beyond all restraint, and the sale of intoxicating liquors wiped out of existence within our limits at the very first election. May God speed the day if this man is acquitted.

I regret very much, gentlemen, that the respondent is not here as I am about to close. I had intended to say a few words to him during the course of my remarks, and have been waiting for him to come in. I desired to say to him something about his future career, the life which is before him no matter what the result of this proceeding may be. I shall make these remarks very brief, because he is absent, but I desire to say to him, and to his friends for him, that no matter whether he is convicted and disgraced—that disgrace which he has brought upon himself, but a disgrace which he may overcome—or is acquitted and goes back to the people of the Ninth Judicial District to serve them in a most honorable position, avoid the opportunities for intoxication, all appearance of intoxication, the appearance of evil, as you would avoid the pestilence; keep away from places where liquor is sold, become a temperance man, and if you cannot do it in any other way, make temperance speeches in earnest, not temperance speeches in fun, as it seems you have done,—become a temperance worker, a radical man.

There is an example of that in this State, to which I alluded yesterday—a man who found himself down in the gutter, and who tells me that the only way he can keep out of temptation, and out of the habit, is to labor zealously in the temperance cause, to deliver temperance lectures, and it is his daily work. I have seen him after a hard day's work in his office or in court, stand upon the street corners in the city in which he lives, and make temperance speeches. He does it to keep himself out of the gutter, to keep himself free from the habit. I would say to this respondent that if he desires to retrieve himself in the eyes of his friends, to leave to his children the good name of his ancestors, a name of which he boasts here, but which has been sadly smirched by at least one who bears it, if he does not want to be numbered among the thousands who have gone to perdition with the curse of strong drink upon their souls, keep away from places where liquor is sold, where you may be tempted, may hesitate and fall. Let your hands be free from contamination, keep away from the moderate drinker and the confirmed drunkard. Do not allow an opportunity for the slightest suspicion to go abroad that you have ever yielded to the desire, the appetite for an instant. In the words of the divine injunction, "Touch not, taste not, handle not." Gentlemen, I thank you for your attention.

Senator GILFILLAN, C. D. Mr. President, I would like to call the attention of the senate, before adjournment, to a matter which seems to require attention. We have had a great deal of difficulty in getting our proceedings published to lay before the court, and it has been very difficult to ascertain where the fault lay, whether with the reporters, or with the printer, or both. Our proceedings are now being closed, and it is desirable that we have our proceedings published about as fast as we perform the work; and it is particularly desirable that the printing shall be completed within a short time after this court adjourns. I think in the Page case it was two or three months before the printing was completed; probably the reporter's notes were written out, but the printing was done at the leisure or convenience of the parties concerned, instead of in accordance with the spirit of our contract. I have drawn up the following order, which I shall ask to have read.

The PRESIDENT *pro tem.* The clerk will read the order.

The SECRETARY read as follows:

Ordered; that the notes of the proceedings of this court taken down by the reporter since March 7th, and those hereafter reported, be written out and delivered by such reporter within three days of the time such notes are taken, and that no bills be allowed by this court for any work done by the reporters, not in accordance with this order.

Ordered, that from this date the public printer shall publish within three days after receipt of any of the copy described in the above order, the proceedings embraced in such copy and deliver the same to the clerk of this court.

The PRESIDENT *pro tem.* What is the pleasure of the senate with reference to this order?

Senator LANGDON. I would like to hear the orders read again.

The PRESIDENT *pro tem.* The orders will be read again by the clerk for the information of the senator.

The clerk again read the orders.

MR. BRISBIN. Is it permissible, Mr. President, for counsel to say a word in protest against that order?

The PRESIDENT *pro tem.* I hardly think it would be in order, Mr. Brisbin. It seems to me to be a matter entirely within the province of the court.

Senator GILFILLAN, J. B. What is the request of the counsel, Mr. President?

THE PRESIDENT *pro tem*: If there is no objection on the part of the senate the counsel may be heard. [To Senator Gilfillan, J. B.] The question of the counsel was whether remarks upon the subject of the order were in order.

MR. BRISBIN. I concur with the manager who has just closed, in protesting against this order, for this reason. It is very obvious as stated by the manager, that counsel for the State have not had time for preparation for the argument of this case, the general form of speech and all that sort of thing, and the same suggestion can be made in behalf of respondents counsel. It therefore seems hardly proper, in my judgment, that counsel should not be permitted to criticize and correct the remarks which they may make in the final argument of this case; I do not mean to amplify their remarks, but to correct verbiage, and that may require some little time. I speak of it in justice to counsel for the State and counsel for the respondent. It is a well known fact to all of those who are accustomed to public speaking, that matter is sometimes carelessly spoken by a speaker, and as these arguments are to be printed and perpetuated, it would hardly seem just that counsel should not have time to correct mistakes of verbiage, perhaps mistakes with reference to authorities, &c., and for that reason, I protest against this order, and I have the concurrence of the manager who has just closed.

Senator CAMPBELL. What time would the counsel suggest as proper?

Mr. BRISBIN. Such time as in the discretion of the court would be regarded as sufficient. I do not require much time, but I should like to revise such remarks as I may feel called upon to make in the closing of the case. I suppose the other speakers will require the same privilege. I do not mean to re-write anything, but to correct mistakes of verbiage, perhaps mistakes with reference to quotations, and I desire to have such time as, in the discretion of the court, will appear to be reasonable.

Senator GILFILLAN, C. D. It is necessary for us to have some time fixed. If we do not these proceedings will be dragging along all summer. The public printer will lay it to the reporter, and the reporter will lay it to the public printer, and together both will lay it to the lawyers. I am perfectly willing to allow the counsel time, but I want that time fixed in the order. There must be a time to it.

Mr. Manager DUNN. I desire to express my concurrence with the remarks of counsel Brisbin as to that order as far as it relates to the argument of counsel. It seems to me that the necessity for the rapid reproduction of the proceedings of this court is about to cease; that which is to come from now on is simply the arguments of the counsel in the case, or is largely to be composed of them. Perhaps there is no great necessity, nor any great urgency for our remarks to find their way into print; certainly not so much urgency as there has been for the evidence that has been taken. Now, for one, I feel that it would not be exactly in accordance with fairness to compel Mr. Brisbin, myself, or any other of the counsel or managers who may be called upon to make arguments before this Senate to permit their remarks to be printed without affording him a fair opportunity for their revision. When I speak of revision I don't mean, as was intimated by the Senator from Fillmore, in the early part of the session of this court, the writing of a new speach; for I hardly think, having once made an argument, that I would be guilty of undertaking the task of writing another one.

But what is desired is the opportunity to so revise the remarks as to correct the grammatical errors that may occasionally creep in, or other matters that are not essential to the argument except as to its symmetry and beauty; and I trust the order will be modified so that there can be, at least, ten days after the matter shall have been given to the reporter, before he will be compelled, under that order, to give it to the printer. I do not exactly mean after the matter may have been delivered to the reporter, but after the reporter shall have delivered it to the counsel. I think, at least, ten days should be allowed counsel in which to revise the same. It is nothing more than fair, and it works no injustice or hardship to anybody.

Senator GILFILLAN, J. B. I hope the further consideration of this order will be deferred until to-morrow at this time, or at the close of the afternoon session, I am not particular which.

The PRESIDENT *pro tem.* Do you give notice of debate?

Senator GILFILLAN, J. B. It is not in the nature of a resolution.

The PRESIDENT *pro tem.* It is a resolution to all interests and purposes.

Senator GILFILLAN, J. B. Then I move that the further consideration of the resolution be deferred until to-morrow morning.

The PRESIDENT *pro tem.* That will be taken as the sense of the senate. Is there anything further for the court to consider?

Senator GILFILLAN, J. B. I believe Mr. Manager Collins is through with his argument, and I would like to inquire what the order of procedure is?

The PRESIDENT *pro tem.* The chair would inform the senator that the court determined that matter in an order passed yesterday.

Senator GILFILLAN, J. B. We have not had the proceedings of yesterday.

The PRESIDENT *pro tem.* The senate, by an order passed yesterday,

has given to the State the right to be represented by an additional speaker, who is to follow immediately upon the close of the initial argument for the State; he is in turn to be followed by the arguments for the respondent, and the state is to have the close.

Mr. Manager HICKS. Mr. President, I was informed by Mr. Manager Gould this morning that after the careful analysis of the evidence which has been made by Mr. Collins he does not desire to take up the time of the Senate on that matter, and would prefer not to speak unless the Senate would, in its leniency, allow him to speak after the counsel for the defense had closed his argument upon the legal questions in the case.

Senator CAMPBELL. After both of them had spoken?

Mr. Manager HICKS. After one or both. He would prefer, as the prosecution have fairly opened the case, not to speak at present, but to follow after one or both of the counsel for the respondent. I understand he only cares to speak upon the law of the case and will do it at that time, if it will suit with the pleasure of the Senate.

Mr. BRISBIN. Against that suggestion I protest. The Senate originally made its order assigning to each side, the State and the respondent, two speakers.

Last evening the proposition came from the managers to modify that, and the court made its order thereupon to the effect that there was no objection to another speaker on the part of the State, provided that both preceded the speakers on the part of the respondent. We have depended upon that. Mr. Arctander, who is to follow the managers, has, with that in view, postponed his preparation for the argument. We have heard from Mr. Manager Collins that Mr. Manager Gould is to speak entirely upon the law. We know nothing, as yet, about the legal propositions that may be advaneed, except by suggestions from Manager Collins. Now, it is imposing a severe and unexpected hardship upon my associate, Mr. Arctander,to require him to immediately proceed with his argument, when, by the action of this body last evening, a different course of conduct was provided for, after explicit suggestions, and extended argument on the subject. We object to the proposed order.

Mr. Manager DUNN. It is true that such an order was adopted last night, but it was done so hastily that I, for one, confess I had no knowledge that it had been adopted until after the Senate had adjourned. I supposed the matter had been put over until this morning, but I was misinformed; the order was really adopted. But the point I wish to make is this: the Senate has permitted the management to add one more to the number of speakers who are to close this case. It would take no more time to permit two managers, who are to close this case, to speak as one, after the argument for the defense shall have been concluded, than it will to interpolate one and reserve the other for the close. I do not think any more time will be consumed, if Mr. Gould speaks after the attorneys for the respondent close, than if he were to speak now. The argument will be first by one of the managers upon the law, and, secondly, by the closing manager upon the facts, touching very cursorily, if at all, upon the law. Now, I understand the argument to be made by Counsellor Arctander is upon the facts, and his objection last night to being required to speak prior to Mr. Gould, was that he desired to be in a position to answer the argument that we propose to make upon the facts, before he was called upon to answer.

The argument to be made will not touch upon the facts. It is upon

the law that Manager Gould desires to speak. I understand the other counsel for the respondent, Mr. Brisbin, proposes to speak upon the law, and therefore, the argument of the management upon the law should certainly come in after the argument which the respondent's counsel will make upon that branch of the case, and be in reply to it. I trust that that order will be so modified that we will be permitted, in behalf of the State, to make our two closing arguments as one, following the arguments for the defense. It does not interfere with the facts at all, so far as Mr. Arctander is concerned.

Mr. BRISBIN. It does interfere with Mr. Arctander, so far as his argument is concerned. It was stated correctly by Mr. Arctander, my associate, last night, that he would speak of the facts, and I generally of the legal propositions. I intend to speak to some extent as to the facts and more exhaustively of the law, so far as I am able to do it.

We know nothing whatever of the propositions of law which are to be relied upon by the managers, except incidentally from occasional remarks made by Manager Collins. Upon the solemn action of this court last evening Mr. Arctander, who, I venture to say (and I will be agreed with by the members of the court) has done more labor than any other member of this court, relying upon the solemn and deliberate action of this court last evening, extending grace to the managers, giving them an additional speaker and providing the order in which they should make their arguments, has, so far as he has been able, been preparing himself for the final argument. He is embarrassed necessarily by finding himself forced, at this late moment, into an argument for which, after the labor he has performed during the last two months nearly, he is practically unprepared, and I think it is an injustice to require him to speak without time for further preparation. If the managers wish to take advantage of the grace which has been extended them by the court they ought to do it in the manner in which the court offered. Manager Dunn was present and so was Manager Collins when this order was made last evening. I speak of it in justice to my associate and in justice to the respondent. The matter is a thing of no consequence to me, as I stated last evening. So far as I am concerned, alternate speaking would be preferable to me; but the remarks I make are in simple justice to my associate, and I think the court should take that into consideration, in view of the circumstances.

Mr. Manager HICKS. I am simply requested, by Mr. Manager Gould, to say that the courtesy which has been extended to him by the senate comes so late that he will not be able to accept it unless further time is given him in which to prepare. He was notified last Friday, or the board of managers were, that two speakers would be allowed on the part of the managers. Mr. Gould was not notified, nor were any of the managers, until last night, that a third speaker would be allowed, and Mr. Gould feels that it is not only due to himself, but to the Senate, that, if he is to present the law of the case, he shall have a little longer time in which to prepare himself, and that he shall be allowed to speak at the close; otherwise he prefers not to speak.

Mr. ARCTANDER. Mr. President, I desire to call your attention to the fact that last night an arrangement was entered into which would give me, as I apprehended, I think I had a right to apprehend,—at least another night before I would be compelled to wade into this great mass of testimony. If we had known last night that the managers intended to force

their wishes upon the Senate in this matter, and to get this matter arranged just as they wanted it, and would take it in no way except as they wanted it, viz', to get two closing arguments before the Senate after we have finished on our side, I certainly could have sat up the whole night, pouring over this infernal testimony, instead of only half of it, as in fact I did, and I would then have been prepared to come before you this afternoon, and enter upon the argument of this case; but I thought I had a right to rely upon the order of the Senate.

The counsel and the managers accepted the situation. We certainly did gracefully, and we thought the managers would do the same thing, and that the order of the Senate would stand. I confess I was a little negligent in thinking so and in not sitting up all night wading through this testimony in preparation of my argument. I should have learned by experience in this case that the management did not propose to be content with anything unless it was in accordance with their desires. The negligence may have been excusable on my part, but, as has been said, it comes rather awkward to me to start upon the argument of the case this afternoon. I have not prepared the testimony as I ought, and have been unable to condense it as I wanted to.

Senator GILFILLAN, C. D. I would ask the counsel whether he would be prepared to proceed at 8 o'clock this evening.

Senator CAMPBELL. I certainly shall object to postponing action now. The counsel all have had notice in this matter and have all had time in which to prepare ; and I, for one, certainly think Mr. Arctander is in better condition to go on now than he would be had he staid up all night.

Mr. ARCTANDER. Perhaps so.

Senator CAMPBELL. At any rate, it is his business to be prepared to go on, and it is the business of the managers to be prepared to go on. If they decline to go on, I shall insist that Mr. Arctander, or whoever is to speak in his place shall go on this afternoon and not this evening.

Senator JOHNSON, A. M. I don't understand that the order of last night has been changed. The order, as I understand it, stands now as it stood last night.

Senator RICE. I think the order ought to stand. I do not see any reason why we should deviate from it.

Senator MEALEY. I am of the same opinion.

Mr. Manager HICKS. I am unable to force Mr. Gould to speak. I do not know of any law by which the Senate can do it. I stated as fairly and as courteously as I could that Mr. Gould perfers not to speak at all other than to follow Mr. Collins. I know nothing further than that.

Mr. Manager COLLINS. I do not care to take any part in this discussion, but it does seem to me that it is unfair to compel Mr. Manager Gould to open the case upon the law, when we do not know the position the respondent's counsel will take. They insist that, at law, this man cannot be convicted. They propose to go over, as I understand, substantially the ground that they argued here on the demurrer ; so we answer before they commence ; that is the position they desire to place us in. Mr. Manager Gould only cares to talk upon the law. He does not care to argue the case upon the evidence.

We simply ask that taking the same amount of time that will be consumed by the defense here by one speaker, that we be allowed to have two speakers. Mr. Gould does not care, when he speaks to speak in an-

ticipation of what they may say or to reply to nothing. What law is there for him to argue upon? Is he to come in here and anticipate the position the counsel will take? We have endeavored to arrange this matter by saying to them that Mr. Gould would speak between the counsel, but they are not satisfied with that. They insist that we shall speak now. They give as a reason, that it would be unfair to have two speakers follow them. I say that it is quite as unfair to have two speakers follow us. But the principal reason is that Mr. Gould desires to argue the law and desires to reply to something, and he cannot nor does he desire to anticipate what the law may be claimed on their part to be. That is the position he is in.

The PRESIDENT *pro tem.* I rather think that Mr. Arctander will consent to speak this afternoon.

Senator CASTLE. Mr. President, I, for one, do not feel disposed to be treated like a child in this matter, nor, as a member of this Senate, do I feel disposed to be played with. We made a rule a week, or nearly a week ago as to what the order of argument should be. Grace was asked on the part of the managers permitting them, in addition to the number of speakers allowed to the other side, under our rule, (which was finally adopted at the time without objection), to have an additional speaker, providing he followed the speaker at that time occupying the floor. This order was not directly in accordance with the precedent established by the Page case, where the two speakers in behalf of the prosecution opened, followed by the respondents counsel, and the case was closed by the prosecution. We have made that order and now, Mr. President, in justice to all parties concerned, unless we propose to regard this matter as child's play, we ought to enforce it.

There were few, or no objections made last night. The order was carried unanimously, or practically unanimously, by this senate. I heard no objection on the part of any senator. I think respondent's counsel had a right to take us at our word and had a right to believe that the senate of the State of Minnesota had some respect for its own rules and its own orders. It is said here that it puts the prosecution in an unfair position. Well, I am frank to say, Mr. President, that I do not see it. It puts them in a position eminently fairer than the position occupied by the State in every criminal case tried in this country, where the defense has the closing of all cases. What is asked here is this: That the respondent shall go through his whole case before the court without being allowed a single opportunity to reply to any proposition of law that may be enunciated by the prosecution.

MR. MANAGER COLLINS. Let me correct the Senator.

Senator CASTLE. The proposition we have adopted is this: We say to the managers, and I think we say so properly: "Gentlemen, you shall have two speakers. If you want an extra man you shall put him in *here*. Then the respondent shall put in his whole case, everything he has; then you shall have the final argument and have your own time in which to make it; you shall have the final kick and your own time to kick it." I do not see anything unfair about that; but what I do object to, Mr. President, most particularly, and the thing alone that brought me to my feet in this matter, is this baby way of doing business.

Mr. Manager HICKS. Allow me to state right here that the board of managers has felt that the question of law in this case was virtually decided at the outset. They have adduced, so far as they know, the law

upon this question—perhaps with very rare exceptions—and they felt that if there was to be any further discussion of the law in this matter they would be glad to hear it presented by the counsel for the respondent before being called upon to reply.

There is no "babying" about the matter, nor in the stand taken by Mr. Gould. He simply says at this time he prefers not to speak. If the Senate prefers that Mr. Dunn in closing the case, shall answer both as to the law and the facts, Mr. Gould simply request to be relieved from speaking at this time.

The PRESIDENT *pro tem.* What is the pleasure of the Senate?

Senator GILFILLAN, J. B. It seems to me, Mr. President, that a mistake has been made in departing from the wholesome rule which was adopted last week. That rule seemed to be eminently fair, and so far as could be ascertained, was entirely satisfactory to everybody. Now I fear that last evening we acted a little hasty in changing the order of the debate; but it seems that it was changed.

Now the gentleman whose privilege it was to speak under that changed rule does not care to avail himself of that privilege. If he does not, there is an end of it, I apprehend, unless the senate shall consent to the two counsel being heard in the final argument on behalf of the managers, the one upon the propositions of law, and the other upon the questions of fact. At any rate, we seem to have come to a standstill here, to a point where the respondent's counsel have to take up the gauntlet, or we are without business. I do not think we ought to adjourn. I think we ought to go on. I do not know how it may be with counsel, but with some of us in the profession,—I know it is so with most lawyers,—it is preferable to speak immediately upon the heels of the testimony, and I think it is somewhat questionable in this case whether an attempt to analyze and systematize the confused mass of testimony in this case would not tend rather to embarrass and befog counsel than to aid them in preparation for their final argument. I hope, therefore, that counsel for respondent will feel willing, under the circumstances, at least to proceed this afternoon.

Now, so far as the argument upon the questions of law is concerned I was not here at the early argument of the case upon the law propositions, but I have understood that they were substantially disposed of then, so far as the sufficiency of the charges were concerned, unless the respondents may have some showing by way of voidance of them. I do not believe, under those circumstances that it would be any hardship for the honorable counsel to make known the points or the grounds which they will assume and contend for upon the final hearing, so that the honorable managers may have a fair opportunity to answer them.

If that should be the view of the Senate, then there will be nothing unfair in allowing two counsel in behalf of the managers, providing there is an understanding that they shall occupy no more time than one would,—one confining himself to the law and the other to the facts. At any rate I think we ought now to proceed this afternoon and use the time to the best advantage possible.

Mr. ARCTANDER. I desire to state, that if it is any accommodation to the Senate I am willing to proceed this afternoon. I am, and have been ready all the time to proceed with my argument, but I believed that if I had a little more time for preparation, I could condense my argument more and get the facts systematized and analyzed in such a

way, that I would not be compelled to take up as much time as I otherwise would. Some of the Senators have heard, undoubtedly, about the man who wrote the long letter, in which he said, "If I had more time, I should have written you a shorter letter." I think it is about the same way with my speech to a certain extent.

That was the only consideration that moved me in the matter, because I think I know a little something about this case, and I do not know but what I am willing to proceed with the argument this afternoon.

Senator CAMPBELL. I hope that will prevail; and while we are here I want to say just this in behalf of the managers, that when that rule was adopted it was well known that it did not quite satisfy the managers, and they wanted a change made in it. The change we made was a change they did not want, and I felt so at the time, but did not feel authorized to speak for them, and I thought the matter might be adjusted subsequently. When we attempted to give them a benefit we gave them something they did not want.

They wanted one of their men to speak after Mr. Brisbin, or between him and his associate, Mr. Arctander. I might say that in the Page case the respondent had but one counsel, Mr. Davis. I think the rule was an eminently fair one in the first place, but if the managers do not desire to avail themselves of the benefit which was given them last night—which was no benefit to them—I move that we proceed.

The PRESIDENT *pro tem.* Is it now understood that the argument for the defense will be begun this afternoon

Senator GILFILLAN, J. B. Counsel has expressed his readiness to go on.

Senator CAMPBELL. I move that we take a recess until 3 o'clock; it is now after one.

The PRESIDENT *pro tem.* That will be taken as the sense of the senate unless objection is made.

AFTERNOON SESSION.

The Senate met at 3 o'clock P. M., Senator Wilson in the chair.

The PRESIDENT *pro tem.* The counsel will proceed with his argument.

Mr. ARCTANDER. Mr. President and gentlemen of the Senate: When, in the earlier stages of this long trial, I opened the case on the part of the defendant at so great a length, I did not anticipate that I should be again called upon to address you on the facts. I had hoped the work I have done in the case since the trial first commenced, exerting myself both by day and by night, as it were, (the laboring oar of the case having, by accident or otherwise, been left in my feeble hands) would be considered sufficient as my allotment of the labor in the management of this protracted trial; and I certainly feel now—realizing, as I do, how wearied and worn I am, suffering, as I have been during the past week, from a nervous headache which has almost prostrated me—that it ought to have been sufficient. But my client and my associates have urged upon me reasons why it is important that I should not shirk this responsibility; reasons, the force of which, upon consideration, I am fully willing to admit.

It has been apparent in this case that Senators have only more or less sparsely attended during the trial; that Senators who have come here during the last days, who are now in attendance and, presumably, in-

tend to vote upon these articles, have held themselves aloof to a considerable degree during the hearing of the evidence; some of them appearing here by actual count from one to three days during the progress of this protracted trial; others being a little more faithful in their attendance, but not much. Some, hearing none of the evidence for the prosecution, seeing none of the witnesses produced upon the stand by the prosecution, seeing not their demeanor, observing not their appearance, others absenting themselves when the witnesses for the defense were brought forward to be examined and exhibited before this Senate.

It seems almost incredible to a lawyer that such a state of facts could exist in a court. It is so foreign to all our ideas of court, that men can undertake to sit in judgment upon a fellow man, and deprive him of all that is highest and dearest to a man, without seeking and obtaining all the opportunities that are possible; all the light that by any possibility could be thrown upon the case and the facts surrounding it, that we might be excused in not believing in such a state of affairs. I say the idea appears so abhorrent to a lawyer that I feel no hesitancy in saying, that neither the respondent nor his counsel expected to see, upon the final vote at the conclusion of the case, certain senators who have been more conspicuous by their absence, than by their presence, during this trial. I say the idea of senators sitting in judgment upon our client, without hearing all the evidence, was so abhorrent to our feelings, that we did not for a moment expect it would be necessary to throw any further light upon the facts, to bring the facts in an analytical manner before this Senate. But the respondent has insisted that under the peculiar circumstances of this trial, it has become necessary to analyze and review the testimony on the closing argument. I apprehend those circumstances attend all political trials where the judges are not judges by nature, by culture, by education or by choice, but rather from necessity —where the statesman and the politician will and must crop forth in spite of the will, the desire or the conscience of the individual senator.

I suppose it becomes natural for statesmen to adopt the ideas and thoughts of other statesmen and that senators, (I do not speak of all, for some have been as faithful in their attendance as if they were judges upon the bench,) but some Senators who have come here to judge us have thought, as statesmen, they could fully endorse the idea laid down by their fellow-statesman, Lord Lytton Bulwer, who says:

> "Why should not conscience have vacation,
> Like all the other courts of the nation?"

For I suppose it is upon that theory we have these gentlemen here,—that their consciences have taken a vacation. But the respondent has thought fit, and his counsel have thought fit, to at least attempt to arouse the dormant consciences of those Senators who have not deemed it necessary for them before pronouncing judgment to hear the evidence and to see the witnesses, and to bring before those Senators the facts as we understand them.

And I am informed that the Senate is willing that should done, under the circumstances of the case; that Senators desire we should not be limited or cramped in our presentation of the facts; and it is with that view that my associates and the respondent have insisted that I, as one counsel likely to be most familiar with the evidence, should make the

closing argument upon the facts. I have no doubt, and indeed I feel it well, that I am not equal to the task, for several reasons. One is that I am young, young in years and young in practice, too young for such a gigantic task. Another reason is that the excessive labors of this case have worn upon me to such an extent that I feel that I have not that command either of my ideas or of the language which the exigencies of the case might rightfully demand. If it was not for the fact that my constant presence here assisting in the examination and cross examination of the witnesses has made me more familiar with the facts than any of the other counsel, I should certainly have begged leave to be excused from this onerous duty.

As it is I have felt that when my client called for my services, and my associates echoed his call, I had, as a lawyer, to throw to the winds of Heaven all personal consideration, that I had not the right to obey the dictates of my own convenience, or gratify my own personal desires. I felt that it was my duty to stand by him until the last blow had been struck, and to do whatever it was possible for my feeble hands to accomplish to clear him of the accusations that have been heaped and heaped upon him, iterated and reiterated, with sneers and with slurs, by the lips of the managers. If I do not do it in the way I desire to I beg that Senators will kindly take into consideration the circumstances under which I appear before you, and lay it rather to my want of preparation and ability than to any inherent weakness in the cause which I espouse.

This, I beg, you will bear in mind in considering what may appear to be weak points in my argument, for I assure you that could this case have been presented by a man that was fully equal to the task, there is in my mind no doubt that you would not, to use an expression common in courts of law, "need to leave your seats to find a verdict of acquittal."

You would not need to hear more than an exposition of the facts in this case such as could be made by a man who is fully qualified to grasp and handle them in the right manner, to do full justice. For I venture the assertion that if this respondent is convicted it will not be of any crimes or misdemeanors of which he is accused, not of any crimes or misdemeanors of which he is guilty; he will not be convicted upon the evidence nor upon the law, but he will be convicted upon prejudice, by the judges, who have prejudged his case.

I do not desire to advert upon the laws of this case as I think I have a sufficient onerous task before me, without that additional burden. That is left for abler hands, for an abler mind than mine. Nor do I want to make any diversions to any extent, at least, in answer to the argument of the learned manager, who took his seat before adjournment. Many statements were made by the learned manager which were not true under the testimony; facts were contorted and the law was contorted; slurs and sneers and jeers were thrown out without stint. I suppose we have no right to complain of it. I suppose it is only what we might expect, and, as a matter of fact, nothing more than what we have expected from the treatment which we have heretofore received, all through this trial, at the hands of the managers. But, if it is a fact, that during the argument of that learned manager facts were perverted, law was perverted and matters were dragged in which ought not, in fairness and justice, to have been brought in, what can we expect hereafter? When

we receive such treatment from *the* lawyer, *the* gentlemen of the board of managers—great God! what may we not expect hereafter?

Before going into a diagnosis of the testimony offered under the different articles, I desire to make a few preliminary remarks upon some statements made by the learned manager who preceded me.

He deprecates the class of witnesses which have been brought here by the defense. He tells you they are not honorable men; that they are men unworthy of belief; that they cannot come up to the standard of the witnesses for the prosecution. Gentlemen, on the whole, I think I dare risk the witnesses for the defense against those for the prosecution. I think I dare risk a comparison of their reputation and standing at home with that of the witnesses for the prosecution. I think I dare risk their bearing and behavior upon the stand, their appearance of honesty and of honorableness, as compared with that of the witnesses for the prosecution. I am not afraid to meet them in single combat upon that point. But the manager finds fault with the occupation of the witnesses for the defense. He tells you he has taken pains to examine into the matter, and he finds that of the witnesses for the defense there are twenty-two lawyers, ten saloon keepers, six cattle dealers, and the remainder farmers. Now, Senators, I never knew that a man's occupation, even though it were humble, the means by which he earns an honest living, was any disgrace to him. I had always thought that a man's worth should be gauged by his mind, his heart, his honesty of purpose, and not by his dress or by his position on the ladder of society. It was with a sneering smile that the learned manager told you that most of the witnesses for the defense were farmers. I wonder whether the learned manager did not, in the heat of his argument, forget the old saying:

> "'Tis the mind that makes the body rich;
> And as the sun breaks through the darkest clouds,
> So honor peereth in the meanest habit."

He should have remembered that old adage before he cast aspersions upon the honest farmers of the ninth judicial district whom we have brought here as witnesses. But not even his premise, much less his conclusion, was correct. As a matter of fact it is untrue that the defense has called ten saloon keepers here. I have counted them up. I find we have, as witnesses for the defense, six men who keep saloons. In the nature of things it became necessary to have some of these men. One man, a saloon keeper, was called to show that Judge Cox was not in his place during a certain time. I refer to the witness Apfeldt, from Tyler.

That was all we asked of him; we did not ask him for his opinion as to whether or not the Judge was intoxicated during any portion of that term. It is very apparent that no one could as properly be called to prove that fact, as the saloon keeper himself. No one else would be so liable to know of the fact. Another saloon keeper was called to show what Judge Cox drank at Tracy, it having been shown that the Judge was in that saloon keepers place all the time he was there. Well, we might have shown that perhaps by other witnesses, but they might have been mistaken or not have paid particular attention to how many drinks the Judge took. The man who sold him the liquor would be most likely to remember just what he drank. I say from the very necessity of the case, there being so much liquor in it all around, it becomes almost necessary to have some of those who are dealing in liquors

around here. I do not think it did hurt the dignity of the Senate nor the dignity of the Senators any and I do not believe that because a man happens to follow the occupation of saloon keeper he is therefore devoid of all honesty or of all truthfulness or manliness.

I have seen saloon keepers that I respect more, whose hearts I know to be truer and more honest—well, I will not say than any of the learned managers, but as true as that of any other man I have met in the pursuit of life, and whose word I would take as quick as that of any other man I have met in the practice of my profession.

The managers took particular pleasure in declaiming whenever they could, of any of our witnesses who had an occupation that was honorable in their eyes, that he was also engaged in the dishonorable occupation of keeping a saloon. I expected that, of course, from the view they take, or pretend to take, of liquor, liquor-drinking and liquor-selling, and the learned manager for a sinister purpose, I suppose, in making his count, includes in among the saloon-keepers who are such a thorn in his eyes, this gentleman from Minneapolis, who keeps a hotel there,—Mr. Hart. Why, of course, he is a saloon-keeper. Why? Because he has a bar at his hotel. I suppose that Colonel Allen and Colonel Belote are also saloon-keepers, and that you could not for that reason take their word if they were called here to testify. Of course not, they are saloon-keepers! Other persons who are merchants, as Mr. Berndgen, of Beaver Falls, as respected, as wealthy, and as honest a merchant as there is in the Minnesota Valley,—he happens to sell liquors too; being located in a German settlement, a German town, you might almost say, where parties coming in to trade, are accustomed to ask at the place where they trade, for a glass of beer, he happens to have a barrel or a keg or two of beer around, and he is a saloon-keeper too! If there is any comfort to be had out of it, I am willing the managers should have it. I am willing they should have all the comfort they can. They need it

Now, while we are engaged upon the inquiry as to the kind of witnesses brought down here, it might not be amiss to call your attention to the fact, that this same class of persons, saloon-keepers were not considered by the managers as particularly unfit for being witnesses when they only would swear strong against the respondent. But enough of this.

About all the witnesses the prosecution have are lawyers, and only nine or ten of them at that. I mean by that the main witnesses all the way through, the men who swear right straight through, at wholesale rate. Nothing small about them! not as to one occasion, but the men who go right through the decalogue and attempt to show up all the sins of all the years the respondent has been on the bench.

Now, it is true we have had a considerable number of lawyers here, too, and we have had even more than the honorable manager stated, for we have had twenty-five instead of twenty-two, as he said. And I call your attention to the fact that of the lawyers that have been brought here for the prosecution, eleven have resided in the respondent's district—and nine only reside there now—while we have of our twenty-five, about twenty-one lawyers residing in the respondent's district. Now I bring this up, not that I think a lawyer's word any better than that of any other man, but to show you how the bar of that district feel upon this subject; its members are certainly the best judges as to the truth of

these charges; they are the men who of all ought to know best whether or not the Judge has disgraced himself and disgraced his position, as the managers here claim. They ought to know it better than any others, and ought to appreciate the situation better than any others.

It was stated, I believe, in the opening argument for the prosecution, that the lawyers were in the power of the Judge, and it was very difficult to get them to act in the matter. Now I ask you, gentlemen, whether or not it is probable or reasonable to suppose that if these charges were true two-thirds of the lawyers of that district would do all that in their power lay to keep and maintain upon the bench the drunken brute whom the managers have tried to portray before you?

If it is a fact that respondent is the drunken brute he has been described to be, do you believe it would be to the best interest of that bar to support, maintain and stand by him? And tell me, further, whether if it were true that he was a man such as has been pictured here before you, the men who have business to transact before him every day, who depend upon his sobriety, upon his sound judgment for their livelihood, I might almost say for their very existence, would be likely to take any risks of that kind? But, the managers say, these men are *afraid* of their Judge; they do not want to live in enmity with the Judge. They are afraid of him and that is the reason they come down here and swear as they do. Well, that is an impudent imputation to lay at the door of as honorable a profession as ours, and at the door of honorable members of that honorable profession. But let us take it up and examine it for a moment. When these men were brought down here to testify in this case, what were the probabilities, what was the popular idea as to what the result of this trial was to be? Was it believed that this respondent would be exhonerated and permitted to go home again to St. Peter, from there to reign in drunken terror over the people of that judicial district?

Was that probable at the time these witnesses were called down here? I say no! Popular sentiment, as it showed itself, temperance and so-called christian zeal, as it exhibited itself, all went to convince the mind that this respondent was accused and convicted before he was heard. The probabilities at that time were, that this respondent would never again see day light as a Judge, after he went out of this court room. That is the prospect those lawyers had before them when they came down here. Can you then say that his prospects or his position cowed them? It is ridiculous to believe so for a moment. Why, on the contrary, if the public feeling and sentiment pointed towards certain and ignominous conviction, as the inevitable result of this trial, as it certainly did until this defense opened, until witness after witness was produced here before you, upon article after article, until the rays of sun light were let in upon the icy mountains of falsehood towering over this respondent—if it is true that these men had consciences so elastic that they could swear to anything to accomodate the case, what would be more likely than that they would have gone upon the stand and crushed the respondent beneath the weight of their evidence and rid themselves and their clients of such a monster.

That would have been reasonable and natural to suppose. There was no inducement for them to do as they did, unless they did it with an honest purpose,—unless they were actuated to do it by an honest impulse, and by respect for the all-fathoming truth. I say then, that to throw such imputations upon the members of an honorable profession,

and honorable members at that, is cruel and unjust in the first place, and, in the second place is unreasonable and ridiculous. It is false in fact,—it is false in reason. But, as I have said, we have not been satisfied with bringing lawyers before you. In selecting the witnesses out of the multitude we had to choose from, (hundreds upon some articles, twenty or thirty upon others,) I endeavored so to select them, that we could bring before you men of all classes of society, men of the lowest as well as of the highest classes ; so that you could see that it was not alone a certain class or character of men that were of the opinion that the Judge had been sober, and faithful in the discharge of his duties upon the bench, and that he ought to be retained to that district because he was an impartial and incorruptible Judge, but that that feeling permeated all classes of society in that district ; and if you will look over the list of witnesses you will see that such is the case, and that we have succeeded admirably in what we attempted to do. Of course, we had only a limited number to choose from, because only a limited number were present on the different occasions as to which we were charged, but from that limited number, in selecting our witnesses, we took as I said, men of all classes, so far as it was possible to do so, in order to show you that it was not alone the lawyers, but also the business men, the farmers, the laborers, the mechanics of that district, who respect the Judge, who look upon him and his actions upon the bench with favorable eyes, and who would not sit by and see an injustice, a cruel and irredeemable injustice, committed upon the Judge by this political court.

You will see by an examination of the list of witnesses that we have here twenty-five lawyers, eight sheriffs and deputy sheriffs, eight clerks, ex-clerks of court, fourteen merchants, twelve farmers, nine county officers, other than clerks and sheriffs,—different kinds of county officers,—five hotel keepers and clerks, two priests, one doctor, two cattle dealers instead of six (I think the learned manager must think there is something dishonorable in the calling of cattle dealer also, since he spoke of them in the same breath as he mentioned the saloon-keepers; I could never see exactly where it came in) four mechanics, two millers, one insurance agent, two dealers in agricultural machinery, two butchers, one banker, one barber, and one man who kept a livery stable. I think the callings are pretty well represented in that list. Now this was done on purpose, and on several of the articles we could have multiplied the list, for the trouble was not who to get, but who to take and who not to take, and I must admit that this necessity of determining what few to select out of so many has worried me more than anything in this case.

The learned manager has a peculiar way of getting around the fact that two-thirds of the lawyers in that district have come down here and testified to the sobriety of the Judge on the different occasions at which his accusers say he was intoxicated. He says they are lawyers by trade and not by profession. Why, of course they are. They are witnesses for the respondent, gentlemen, and of course they must be lawyers by trade rather than by profession! I rather smiled when I heard it. I rather thought that was a little too thick even for this Senate. Why Senators, some of them at least, know men like Davis, of Nicollet county. He is a lawyer by trade rather than by profession, is he?

C. R. Davis, a man who has practised law I believe for the last fifteen or twenty years; a man who has always stood high in the community

in which he lives; who, although, as I understand it, not of the same political faith as the overwhelming majority of the voters of Nicollet county, has been, time after time, elected county attorney; a man who is honored with the confidence of the leading business men not only of St Peter but of the surrounding cities; a man who is a lawyer with all what that word imports—no Sumner Ladd about him; and this C. R. Davis the managers say, is a lawyer by trade rather than by profession! Old Judge Weymouth, a man who has practiced the profession of law, and practiced it honorably for forty years successfully, he, also, according to the estimate of the learned manager, is a lawyer by trade rather than by profession!

Why Judge Weymouth, in his long and active life, has forgotten more law than some of the lawyers constituting the board of managers ever knew. I know that old gentleman well. I have met him frequently in court, battling for right and justice during the sunset hours of his honorable and active practice; and I submit to the honorable manager that if he had watched the honorable career of the Nestor of the bar of the Ninth judicial district, the honored and honorable Judge Weymouth, the words had died unborn on his lips, when he denominates him a lawyer by trade rather than by profession. His silver gray hairs, his deeds of charity and kindness, the acts of his noble, great heart, ought to stand guard against such ill-timed aspersions. Young Seward, the ablest lawyer in that district, a man sharp and keen as steel—a man who is born to the profession of the law—a man who bears in his actions, his demeanor and appearance evidence that not only have natural gifts fitted him for that honorable profession, but that a liberal education has qualified him to take the position he will some day undoubtedly occupy, at the head of his profession, in the Minnesota valley at least, if not in the State. A man who, also, is the very soul of honor; a young man who, upon the stand here, impressed every Senator that listened to him as being bright, intelligent, truthful, honorable and honest, for it could not be otherwise from the manner in which he gave his testimony. Matthews, Bowers—Judge Bowers, of Redwood—Freeman, the county attorney of Blue Earth county, and a leading lawyer there, Andrews, Butts, Grass, Cass, all of them lawyers by trade rather than by profession!

Well, I think I would risk any of them against some of the lawyers who appeared here as witnesses for the prosecution. Why, I can hardly express contempt strong enough for some of the lawyers who are candidates for judge, who are anxious to fill the shoes of Judge Cox as soon as they are empty, and as soon as they can crawl into them, with him out of the way, so that he can not be a competitor; for certainly some of those men would never think of reaching for those persimmons if Judge Cox was around, and was untrammelled and possessed of his rights as a citizen, They are too low, too insignificant to compare with him, or to attempt to rival him—every inch a king as he is. I say that to some of the young lawyers upon the frontier that I have mentioned, and who have been witnesses for the defense, I would, with greater confidence, with greater trust confide a case than to some of the candidates for judge in that district. And there is Megguier too, another lawyer by trade rather than by profession. I wonder if Manager Dunn included him in that category. Why, I remember when he was here upon the stand, and if he was not a match for Manager Dunn there never

was one. Oh, how it did me good to see how he played with the Manager as a cat plays with a mouse, and he came out ahead too. That man, keen and sharp as a Sheffield razor,—that man is a lawyer by trade rather than by profession! I noticed the Manager wanted to cast slurs upon him, saying in the course of his cross-examination, that you could not of course expect any thing else than that a man whom he defended would be convicted; but it appears that the people of that county have not the same view of the ability of Col. Mcgquier that Manager Dunn pretends to have, for it seems, on that criminal calendar he was engaged in every important case there was.

That does not indicate that he is a lawyer by trade rather than by profession, does it? It is true, and I will admit, gentlemen of the Senate, that we have no witnesses on the part of the defense, who have in their profession attained to the summit of thievery and rascality of a Coleman and a Morrill. It is true we cannot exhibit such unsurpassable and unrivalled thieves as they are; but I, in my simplicity thought that honesty was compatible with our profession, and that it did not follow because a man was a lawyer by profession that he was also a professional thief. Now, I do not desire to traduce any of these men, but there is certainly testimony here, uncontradicted, which warrants this assertion. We would rather not have that class of men on our side. It is true, too, that we have not brought before you any briefless barristers, like Drew of Marshall, the man who comes down here and tells you that he was there watching the cases the first day of the term. That is his business the first and second days, and it crops out that he only had two little justice court appeals out of a calendar of eighty cases in that county. That kind of a man, and that kind of a lawyer, can afford to come down here and swear to suit, for the milage and the fees that they get. They can afford to come here and swear even to what is not the truth, for the little perquisites they can obtain from the State on two or three trips down here. It is also true that we have not upon our side heavy men like Mr. Pierce—Mr. S. L. Pierce of this city, a shyster by birth, by nature, by education and by practice,—to use a quotation from Cicero, I believe. [Laughter.]

Nor have we down here, remarkable as it may seem, any of the candidates for Judge in that district, as Webber, Ladd and Wallen. I do not know, Senators, whether you have noticed the spectacle that has been presented before you during this trial by those men. Take those three men, and the henchmen of Mr. Webber, Mr. Lind, out of this case and what is left of it? Take them out of the prosecution and what have you got left? What peg have you to hang a judgment of conviction upon? Why, these men run through this case as the red thread of Ariadne through the labyrinth of old. You can see wherever you go, in the labyrinth of the prosecution their blood-strewn path, where they have wandered, imagining that the scalp of respondent dangled at their belts. They are there as guiding stars to his conviction. Their action brings back to my recollection an impressive scene in a drama, written by one of the most celebrated poets of the age, one of my countrymen, Henrik Ibsen. The poet, in the scene to which I have reference, lets one of the leading characters in the play deliver a speech on the day of the liberty of Norway, and it is a republican speech too, not Republican in the American, but in the European sense of the word. In that speech he tells the multitude which stands with bated breath beneath him, that he had a

dream the night before in which it seemed to him that the whirlwind of revolution stormed over all Europe, displaced the tottering thrones and shook the heavy crowns from the heads of the trembling monarchs of the world, that the crowns whirled in the storm, and that the emperors and the kings ran each after his crown, trying to grasp it, just as a man runs for his hat in a storm; and he described how their long mantles by the wind were driven around and ahead of them, and the ludicrous spectacle they exhibited.

Now I say I was reminded, when these candidates who are running the judicial race for the judicial persimmons of that district, came upon the stand and tried the one to out-swear the other,—I was forcibly reminded I say, of that old word-picture, and I thought I could see the little Ladd running for that judicial hat, and the storm sweeping his coat tails up above him, so that you could see nothing of him but his long ears protruding; I thought I saw him crawling over the ground and licking the dust, trying to get hold of that judicial hat. I thought I saw the long-legged strides of Webber, with his coat tails flying around him, marching straight for that hat. I thought I saw the old majestic Wallin himself, too aristocratic to run, placed upon a pair of high stilts, taking long strides in his endeavor to get ahead of the others. I thought I saw all of them run too fast altogether, and as a man will do sometimes when running for his hat in a storm, they ran by it, and I heard the mocking voice of the wind, "too fast, young man." And I think that when you come to closely observe the judicial race these acrobats have run upon the stand here before you, you will come to the conclusion that it would be a good thing for the ninth judicial district if they all had run too fast, and ran by that hat. In my judgment they certainly have done so, and I do not believe that that judicial hat is going to fit any of their heads. I do not believe that we are ever going to live to see it, and I hope for the benefit of that district,—I hope for my own benefit, for I practice my profession in some counties in that district, that I never will see the day when the judicial hat of that district,—the hat that has graced the magnificient and talented brow of E. St. Julien Cox, placed on the head of a Wallin, a Webber or a Ladd.

You probably never noticed, gentlemen, your attention probably not having been specifically called to it, what a figure those judicial candidates and their henchmen have cut in this case. Look at article three, take Webber, and Ladd, his henchman, out of that article, and what have you left? Nothing but Pierce! Nothing to speak of—nothing but Pierce! Take the scene down in the Nicollet House parlor; take Webber away from it and what is there left of that?

Take the Dingler Case, and there we find the trinity of candidateship. Take Ladd, Lind, and Webber out of it, and where is the Dingler case? Nothing but poor Downs is left, and he didn't know anything about it six months ago,—no, *three* months ago. He didn't know that the Judge was drunk at that time, but he learned it since. Take Webber, and Lind, his henchman, out of the McCormick case and there is nothing left, because they uphold it with their feeble hands and strong swearing. Take Lind away from the Lyon county case and you have nothing left but Drew, for Coleman is wiped out all together. He does not exist any more. He has lost his civic existence in this case. I take so much for granted. Take Webber out of the Castor case, the

swill cart exhibition and what is left? Take Wallin out of the Power case, the settlement in New Ulm, and then that charge is gone too,—banished to the winds of Heaven. Take Webber, Lind and Thompson out of the last June term in Brown county, in May, 1881, and that case is gone too. Take Webber and Wallin out of the Hawk case, up at Redwood Falls, and there is nothing left of that. Take Wallin out of the Tower trial. He stands alone there, mourning in his solitude that he cannot get any other candidate for Judge to help him to swear that charge through. Take him out and there is nothing left of that.

I say that the evidence of these candidates and their henchmen go through these articles, from article to article, as a red thread, and you can follow their movements jumping from article to article, higher and higher, stronger and stronger, until they disappear, when this case is disposed of, in the abyss of eternity and oblivion.

The remark was made by the lea ned Manager, that the explanation to be given to the apparent contradiction in the testimony adduced here before you, was that our witnesses had a standard of drunkenness and intoxication different from and lower than that of the witnesses for the prosecution; that they did not look upon it with the same eyes, or in the same light; that when they saw a drunken man they did not know it, while the witnesses that the prosecution has called would certainly know it. Why, I have no doubt the witnesses for the prosecution have eyes a great deal sharper than the eyes of the witnesses for the respondent.

Why, one of them sees even in the darkness of a winter night and can tell of the flush upon the cheek of the Judge, and of the color of his eyes, an hour and a half after sunset in the middle of winter. I do not doubt that these men have sharper eyes than ours, when the question is to detect intoxication in Judge Cox. For they have something to assist their eyesight. The desire to see it is there. They see sharper, undoubtedly for that reason, but I do not apprehend that that is the kind of sharpness that this Senate wants, or that it appreciates. Now, I take it for granted that the premise of the learned manager in the first place, is false, that our witnesses have a standard of drunkenness or intoxication different from that of the witnesses for the prosecution; for I think that when I withdraw from the list of witnesses for the prosecution the Rev. Mr. Liscomb, the man who has such a profound respect for this court, our witnesses, as a general thing, looked with more stringency upon the proper definition of the different states of intoxication and of drinking than the witnesses for the prosecution. I do not claim that our witnesses, as a general thing, come up to the standard of the Rev. Mr. Liscomb, nor do I desire that they should.

But outside of him, I think you will find that the witnesses for the prosecution who were asked the question, heartily agree with all the witnesses for the defense in their definition of the different degrees of intoxication and drinking. You will find that almost every one of the witnesses for the defense considered a man under the influence of liquor if he had drank a drop, and that some of them only made a distinction —that they would not say that a man was under the influence of liquor if they hadn't seen him drink, unless it was perceptible in some way, either in his manner, speech, language, accent, or anything of that kind, but they almost every one of them went to this extent, so far as intoxication is concerned, that they considered a man intoxicated when either

his bodily or his mental faculties were affected at all. Some of them went a little farther and claimed that there must be a weighing down of the balance—that the liquor must have got the better of the judgment before they would consider him intoxicated, but the great majority of them told you,—I think, with a very few exceptions, *all* of them told you —that they considered a man intoxicated when either his bodily or his mental faculties were clouded or affected in the slightest degree. Now, that, certainly, is a good definition of drunkenness, and just as strong as any temperance man wants it, I apprehend—not being one myself, of course, I cannot tell. It is true that some of them when you come to the term drunk, said that they considered a man had to be right down, in order to be drunk, but that was only one or two—I think not more than two, and the remainder of them made no distinction at all between drunkenness and intoxication.

The matter of definition does not cut any figure in the case anyhow because these witnesses were not asked whether Judge Cox was drunk or intoxicated, but they were asked what his condition was as to sobriety or inebriety, and they testify that he was sober, perfectly sober, sober so far as could be observed, etc. They were not asked to tell whether he was drunk or not, and did not so testify, so the play on words can have no significance whatsoever. Now, I say, that you will further have noticed that some of our witnesses were men who swear on the stand before you, like Mr. Butts, Mr. Ensign, Mr. Eastman and others, that they were men who never drank a drop, so that the managers can not claim that it is drunkards that we have brought down here. Certainly, when we brought our witnesses upon the stand and marshalled them before you, one after another, it became very apparent that they did not have the appearance of drunkards. It is true that we had men here who took a drink, and it is true that we had men on the stand like Martin Jensen, who admitted that he occasionally got drunk. But, gentlemen, I do not apprehend that it affects a man's truthfulness any if he occasionally gets drunk. I claim that a man who has the manhood to come before you as he and Col. McPhail did and say that they occasionally got drunk,—I say that a man who has that manhood, is more worthy of belief than one who comes in here and tries to make you believe he is so awfully goody good, because he is a man that openly confesses his faults; he is a man that you can see does not lie. We are all desirous of hiding our faults as much as possible. That is natural. Those men come before you on the stand and they were asked to confess their sins. No denial there,—no general denial. They came up like men and confessed and admitted, as they had to do, as honest men under oath. And I say that is the kind of a man I desire to put my trust in. That is the man I desire to believe and that I will believe.

Now, then the next question is, is there any difference as to the intelligence between the witnesses for the prosecution and those for the defense, taking them at a general average. I speak now only generally. Is there any difference in their standard of intelligence. You saw them upon the stand, and you can tell. I apprehend that there were some very bright men upon the part of the defense also; and I apprehend that there were some not so very smart on both sides; but take it as a general thing, is it not a fact that the witnesses for the defense compared favorably with those for the prosecution, so far as intelligence, so far as appearance is concerned? Are there any of those witnesses for the de-

fense whom the prosecution has succeeded in impeaching in the least? Are there any of these men, even, who are in the habit of drinking themselves, whom the prosecution has been able to show did not know what they were testifying to at the time, because they at that particular time had been themselves intoxicated? Is there anything of that kind before you? Not at all! None whatever. None even of those men who admitted that they occasionally did drink, and there are only two or three of that class of men, could be shown to have been under the influence of liquor at the time they testified to. Almost every one of our witnesses were strictly sober, some of them strict temperance men, men certainly who were most of them abstinence men, successful business men, not drunkards, nor men that get drunk.

Now I come to the question of honesty, for that will cut a figure, I suppose, in the case. You can certainly not say that the witnesses for the defense did not have as good means of knowledge or observation as to what the condition of the Judge was, at these different times, as those for the prosecution. So, the question comes right home to us here, who has done the lying in this case? And, gentlemen, that is the fair and square issue that you have to meet; that is the fair and square issue that you will have to meet, and you cannot dodge it, even if you are inclined to, for here stand witnesses who swear diametrically opposite to each other. It is not, as the manager says, that men come down here and swear, we did not notice that he was drunk; for the managers in this seem to be willing to take the cue, as given them by their pet newspaper, and I cannot at this point refrain from saying that it seems rather as if the managers have all the way through tried this case on a double battle-field, here in the Senate chamber, and again in the newspapers. We had it advanced in the newspapers very early in this battle, that of course this testimony didn't prove anything—this idea about different standards was then first advanced—whatever these witnesses for the defense say, don't amount to anything. They say they didn't see Judge Cox drunk, but that don't amount to anything; there are a hundred others who can say they didn't see him drunk. Now, have there been any evidence of that kind? Have the newspapers or the managers the right to characterize the testimony in that respect, as they have done? Have the witnesses for the respondent come here and told you simply that they did not see him drunk, or notice that he was drunk? What is their testimony all the way through? that they were right then, as the witnesses for the prosecution were. The witnesses for the prosecution swear that he was drunk.

The witnesses for the defense come in and tell you that they were right there, and they saw him; that they had the same means of observation; that they noticed him and that he was sober. There stand the two statements, one against the other. It is not that they did not see it, for even if it was that, under the circumstances that have been brought forward here, showing these men present at a particular time, showing them in a position in which they had just as good occasion and means of observation as the witnesses for the prosecution had, it becomes simply a question of truthfulness between them. The question to be answered is simply this, who tells the truth and who lies.

Now, gentlemen, when the inquiry comes to that, when the inquiry is, who has been upon the stand and sworn falsely,—when the inquiry comes to this,—who has been here before you and perjured their souls,

then it becomes a proper matter here to determine where, and on what side does the interest lie that would permit and incite any such action? Now, gentlemen, if it were not notorious that this respondent is as poor as Job; if it were not notorious that he has not a cent in the world; if it were not notorious that his counsel defend him without even the promise or hope of reward; if that were not the fact, then probably you would have a shadow of right to say that these witnesses for the defense may have been bought—if you could think you could buy bankers, and merchants, and lawyers, and farmers, and every kind of business men up in that country. If you could allow yourselves to think anything of that kind, then certainly such a question could be raised; but I am glad it cannot be raised, and I suppose the respondent is, for the first time, glad that he is poor as Job, because you cannot even suspect him guilty of the crime of buying witnesses.

Now, the question comes, if there is no pecuniary interest, what interest could there be upon the part of the witnesses for the respondent? Well, if you can find any, you can do better than I can. How you can explain why, and how it is, that men came down here by the score (one hundred and twenty, I believe, of them) and swore willfully false, —men of standing and reputation,—men who are owners of fortunes, —men who desire to leave their children when they leave here an unsullied and untarnished name,—how those men, men of respectability, could come down here and swear falsely for any considerations of friendship, or for any considerations of fear or favor—I cannot see. Now we offered, in the case of some of the men who have been here upon the witness stand to show that they were even not friendly to the Judge; that they had not voted for him; that they had rather an unfriendly feeling towards him; but the managers objected and we, of course, could not then show it. Well, of course, it didn't cut any figure particularly, but I say it shows that friendship is not the actuator of this phenomenon. It is not friendship, and if friendship could get even one unscrupulous man to forget the sanctity of his oath and tell an untruthful story, you certainly could not get one hundred and twenty men, picked around out of the different counties of that district to do it, men of standing and respectability, honorable men, as the men that have come here for the defense, are.

Now, on the other side, I desire to call your attention to the fact that the leading witnesses for the prosecution have an object in view. There is a reason why they swear as they do. They have some reason why they want the Judge torn from his judicial throne. They have some reason for it.

The most prominent among the witnesses for the prosecution are themselves candidates for the office. Their oaths may lead them to that position. If they do not swear as they have they certainly will never reach there, because, if they do not, this respondent will hold his position, and they know he is a tower of strength in that district, and as long as he holds his head over water nobody need apply for that judgeship, and they know it. They know it just as well as if it were written upon the judicial bench of that district in letters of gold or letters of blood. No Wallins, nor Webbers nor Ladds need apply. He must be crushed or the opposition cannot succeed. That is the spirit so far as these men are concerned. He must be crushed! It is not enough, it won't do to wait until his term of office expires, and then

apply, for they know they could never reach and get the game. They know that he would be there, and ahead of them. No! he must be torn from that position, dragged down into the mire, and on top of that it is necessary for you, gentlemen of the Senate, to satisfy these men, to take away from him the right of a free citizen to hold office; for if you do not they know he will be back there again as a spectre, and scare the life out of the Webbers', Ladds' and Wallins'.

Those men, then, I say, have an object in starting this prosecution. They have an object in coming here and swearing that the charges are true. Ambition has before to-day, in unscrupulous men, been the procreation of perjury. Then, again, you will find that every man who has been a witness for the State in this prosecution has, at some time or other, had his toes trodden upon by the Judge. In some cases the tread upon the corn is as insignificant as that he left their hotel and went to another. In another case he has beat somebody in a lawsuit; other times he has scolded somebody in court—reprimanded them. You cannot pick up a witness for this prosecution, outside of these candidates, that the Judge has not hurt at some time or other. Some are hurt in their dignity, others are hurt in their pocket-books by being beaten in law suits that they had; others are hurt in their standing, political or otherwise, and they are all here ready to avenge the action of the Judge upon them. They are here ready to avenge their fancied grievences, and they will do it, if possible. They have a motive for false swearing. It may seem, in the case of some of them, a small, insignificant motive, but there is at least a motive. Look upon the other side, and I challenge you to find a motive, to define it, to assign a reason why one witness here upon the part of the respondent, has come before you and made the solemn statements, under oath, that he has, if they were not true. I challenge you to assign a motive in the case of any one of them, that has a reason for it; it cannot be done.

Now, then, I say that the first consideration in any case, where we are to enquire as to the truth, where there are diametrically opposite statements,—the first thing that we should look after, to find out, who does the false swearing, who tells the falsehood in the case, is where is the motive for telling the falsehood. If there were motives on both sides, that would not figure so much, but if you find motives on one side, and do not find any upon the other, and cannot see any reasonable motives, that in itself ought to be sufficient to turn the scale.

At this point the court took a recess for five minutes.

AFTER RECESS.

Mr. ARCTANDER. Mr. President and gentlemen of the Senate: In undertaking to deliver the first of the closing arguments, I have expressly bargained with my associates and with the respondent, that all that I should be required to do in this matter was, simply, the drudgery work,—to bring before your mind's eye the details of the testimony; to show you analytically and sytematically, as far as I am able, what the evidence is upon both sides. I have on purpose, so far, and shall hereafter, on purpose, abstain from such eloquent outbursts as a lawyer might be inclined to indulge in, on account of the record, and on account of the fame, that of course all attorneys like to obtain, and which might be obtained in a case of such notoriety. But I do not speak for the record, I stand

here for justice only, and shall therefore try to be as dry, as matter of fact, as tedious, as borous as possible ; for my object is to find the truth, and truth is always dry and matter of fact.

I will now go into an examination of the different articles, and try to show what the evidence is,—what mis-statements were made by the manager who has preceded me, and where the weight of evidence is.

But before I proceed to this branch I will state that I claim and maintain that this being a criminal prosecution, this being a proceeding in which the respondent is accused of crime, and I don't care for the sake of argument here whether you call it a criminal prosecution or not, the prosecution must show the guilt of the respondent beyond any reasonable doubt in order to convict. I maintain that whenever a person is accused of crime, as the respondent certainly is,—if he is accused of anything he is accused of a crime, for he could not be tried for anything else but crime or misdemeanor,—it is a rule of evidence well established, whether the form of the prosecution be a civil or criminal proceeding—when a crime is to be made out and is the foundation, the ground work, the substance of the case, that the crime must be made out beyond a reasonable doubt. I want to explain what that is, for the benefit of the lay members of the Senate. I had expected that the prosecution would have explained it, for I think it is their duty to give a full explanation as well what is against them as what is for them, but they having seen fit only to present the latter, I shall proceed. Whether this be a civil or criminal prosecution, you must, in order to convict, be convinced beyond a reasonable doubt that this respondent has been guilty ; and upon the vote on every article this must be the test, has the evidence shown so conclusively that he is guilty, that there can be no honest, reasonable doubt about his guilt. If there is such a doubt in your mind, then he is entitled to the benefit of it, and it should result in his acquittal. It is not enough, it is true, that you have any kind of a flimsy doubt, that will not do. A flimsy doubt will not acquit. It must be a doubt for which you can assign a reason.

In other words, before you can convict this respondent, you must be so thoroughly convinced of the sufficiency of the proof of his guilt that you would be willing upon such a conviction, to act in matters of the greatest importance and magnitude to yourself. There must be no such doubt of his guilt as would in matters of the greatest importance to yourself, make you stop, hesitate and desist from the course of action you had intended to take. That is what it means—that you must be convinced beyond any reasonable doubt before you can convict. Now, then, I shall maintain, going through these articles, that in most, if not all of them, the evidence introduced by the respondent has not only been sufficient to create such a reasonable doubt, but that even the preponderance of testimony is upon his side ; that we have shown beyond peradventure that the witnesses for the prosecution have either been mistaken, or that they have wilfully and maliciously lied. I shall maintain that this is the case in most, if not all, of the articles; and I shall maintain as I go along in consideration of the articles, that wherever that is not done, at least sufficient doubt has been thrown by circumstantial evidence—by circumstances that are to be taken and must be taken into consideration by you and by me—around the charges, so that a reasonable doubt must have been awakened in your hearts and your minds about the guilt of the respondent. And if such a reasonable

doubt exists, he is entitled to that doubt, because the presumption of law is thrown around him, the presumption that he is innocent, protects him and holds its protecting shield between him and his prosecutors—between him and you.

So far as the

FIRST ARTICLE

upon which we stand charged is concerned I will not insult the intelligence of this Senate by arguing the evidence extensively. I take it for granted, Senators, that that article is so flimsy, that charge and accusation is so flimsy that it falls to the ground by its own weight, and that no men of reason, no men of sense, no man that is not prejudiced beyond redemption, can, without even a word being said upon it, find the respondent guilty of the charge therein contained. Why? Because, in the first place, every witness that has testified upon that article on the side of the prosecution gives to you for your consideration only his thoughts, his ideas, his opinions; and every witness that has testified upon that article for the prosecution also tells you that if Judge Cox had been drinking at the time (as they thought he had at times), that it did not interfere with his business; that he dispatched the business in a proper manner, and that there were no vestiges of it in his conduct on the bench.

It has been said by the learned manager that his conduct there was very scandalous; it was within ten days after he had taken his oath of office, and all that; it was certainly very bad, so bad that it found its way into the public press. Yes, it did. That is to say, the accusation did. But, if that piece of news was traced down to its true origin we would probably find that it was one of the managers for the State in this case who caused it to find its way to the public press at the time.

If we traced this matter to its origin we would probably find that this respondent went before the House of Representatives as soon as that unfounded and scandalous charge was made in the public press against him, and himself asked an investigation; that it was had, and that he was cleared; that the House found the charge maliciously false and slanderous. But I do not care about that. That finding is not properly before you, and we do not want to rely upon it at all. We rely upon the facts as they have been proven before you, and they are with us.

First, we find that there are four times at which it is claimed by the witnesses that in their *opinion*—that they *thought*—that they *had an idea*—that they had a *doubt* in their minds as to whether—the Judge was intoxicated—that they *doubted* as to his sobriety, etc.,—and that is all the testimony amounted to, as I understood it. I think you will find it so by reference to your journals. I have not particularly gone over it now, because I did very fully in my opening argument; but, at any rate, the charge is as to four occasions. One is the evening when it is claimed that Senator Wilkinson made a sham motion before the Judge. That occasion is testified to by Mr. Graham and Mr. Higgins. Another of the witnesses for the State comes before you. He is asked whether or not it is a fact that the Judge was intoxicated that evening. That is Mr. Wollenston, and he tells you that was not the evening he had reference to; that he did not consider the Judge intoxicated at all that evening.

So that part of the article, when the prosecution rests, is left with two of their witnesses who claim that he was intoxicated or that they thought he was intoxicated that evening, and another one who says he was not. In other words the witnesses of the prosecution are divided upon the question. Mr. Bird, the sheriff, Mr. Fancher, the clerk of court, Mr. Blaisdell, the attorney, all tell you that it is not so, and they are corroborated by the testimony of Mr. Wollenston.

We then come to the evening upon which Mr. Wollenston said he had *grave doubts* as to the sobriety of the Judge, and he gives as the reason why he thought so that the Judge made an unintelligible order to the clerk or the sheriff there, he don't know which, and that the clerk did not understand it and he had to ask the Judge to state it again. Upon that we call both the clerk and Mr. Bird, the sheriff, and they testify that there was nothing of the kind. There was no such order ever given, and Mr. Wollenston's evening fades into mist. Then there is the occasion testified to by Mr. Higgins—the time when the Judge issued the special venire for the grand jury. Higgins says that at that time he *considered* the Judge intoxicated—*thought* he was. Against him there is Mr. Blaisdell, Mr. Fancher, and Mr. Bird, who come in and testify that they remember the occasion, that there was nothing whatever to indicate that the Judge was intoxicated, and that, as a matter of fact, he was perfectly sober.

They further have a special venire for a petit jury, when Mr. Everett, the postmaster was present, and he thought the Judge was intoxicated. Our witnesses, Mr. Blaisdell, Mr. Fancher and Mr. Bird tell you they were there; that they remember what happened, and that there was nothing out of the way with the Judge at all; that he was perfectly sober. And finally there is the testimony of Mr. Livermore, which is so spread out over all the term, that he cannot tell anything definite, and he *thinks* towards the latter part of the term the Judge was not exactly as he was before. I thought I would offset that general kind of swearing, so I called Mr. Sawles, and he said he was there all the time, and in his opinion, there was no difference in the condition of the Judge.

Now, the manager says, and I desire to call your attention to that fact, that Mr. Fancher testifies that one evening the Judge looked somwhat wearied. The manager says it has been testified to by Judge Cox's best friend, that that is an evidence of intoxication with him, and *ergo* at this time Judge Cox must have been intoxicated. That is the way he reasons. Now, again his conclusion is false, both because his reasoning is false and because his premises are false. It may be that Mr. Fancher testified that the Judge was weary a couple of evenings, but not as to any of the evenings when it has been testified to here by the witnesses for the prosecution that he was intoxicated. That he looked weary and fatigued a couple of evenings, it may be considered to have been testified to.

That premise is all right; but the other premise as to Mr. Davis testifying that a wearied and fatigued look was an evidence of intoxication on the part of the Judge, is false; because there was never anything of the kind testified to. Now, I would say, for one thing, that it would be pretty dangerous business—even if it had been testified that that was an indication that Judge Cox was drunk,—that that was one of the indications, one of the signs, that showed itself when he was drunk—it would be dangerous business, I say, to say, simply upon that, that a man was

intoxicated. Why?' Let us illustrate the proposition. It is said every great man has great faults. There never was a great man who was not a drunkard, for instance—and, there have not been many great men in this country who had not that or some other vice, as an unbridled passion for the fair sex, or something of the kin l. Now, to say "I love the women, therefore, I am a great man;" or, "I drink and get drunk, and, therefore, am a great man," you only need to follow the reasoning to its extremes and its ridiculousness is apparent. It does not follow because you possess some of the indications of a great man, that the other indications are there. So that even if it had been testified that Judge Cox, when drunk, had a weary look, that would not prove that he was drunk whenever he had a weary look, because that might have been caused by something else. It would have been a false premise to build a conclusion upon. But as I said before, the premise is absolutely false anyhow.

It is not only false in reason, but in fact. We will see what Mr. Davis testified to as the signs of intoxication in the Judge. That was the witness the Manager said testified to it. It is on page 505. What he testified to was not that Judge Cox had the appearance of being tired, fatigued or weary at all, as the learned Manager will have you believe. All the way through the Manager insists on this false premise. In Waseca, he was fatigued In Martin county, he looked weary and fatigued,—*ergo*, he was drunk. When he came up to Marshall and Judge Weymouth saw he looked weary and fatigued. "Now," says the Manager, "that is the very indication of drunkenness in him. Of course, he was drunk as we claim." Now I desire to call your attention to what Mr. Davis testified to on that point,

Q. You say that 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 noticeable feature about Judge Cox, when he is intoxicated or immediately afterwards, his eyes sink very far back into his head, and he looks quite black under the eyes,—usually gives him a haggard appearance rather than a flushed and florid one.

Now, gentlemen, there is a great deal of difference between a man having a haggard expression, and one looking tired and weary. There are numerous degrees between those two facial expressions. I desire to call your attentio n particularly to what Mr. Davis' testimony was, and you can refer to it yourself in the record, and see if you can find any where there, on that page or the next, anything that goes to show that weariness, or a look of weariness or fatigue is even upon the Judge when he is drunk or that it is any indication of his being drunk. On the contrary Davis swears farther:

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.

Now then, what does he mean when he says that his face had a haggard expression? It is not necessary for me to explain it. It is not necessary for me to use any psychological definition of what the word haggard means, or what the appearance is, or how it exhibits itself. The Senators themselves know that there is a distinction as wide as be-

tween heaven and earth, between a man looking haggard and a man looking tired and weary and fatigued. It is not the same expression at all. And with that I dispose of the first article, gentlemen; I am not going to spend any more words on it, nor any force; it is not worth the powder.

We now come to the

SECOND ARTICLE,

the Waseca term. I think I stated in my opening, that I considered it convenient to divide this article into three sub-heads. One was the occasion of Mr. Taylor's and Judge Edgerton's argument on the fifth day of April; the other one was the last week of the term, with the exception of the third day of April; and the third sub-head, the third day of April, when the motion for the adjournment was had in the case of Powers vs. Hermann.

Of course the second sub-head has been partially abandoned. It had to be. I do not think the learned manager who preceded me even noticed or paid any attention to it; but, as we can not tell what will come hereafter we had better not leave it without paying some little attention to it. Besides, it is important because it characterizes the testimony of the main witness upon that Waseca charge.

The main witness upon

THE FIRST SUB-DIVISION OF ARTICLE TWO,

on the fifth day of April, the time when the Taylor and Edgerton motion was heard, is Mr. Taylor himself. I will call your attention to what he testifies to. He says he *thought* the Judge was intoxicated. You will find, by reference to your journals, that that is as strong as he puts it; he *thought* the Judge was intoxicated.

He asks you upon that to find him guilty. He tells you the reasons why, and I have already explained them in my opening arguments, and shall not go into them much further. One reason was that he thought the Judge was mistaken in what side he was upon in that case. I have explained that. I have shown that by his own testimony upon cross examination it appears that there was no mistake, necessarily, about it at all; that it was simply an indication on the part of the Judge that he had heard enough from that side; that he need not speak any more upon it; that he had made up his mind and the counsel could keep quiet. He further predicates his opinion, his *thought*, that the Judge was intoxicated upon the fact that the order that he gave there, as he claims was erroneous or was kind of doubtful rather,—some orders that he didn't think were in perfect harmony with each other. So far as that is concerned, I think that was explained upon his cross-examination, and I think I explained in my opening argument sufficiently, that there was no indication at all of the Judge being intoxicated on the trial; it was the proper order to make in such a case; so I shall not dwell upon that any further. That is all the testimony; that is the evidence upon which you are asked to base your verdict that the Judge was intoxicated. Mr. Lewis supports it but simply by this statement,—that he *thought* the Judge on that day was considerably under the influence

of liquor. He *thought* he was considerably under the influence of liquor.

Mr. Lewis, I think, before we get through with this article, will be so thoroughly disposed of, that we shall not need to pay any attention to what he says, but for fear that that should not be so in the mind of some Senator, I desire to call your attention to the fact that even he is not positive, but says that he *thought* the Judge was under the influence of liquor that day; considerably so, he says. He gives no incident; he was not present, does not claim to have been present at the time that motion was heard; does not claim to have heard the order; does not claim to have heard this mistake of the Judge or anything of the kind; so there is only his say-so for it any how. Now, what have they brought against that on the side of the prosecution? What are we starting out with before we come to the defense? We have this fact established on the cross-examination of Mr. Taylor, in the first place, that Mr. Taylor is a young man who does not know very much. Mr. Taylor is a young man with not a very excellent memory. We tried to show by him when this motion came up, what preceded it; that the Judge charged the jury in the case of Powers vs. Hermann, in the afternoon, immediately before his case was taken up. Well, he does not remember what it was. He remembers some charge sometime while he was there, and that it was clear and all right and nothing out of the way, but he evidently has reference to the charge on the twenty-ninth day of March when he was in there, in the Reives case, the bank libel case.

The fact that he does not remember anything distinctly about it, shows that the young man has not a very excellent memory, and that he is very liable to be mistaken about a fact—as to the exact words that Judge Cox used, the exact way in which he decided that matter, the exact language that he used to him at this time, which was three years ago. He does not remember what went before his motions; he does not remember what came after it; but he remembers the order and he remembers the mistake. Now I say that we have got that to start out with. He is a man that has not a very perfect memory. Then you will find farther that we have established before the prosecution rests, that immediately preceding the time when this motion was made by Mr. Taylor, the jury was charged in the Powers against Hermann case, at one o'clock in the afternoon, and that immediately after the jury was sent out the motion was taken up. We have the testimony of Mr. Lewis that the charge was clear, and that there was no fault to find with it. This we have established before we start in with our defense, mind you. Now, I ask you to take that evidence into consideration, and say whether when it is established that in a case of that magnitude, a trial of four days' duration, he gave a charge to the jury which none of the lawyers were dissatisfied with, to which no exceptions were taken, which was not carried to the supreme court for any reason, a charge that both sides think is clear and perfect in every way, and showed good judgment upon his part, you can connect that fact, which the prosecution proves to you, with the statement of Mr. Taylor that the Judge was so drunk that he didn't know which side he was on in the case, and that he gave contradictory orders immediately thereafter.

That we start out with. Then we have the testimony of Mr. Hayden, the clerk of court, that he saw nothing out of the way that afternoon,

and he was right there in court. We have the testimony of Mr. Collister, an attorney down there, a witness for the prosecution, that the Judge was all right on that day, that there was nothing the matter with him. In fact, Mr. Collister swears that he was in court every day during that term of court, and that on no occasion, but on the 3d day of April, did he think the Judge was the worse for liquor; that on that morning he was a little off, but that was the only morning—the 3d day of April. This is the 5th day of April, mind you, that this Taylor motion was up. Now, then, we start out with Mr. Taylor, whose testimony is denied impliedly, you might say, by the fact that the Judge was sober when he gave the charge immediately prior to his motion coming up. We start out with the fact established that Mr. Taylor does not know much about it anyway; that his memory is very weak upon the point; and we further start out with the proof from two of the witnesses, namely, Mr. Hayden and Mr. Collister, for the prosecution, that the Judge was all right that day; and then what have we on the part of the defense? In the first place, we have the jurymen who were on the case of Powers against Hermann—Mr. Murphy and Mr. Forbes—who sat and heard that charge at half past one o'clock, a charge which lasted about one hour probably, and then the motion of Mr. Taylor and Mr. Edgerton was taken up, at half past two, and gone through with. We have the testimony of these men that the Judge was perfectly sober during that day, the 5th of April; that they could notice nothing out of the way with him at all; that they sat there in the jury box; and I desire to ask you, right here, do you believe that with those men sitting there in the jury box, naturally paying attention to what the Judge would say to them, as well as to the evidence, that the Judge could sit upon the bench so full that he did not know upon which side an attorney was on in a case (if that attorney was arguing as he ought to) and so full that he made an order that was perfectly ridiculous,—that that Judge could sit upon that bench and charge that jury, and make rulings and act as Judge there, without those same jurors observing it?

Do you believe it possible? Why, you know yourself when you sit upon a jury or in a court room, that the Judge is the cynosure of all eyes. Everybody's eyes are turned toward him. He is the observed of all observers. He is the aim of every eye, and more particularly so, if you sit in the jury box, getting your law from the court. If he had been so muddled that he didn't know how to make an order; if he had been so muddled that he didn't know upon which side Mr. Taylor was, (if he spoke intelligently,) how would his charge to that jury have been? Could he have given an intelligent charge to the jury? Could it be that they would not have noticed it, sitting there, listening to every word coming from the lips of the court? It is incredible; it is ridiculous to assume any such position.

Besides those jurymen we have the the testimony of Dan Murphy, the deputy sheriff in charge of the court rooms, who naturally paid attention to the court, who is the officer immediately subservient to the court, who has nothing to do, unlike the clerk of the court, who has to pay attention to his books, his records and his minutes, and who naturally does not observe the court as closely as he otherwise would; but the deputy sheriff, the bailiff, sits right there beside the court, facing him, looking at him, and if there was anything the matter with the

Judge, if he was drunk as has been described here before you, wouldn't that man have noticed it?

Wouldn't it be reasonable that he would have seen it? Yet he tells you that the Judge was sober; that there was no difference between his actions and appearance at that time and other times. Of all men he would be the most likely to notice it,—the man who has charge of the room, as you might say—who is the immediate officer under the Judge; he would certainly have noticed if there was anything the matter with the Judge. If he is honest—and we will come to that hereafter—he could certainly tell you what his condition was. But we were not satisfied with that. We have the testimony also of a man who has known Judge Cox for twenty or twenty-five years. And I desire to call your attention to this fact, gentlemen, that all through the case, on every article, it has been our aim in securing witnesses on the part of the defense—the prosecution having failed so materially in that regard—to bring before you men who have known the respondent for a number of years, men who have seen him drunk and have seen him sober; and let me say right here, in answer to the learned manager who says it is suspicious to hear our witnesses speak of having seen the respondent on fearful sprees, that none of those witnesses prove the respondent on those sprees when he was upon the bench or while he was Judge. We have called men who have known him for twenty or thirty years, and you will find the remarkable fact all through this case that at least four-fifths of our witnesses are men who have known the Judge for a number of years,—from twelve to thirty years; that is the character of our testimony. We have tried to do so in order to convince you that these men, who know him best, would be the least liable to be mistaken; because those who know him best, who know his characteristics, who know and are familiar with Judge Cox's particular and peculiar Coxonian language and actions, would be liable to know just what his language and actions really indicated,—would be liable to give due credit to them whenever they observed them.

A stranger seeing and hearing them would naturally think, not being acquainted with the Judge, and not knowing his peculiar Coxonian nature, that they were indications of drunkenness, and think so honestly, while those who knew him well, would be able to distinguish where the line is to be drawn, would be able to know and to testify when he was Judge Cox sober, and when he was Judge Cox drunk. Now, I say in this case, we succeeded in finding an old acquaintance of the Judge, an old neighbor, that has lived near him for twenty years, and we brought him forward. He was there on that particular day, and heard the charge in the Powers against Hermann case; he was there observing him; he naturally would observe him; he had an interest in the Judge, because he was a near neighbor and an old friend. Do you not think he would have noticed the fact of the Judge being drunk? Do you think Mr. Lansing, the contractor from St. Peter, who was down there (and, if the fact had come out, one who really had an interest in that case together with Mr. Powers,)—do you not think, if the Judge had been drunk when he charged the jury in that case, charging the jury, as he did, against them to a certain extent, that he would have noticed whether the Judge was drunk? A man who says he has seen him drunk, and who has seen him sober, and who says he can distinguish between Judge Cox drunk and Judge Cox sober? He tells you that at that time the

Judge was perfectly sober; that there was no difference in his actions that day from what they had been during the first part of the term, when he came there as a witness, and remained for two weeks or more.

Then besides that, we have the witness that I, for my part, place more confidence in than any other witness upon the stand,—a man whom I never knew before this case commenced, but one whom I have learned to love and respect as I do few men that I have come in contact with in life,—and that is Father Hermann. He was there. He tells you he was interested in that case of Power against Hermann. He tells you he sat there and heard the charge. Of course, he was vitally interested, and you could get an idea from his appearance upon the stand, and from the testimony that he gave, how deeply interested he was in the case. This was not a case mind you, the verdict in which he would have to pay himself, probably, but one that his church was interested in. He was sued individually for the building of this church, but we all know what the relation of a Catholic priest is to his church. It would be the proper thing to sue him, for he is, you might say, a part of the corporation, and, of course, his church would indemnify him. It was a matter of the greatest importance to his church,—a lawsuit, involving, I think, some ten thousand dollars; and, of course, with his love for his church, with his love for his parishioners, he did not desire to see any burden of that magnitude inflicted upon them, and he would naturally take a great deal of interest in the suit. If the Judge sat there drunk, when he charged the jury in that case, do you believe a man with the perceptive powers of Father Hermann, sharp as he is, with the keen eye that he has, would not have observed that Judge Cox was intoxicated at that time, when every interest that he had and every interest of his church was at stake?

Do you think he would have allowed him to do it? Do you think he would not have known whether the Judge was intoxicated or not? And he tells you not only that he was there, and that the Judge was perfectly sober at that time, but that he sat there after the jury was charged; that no recess was taken; that they went right on with the business and that the first thing taken up was Judge Edgerton's motion. He does not know the man; he cannot identify him, or the case particularly, but he knows that Judge Edgerton was interested in it. He waited because there was another case for the church in which he was interested, a case in which there was a motion for leave to file an answer, and he sat there after the jury went out. He heard the argument at the time and noticed particularly this young man from Winona who was such a pleasant young man, and who made such a nice speech, and who treated Gen. Edgerton so nicely; and he heard this other fool who arose in court (he didn't say that exactly, but he came pretty near to it) after Gen. Edgerton had made his argument. He said there was something peculiar about him; he does not know his name, but he says he was "the other young man"; that is the way he identifies him; and he tells you the Judge made a sarcastic remark to him about his seeming to take the same position that the General did. Now, that is what Father Hermann tells you. Mr. Taylor says that the Judge asked him if (or seemed to think that) he was upon the side that Judge Edgerton was upon. Father Hermann tells you if there was anything of that kind it was a sarcastic remark by the Judge that might indicate to him that the Judge thought he was not arguing his case in a proper way or that he was arguing in the same way as Gen. Edgerton.

Father Hermann, in his peculiar way, not knowing the law terms, expresses it that he "pleaded" in the same way that Gen, Edgerton did. That is the very language. "You are pleading like Gen. Edgerton." That is the way he expresses it, and it comes very natural, especially when you take it in connection with testimony of the next witness, viz. Mr. Brownell. Lewis Brownell says he stood there and listened to that argument and that had he been in Judge Cox's place, he certainly would have asked the same question; if there had been any doubt in the Judge's mind, as there was in his, as to which side Mr. Taylor was arguing upon certainly *that* was no evidence of intoxication. Now, I take it, that a man of Mr. Taylor's appearance upon the stand (he doesn't appear to be a very bright man; I may be prejudiced against him, but he does not appear to me as a man of a great deal of force or vigor,) may very probably have argued the case there in a loose and hap-hazard way; I judge that is his way; there is no vigor about him; he cannot come up and take a stand like a man; he is something like a woman, in his language, movements and everything else,—kind of hesitating; and that, very likely, would show in his argument there. Now, the learned Manager continues to throw a slur upon Mr. Brownell in this connection, and one of my associates called my attention to the fact that Manager Putnam had contributed, as his quota to the prosecution of the case, (trying to do justice, I suppose, to the ten dollars a day, that he is paid by a munificent State for his valuable services in this prosecution)—that he has discovered the great fact, that Judge Brownell or Mr. Brownell—it is my fault, of course, to call him Judge, not being judge in fact,—had received four votes at the late election down there while Judge Buckham received some ten thousand.

That was Manager Putnam's quota to this case, and Manager Collins used it and brought it forward to show you what kind of a judge Mr. Brownell was, and what kind of a lawyer he was. Well, I don't know that that proves anything. Last fall, gentlemen of the Senate, I, myself, was a candidate for district attorney, in the Twelfth Judicial District. I never counted the votes, but I believe I got some five or six thousand, and in one town in my district the Devil got six votes. It is a very religious district I live in but I claim that the fact that the Devil got only six votes against me does not prove that the Devil was not as popular up there as I was, because I believe, if the Devil had run, even in that pious district, he probably could have polled a good deal more than those six votes. I think it is about the same way with Judge Brownell. Mr. Brownell, as we all know, was not a candidate for Judge at that election, there was no one running against Judge Buckham, as every body knows; nobody disputed the honors with him—Judge Brownell certainly not—he was not a candidate against him, did not try to run, and the fact that he got four votes was probably due to the fact that somebody was angry with Judge Buckham, and did not want to vote for him, and as some enemies of mine, in my district, thought they would rather vote for the Devil than for me, so down there a few voted for Brownell instead of Buckham. Judge Brownell was not a candidate, and did not ask for any votes. But that does not prove anything, it seems to me, and when the counsel says that Brownell was never able to understand a law argument in his life, and that the fact that Judge Brownell was not able to understand it does not prove that Judge Cox could not or that Judge Cox was sober.

I will say this, that is an assertion that will have to stand upon the

counsel's own account. It is remarkable, if Judge Brownell is such an ignorant man, so poor a lawyer, a man of such poor comprehension, that he did not make that impression upon me. He has his faults, undoubtedly. He is a small man, a man that is quick and rash in his movements, and he is eccentric to a fault you may say in his way. But Mr. Brownell, as appears in the testimony, is an old practitioner, a man that has practiced in New York City, practiced in the State of New York, and practiced law here for, I think, about thirty years or more; and I say, it is remarkable that that same Judge Brownell should be considered by the people of the county in which he lives, a man of such ability as a lawyer that, in that county numbering among its legal luminaries such men as Lewis and Callistón, old Judge Brownell should be the most eminent practitioner at the bar; that he should be employed in the most important cases in that county, and that the people should have the confidence in him as a lawyer that they do have. I cannot understand how that could be so, if he does not understand anything, if he is the numbskull the managers want you to believe he is; because it is a fact, and one that anybody can ascertain by looking over the calendars of the court of that county, (I don't know but what it came in here, I think it appeared in evidence from Mr. Brownell's own mouth,) that he was engaged on one side or the other, of most of the cases down there, and in some of the most important cases that there were at that term of court, and it certainly is a fact, as I observed in looking over the calendar, that in a calendar of one hundred and twenty or one hundred and thirty cases, his name seems to appear in the most important cases tried there, and a great majority of the cases upon that calendar.

I say, it is remarkable that men in the county where such a man lives, who have seen him try his cases and do his work, would, if he were the numbskull the managers want you to believe he is, have the confidence in him which it appears the people of that county have in him? I think I can smell a mouse here Mr. Brownell is a very important witness for the defense. Mr. Brownell stands beside the Rev. Father Hermann you may say, as a great and important witness in this case. The testimony of those two men is most important. They are both men of standing, both men whose opinion will carry some weight with the members of this Senate. Everything must be done to throw that testimony over, if it is possible to do so. That is the secret of the attacks, not only upon the professional character but upon the personal, moral character of Judge Brownell, which the manager has indulged in. He must be crushed, his evidence in this case must be destroyed, because it is of too much importance to allow it to stand. It must be destroyed at all costs and all hazzards, and that is the secret of the animus of the prosecution. Judge Brownell was asked, and I refer to it right here, because it comes in properly in this connection,—whether or not he did not state to Mr. Taylor that the Judge was drunk, so that he couldn't hear his motions. He said he did not say anything about it at all; he had no talk with him about his motives or case at all. He does not remember but what he might have said from hearsay or something like that that the Judge had been drinking. If he did he did not give it as a fact of his own knowledge, but he don't remember that he said any thing about it.

Then Mr. Taylor was called upon the stand, and what does he swear to? Was he asked whether or not—mind you this was the question to Judge Brownell: "whether or not he did not state to Mr. Taylor at that

time, that the Judge was so drunk that he could not hear his motions," and I think Senators will remember it. He said he had no talk with him about motions. Now, what is the question that is answered by Mr. Taylor? It is this: "Did Mr. Brownell at that time, when you were down there, say to you that the Judge was drunk?" "He did." Now, I desire to call your attention to the fact that that was all that was proved there at that time. Mr. Taylor does not say that Mr. Brownell said he thought the Judge was drunk, so that he coul l not hear his motions. Mr. Taylor did not even claim that Judge Brownell said he was drunk at that time, but simply that he had been drunk,—giving no time and no place, as to the Judge's drunkenness. Nothing was alleged, no foundation was proven. That question was not asked Mr. Brownell at all, so that he could not either deny it or affirm it, but what he answered was undoubtedly true, and what he could state, that he did not have any talk with Taylor about any motion, or say to him that the Judge was drunk so that he coul ln't hear his motion, for Mr. Taylor didn't even come upon the stand and say that it was not true. Now then, Mr. Brownell was right upon that. I bring it forth just simply to show, as I think I shall before we get through this matter, one of several abortive attempts upon the part of the managers to do one thing or another, to impeach somebody, or prove something which, indeed proved very abortive. This is one of them. It is an impeachment for lack of evidence or from mistake, or from not knowing what they had asked Mr. Brownell, proved entirely abortive, because Mr. Taylor did not affirm that Brownell had said anything that Brownell had denied that he had said. They didn't ask him that question at all.

Now, then, I think I can safely say, upon this branch of the Waseca case, article two, that the testimony not only stands so that there is a reasonable doubt as to Judge Cox being intoxicated on the 5th day of April, when the motion was heard, but that the great preponderance of testimony goes to show that he was sober at that time; that Mr. Taylor was mistaken; that Mr. Lewis was mistaken, and that Judge Cox was not intoxicated at that time; for against those two is the testimony first of Mr. Hayden and Mr. Collister, of the witnesses for the State, and then the testimony of Dan Murphy, and the testimony of James Murphy, the testimony of Max Forbes, who, by the bye, is not a saloon keeper, as the manager says; they have been so anxious to make saloon keepers out of our witnesses that they are bound even to manufacture them. Max Forbes swears he is a hotel clerk—the manager says he said so on direct examination but on cross-examination he inferred he was something else. He was asked on cross-examination whether there was a bar in the hotel and he said no. There is no intimation that he ever tended a bar in his life; he is too nice a young man for that. We have also Mr. Lansing, an old acquaintance there; Rev. Father Hermann and Mr. Brownell. You have two witnesses for the prosecution against two for the prosecution, and then seven witnesses for the defense, establishing the same fact established by the two witnesses for the prosecution, viz., that the Judge was not intoxicated at that time. I shall waste no more time on that part of the article but proceed to

THE SECOND SUB-DIVISION OF ARTICLE TWO,

covering the whole of that term of court, except that memorable third

day of April when the sham adjournment was had. That day I will advert uponlater.

Mr. Lewis swears that the first week the Judge was sober; the second week he was not quite sober, and the third week he was far from sober.

But that same witness, on cross-examination, has admitted that he cannot recollect anything out of the way in his rulings, his actions, his charges or anything of that kind during any part of that last week, but he tells you that on the second day of April, particularly, he remembers that when the case of Rasmusson against Buxton was tried, (the morning of the day when the Powers case was taken up in the afternoon for the first time,) the Judge was intoxicated. Now, when we take hold of the case, what have we against the testimony of Mr. Lewis? He stands there alone, a barren liar, upon a mountain peak. I say, he stands there a barren liar; nobody will support him. Why, Mr. Hayden himself, who goes as far as anybody, who is his bounden slave and follows him wherever he goes, comes up and swears that he could not notice any signs of intoxication until the third day of April; and he says upon cross-examination that during all that term, with the exception of the third of April the Judge's mental and bodily faculties were not clouded nor affected in any way. Mr. Collister is another of the witnesses for the State, who comes before you and says he was in court every day of that term and that he noticed nothing out of the way with the Judge at all, except on the third day of April. The other witnesses upon that article do not say anything about that week at all. The other witness upon the article, Mr. Newell, testifies to the third day of April; so does Mr. Hayden; Mr. Taylor testifies only to the fifth. Now, then, I say, Mr. Lewis stands in the first instance, a gazing spectacle there; he, alone, affirms the fact that Judge Cox was intoxicated during this last week, outside of the third of April. The witnesses for the prosecution disavow him, will not acknowledge any brotherhood with him; say to you that it is not true.

That is the shape it is left in when we take hold of the case, two against him of the witnesses for the prosecution. Then comes what evidence upon the part of the defense? Mr. Brownell tells you that he was there during the whole of that term of court; that he took part in every case that was there of any importance; that the only day that he was not there, was the day that the adjournment was had on April 3d, and that day he was there in the afternoon. He says that during the whole of that week, as well as during the whole of that term, the Judge was clear-headed and sober; that he directed the business of the whole term with intelligence, skill and ability; that the business of the court was not delayed a minute on account of the condition of the Judge. That is Judge Brownell; that the Judge was perfectly sober during all the time that *he* was in court.

Then there is the testimony of Father Hermann. He tells you that he was present and had a case with Mr. Kepler that was tried between the 27th and the 29th of March; that he again came into court, and was present in court from the 2d to the 5th, in his case with Powers; that he was in court constantly during this trial, and that he was there, I suppose, more or less, the days between—if there was any. It could not have been many, for a Sunday intervened.

Now, then, we have got over the last week. On the 7th, which was Monday, the court adjourned; the 5th was Saturday. We have got the last week. Father Hermann was there all the time that week and the

week before, and he tells you the Judge was perfectly sober, that there was no difference in the latter part of the term from what it was in the first part, either in his actions, his behavior, his manner or his language. And I submit to you, whether or not Father Hermann is a keen observer, in whose word and in whose intelligence you can trust.

I do not think there is any doubt about it; I am willing to parry him against Mr. Lewis any day in the year.

We have, further, the testimony of Mr. Lansing, who says he was always sober during that term while he was there; he tells you he was there during the last twelve or thirteen days of the term, and that the Judge was always sober; and this is the testimony of all who had known the judge for twenty-five years. We have the testimony of Mr. Murphy, the juror, who says that he was upon the special jury that was called there on the 29th day of April, and that he sat there until the end of court; that he was upon that jury and was upon every case that was tried during that portion of the term, I believe. He says he was in court steadily. Before that time he had been called upon three juries, as he tells you, and had seen and observed the condition of the Judge, and he testifies that there was no difference between his actions, his appearance and manner during the last week and what they had been the week before. We have also the testimony of Dan. Murphy, the deputy sheriff, who was right there in court, except when he was sent out on an errand by the Judge. They all testify that the Judge was sober during the last week (of course, that is omitting the charge with regard to the 3d of April); that there was no difference at all in his appearance or his actions.

We have the testimony of Max Forbes, who was a juror there from the second to the Fifth of April, and he tells you that as long as he was on the jury the Judge was perfectly sober; that he had no doubt about it at all.

Now, then, you have Mr. Lewis upon one side, and upon the other side Mr. Hayden and Mr. Collister, the witnesses for the prosecution, so weighing him down that he has kicked the beam, and so holding down on him that he disappears into empty air, and nothing worth hearing can be heard from him. His testimony even as to the 3d day of April is malicious testimony, that will disappear entirely from your view; and for that purpose only have we laid that weight upon the scales. Father Hermann, Mr. Brownell, Mr. Lansing, Mr. Dan. Murphy, Mr. James Murphy and Mr. Forbes all testify unanimously and in the same manner as Hayden and Mr. Collister, the witnesses for the State, viz., that the Judge was sober during that time. If Mr. Lewis is not disposed of by this time, I do not know who is, and I think I can now safely leave that branch. I went into it simply for the benefit of Mr. Lewis.

We come now, to the

THIRD SUB-DIVISION OF ARTICLE TWO.

That is the third day of April, the day the adjournment was had in the Powers case. Now, what is the evidence for the prosecution. Mr. Lewis says the Judge was intoxicated; that his hair was uncombed, and that his eyes were bloodshot. Is that true? Mr. Hayden says that his eyes were not bloodshot; that his hair was not uncombed—no, not that his eyes were not bloodshot, but that his hair was not uncombed. Mr. Newell says that his hair was combed all right. That is another of the

witnesses for the prosecution who say that he was dull and drowsy that morning; that is all he noticed but he thought he was intoxicated. Mr. Lewis tells you that the court adjourned about fifteen minutes after it convened. I believe I had better go through with this in its regular order, though Mr. Lewis says he was intoxicated at the time. Mr. Hayden says he thought he was under the influence of liquor. Mr. Collister says he thought he was under the influence of liquor,—and I am using the exact language gentlemen, taking it right from the book; Mr. Newe'l says the same thing,—that he attributed it to liquor, that he looked dull and drowsy; that is all.

Now that is the evidence for the prosecution upon that point. Against it we have the testimony of Mr. Bohen, the insurance agent down there, who was a spectator in court, who sat there and observed the Judge. He stated that he looked fatigued, but that he was sober; that he had a sober look; says that his rulings were proper, his language clear and his action distinct. We have the testimony of Mr. Winston, who was there and saw him when the adjournment was over, and he says he was sober. We have the testimony of Mr. Lansing, the twenty-five years old acquaintance of Judge Cox, who says he was as sober as ever. We have the testimony of Mr. James Murphy who sat right by the Judge's seat and observed him, and who said that he had no doubt that the Judge was sober; that he was fatigued the night before and that morning, and that was all there was about it. We have the testimony of Father Hermann, who says that although the Judge looked fatigued, that he is confident that the Judge was sober; and that he was *sure* of it; that he had no doubt of it at all, that the Judge was sober that morning. We have the testimony of Dan Murphy, who says that he was sober in the morning when he came, and that of the juror Max Forbes, who says he had no doubt of his sobriety.

Now these are simple opinions; the opinion of Lewis, Hayden, Collister and Newell—four men—against the opinions of Mr. Bohen, Mr. Winston, Mr. Lansing, Mr. John Murphy, Father Hermann and Mr. Dan Murphy, and Mr. Forbes—six men. The opinions of four against the opinions of seven. But we tried, as we have in every one of these charges, to get something tangible upon which you could lay your hands, something that could be sworn to beside opinions. We are not satisfied with opinions that you can deliver so easily, simply making up your minds one way or the other, and then trusting in confidence, swear so and so. We ask Mr. Lewis what his condition, his personal appearance was, and we learn from him that his hair was uncombed and his eyes blood-shot. The witnesses for the prosecution as I said, (two witnesses, Hayden and Newell,) deny that fact, and say that his hair was not uncombed. That is disputed, then, in the first place. We start in with that advantage, that the very foundations for the opinions they give are false—are disputed by their own witnesses, and we follow it up by testimony on the part of the defense, that of Mr. Murphy, that there was nothing unusual about his hair or eyes, nothing to attract attention; by Mr. Bohen, by Father Hermann, by Mr. Forbes, by Mr. James Murphy, by Mr. Lansing, who testified that he had never seen the Judge's eyes red or blood-shot in his life.

Now, all of those men testified that they observed nothing of the kind. Do you think this juror, Mr. Forbes, could have sat there,—that Mr. Murphy, this deputy sheriff, could have sat in his seat; that Father Hermann could have sat by his counsel, all looking at the Judge, who

is always the cynosure of all eyes and that the Judge's hair could have been uncombed, his eyes red and blood-shot, and these men not have seen it? or that this man Lewis would be the only one to observe it,—the only observer in that court room keen enough to see it? I do not think you will believe anything of the kind.

Another little circumstance to which I desire to call your attention is this: Mr. Lewis says the court adjourned in about fifteen minutes after it was called to order. Mr. Hayden and Mr. Collister both say—the one, that they were there about an hour and the other, an hour and a half. Mr. Bohen, a witness for the defense, says they were in there nearly an hour before the adjournment. Father Hermann says it was ten o'clock before they adjourned. Mr. Dan Murphy says it was about an hour and a half, that the Judge sent him to the depot and that he came back and found that court had just adjourned. These are little things, but they serve to show what is the truth.

Now, Mr. Lewis testifies in his direct examination that Judge Cox is rather æsthetic when sober; that at this occasion he put his feet on the bench, and sat with his chin falling on his breast and that that was an indication of drunkenness.

That is the view he takes of it, and that is the view I took of it, and I therefore called witnesses to testify whether that was the fact; and you have upon that question the testimony of Mr. Bohen, who says the Judge was not resting in any such way, that he was resting his head upon his hands somewhat; and he is corroborated therein by Mr. James Murphy the juror, and by Father Hermann. We have the testimony of Murphy, who says the Judge sat writing awhile, and after he got through with writing put his hand up in this way, [indicating] looking down upon what he had written. We have the testimony of Father Hermann who swears to the same thing, that when he came in that morning the Judge sat there writing. We have the testimony of Father Hermann, of Mr. Murphy, and of Mr. Forbes as to the position he occupied on the bench; that there was nothing in his position different from what it had been at other times during the term; that it is not true that he sat with his feet on the table; that it is not true that he put his head down in this way, [indicating.] If he put his feet on the bench during the term, it was evidently to avoid hurting the boil he suffered from during the term, not to have it pain him, so that he could rest his feet, and not strain every muscle in connection with or near to that boil.

That is explained to you by Father Hermann and explained to you by Mr. Murphy,—"just the same position as he always took," and Mr. Forbes testifies to the same thing. Mind you, these were men that were right around the Judge there,—men who sat on the jury, and Mr. Forbes says before he had been called on the jury he had been frequently in the court as a looker on Father Hermann spent half the term there, and he tells you this same thing. Then the managers call Mr. Hayden to show you that such was not the case. The managers have in their heads the idea that Father Hermann swore the Judge put his feet on the witness box. They could not have real the testimony; you certainly did not hear it. They called Mr. Hayden to show that in order to be able to do so he would have to be eight feet long. Father Hermann did not testify to anything of the kind. When Hayden was asked if there was not a box there, he said he did not know anything about it. They had been there and measured it, even to the inch, he and Lewis, and Hicks, the glorious triumvirate! but they did not know

anything about the box. I think the fact that they do not deny it was there, is proof enough that Father Hermann was correct, that Murphy was correct and that Forbes was correct. I say these things show that Judge Cox was not drunk, and that the basis or foundation upon which they have built their hypothesis of drunkenness, his peculiar actions, having been removed, the superstructure, his drunkenness, must fall to the ground.

Now, again, Mr. Lewis tells you, and I think he is therein corroborated by Mr. Collister, that the Judge was half asleep. No, Mr. Collister does not say that. He says that he was sleepy; at any rate, that he was not anything else; he was sleepy. Mr. Lewis says he was half asleep. Now, as far as that is concerned I should not be surprised if the Judge was half asleep; I should not blame him if he was.

What was the evidence as to what he had been doing? The first evidence is that he had been at that term of court for about three weeks; that he held court almost from day-light to mid-night, and, undoubtedly, had been out with the boys a little in the evenings. I do not doubt it. He probably played cards there a little. As I explained, in my opening argument, there was a very good reason why he should; the boil would not allow him to sleep; he had to sit up and endeavor to drive time away by playing cards with other gentlemen. Here is a man who sits there during a term of court lasting fourteen days. He starts in at 8 o'clock in the morning and keeps on until half-past twelve; begins again at half-past one and continues until six; comes back at eight and keeps on until ten or eleven o'clock. Now I ask you have any of you tried it?

You are tired of sitting here six hours a day. What do you think of respondent sitting for twelve hours? Not sitting whittling or smoking, as some senators have done, but paying close attention to what is done; exercising his brain, his mind, ruling upon questions as they come up, listening to arguments, examining pleadings—and that is one of the greatest labors of a judge—to examine pleadings, to try to make out what some of those fellows who do not know very well how to plead, who are unable to convey their ideas in a proper manner, try to say in their papers. He sits there exercising his mind for fourteen days, twelve hours a day. I ask you whether a man would not be tempted to be sometimes asleep or half asleep under such circumstances? Add to that the fact that the Judge was suffering from this boil as is shown, which, of course, did not help his comfort any; it did not add any to his happiness; it did not give him any rest, if it did not detract considerably from it. Bodily pains and hurts, at the same time that he was exercised bodily and mentally, and working there, day and night you might say, during that term of court. Then add to it that the evening before, as Father Hermann testifies, (and you have no reason to doubt him, as he is corroborated by the witness Murphy and not contradicted,) the court had sat until eleven o'clock. Mr. Murphy tells you that when court adjourned all the stores had closed, and everything was quiet on the streets as they were going home. They had stayed there until eleven o'clock the evening before, and Father Hermann tells you that the room was crowded, that the air was foul and was very sickening. What wonder if the Judge contracted a sick headache that evening, or what wonder, even if he did not contract it, that he felt wearied, fatigued and sleepy next morning.

Would it be evidence of intoxication, necessarily? Not at all. There were all elements there necessary to create on his part a condition of

body and of mind such as is described by the witnesses for the defense, as well as by Mr. Collister, a witness for the prosecution, who tells you that the Judge was sleepy, that that was what the matter was with him; that he was drowsy. That is also what Mr. Newell tells you. Now, I put the question to you here, do you believe the testimony of Mr. C. R. Davis, the intimate friend of Judge Cox, his old partner, one who has known him for a lifetime, who has frequently seen him on sprees, and who tells you that the Judge is never drowsy or sleepy when intoxicated or on a spree, but is quite the reverse? And that he has never seen him after a spree when he has been drowsy or sleepy? Take that in connection with all that is claimed on the part of the prosecution, outside of Mr. Lewis probably, is that the Judge was drowsy and sleepy the next morning, and did not pay attention when Mr. Collister called his attention to a certain fact, Mr. Lewis crowding that witness; that he held his head down. Now would you wonder at all at this under such circumstances, that with the fatigue of the term and the fatigue of sitting up the evening before, with the fatigue of the boil, with the fatigue naturally resulting from the close condition of the room the evening before, that he was wearied and tired looking, that he was even sleepy?

On motion the court here adjourned.

FORTY-FOURTH DAY.

ST. PAUL, MINN., Thursday March 9th, 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, Bonniwell, Buck, C. F., Campbell, Case, Castle, Clement, Crooks, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., McCrea, McLaughlin, Miller, Perkins, Peterson, Powers, Rice, Shaller, Shalleen, Wheat, 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.

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.* Mr. Arctander will resume his argument.

Mr. ARCTANDER. I think I had shown, Mr. President, at the time of the adjournment last night, very conclusively, that the testimony of Mr. Lewis corroborated to a certain extent, as it is, rather hesitatingly by the testimony of Mr. Hayden as well as by Mr. Collester and Mr. Newell, also rather hesitatingly, in regard to the intoxication of the Judge, or rather, as to their opinion of his intoxication, was conclusively contradicted by men who must be presumed to have known what

that condition was, who had the opportunity to know and observe him and who undoubtedly are honest men, men who have no purpose, no interest in lying or telling a false story.

I think I had gone farther and shown that some of the incidents testified to by these witnesses as going to show the intoxication of the respondent, were not true. Some of them were denied by their own colleagues, by the other witnesses for the prosecution, I mean, and further clinched by witnesses brought here by the defense. I think I had fully disposed of the incidents which were claimed by Mr. Lewis, that the Judges hair that morning was uncombed, that his eyes were bloodshot, that he had his feet on the bench and his head down on his breast, and that he was half asleep, etc.,—or that he was sleepy, at any rate. I think, I say, that I had disposed of all that.

Mr. Lewis was asked whether or not it was not a fact that at this time the Judge suffered from the boil that has been mentioned in evidence, and he tells you very shrewdly that the boil was cured before that time. That is also only a small circumstance, of course, but it goes to show, it all goes to characterize the testimony of the witnesses and to show its animus. Now he knew probably very little about that thing, except what he would infer from the outward appearance of the Judge, his position on the bench, and so forth, and certainly if he did pay attention, if he knew anything about it at all, it must, under the testimony introduced for the defense, conclusively appear that he is mistaken, to say the least, or not honest in his statements upon this point, because Mr. Dan Murphy and Mr. Forbes both testify that they know, of their own knowledge, that the Judge was suffering from this boil until the last day he held court there; that he was not cured at that time. Father Hermann tells you that at this particular time the position of the Judge indicated that he was suffering from this Job's comforter, and that not only his position indicated it but that his looks were those of one in pain; that you could see from his appearance, that he was suffering. I say that it does not amount to much, but it shows the animus of the evidence upon the part of Mr. Lewis.

Mr. Lewis further says that the Judge sat upon the bench there that morning before adjournment but did not say a word. Mr. Collister swears, too, that he could not get the attention of the Judge when he wanted to stop Mr. Lewis in his cross-examination. Now, let us see how that testimony corresponds with the other testimony introduced. Mr. Hayden, the witness for the prosecution, Mr. Lewis' right bower, tells you that the Judge that morning would not allow the attorneys to speak and make their arguments, but cut them off quick. How does that tally with the statement that he sat there and didn't say a word, that Collister could not get his attention at all, or rather that he was entirely inattentive, and as if he was not in the court room? We have the testimony of Mr. Bohen that several rulings were made there that morning. Several questions were asked and objections made, upon which the Judge ruled. We have the testimony of Father Hermann to the same effect. We have the testimony of Mr. James Murphy and the testimony of the two jurymen, Mr. Forbes and Mr. J. Murphy, to the same purport, that there were several questions that came up this morning which were argued to the court and upon which he ruled. Now, how does that tally with the allegation of Mr. Lewis and Mr. Collister, that the Judge sat there and didn't say a word, and that it was

impossible to get his attention? That he seemed to be dead to what was going on?

But we come now to the main point in that charge. It became necessary for Mr. Lewis and for the managers in order to establish the article, in order to prove the allegations of the article, not only to show that the Judge was intoxicated at that time but also that he was intoxicated to such an extent that it prevented business from going on in the proper manner.

They called upon Mr. Lewis to establish that fact, and he generously responds to the call, and tells you that the Judge was intoxicated, and by reason of that intoxication they were forced to ask for an adjournment, to make a sham motion, claiming that a witness was to be had from some other place, and that Mr. Collister asked for that adjournment. Mr. Collister says the same thing substantially; but before that case is left for the defense to step in we will inquire to see what support the theory of the defense gets from the evidence for the prosecution, and we again find considerable comfort in the testimony of Mr. Hayden, who corroborates Father Hermann in the statement that it was not Mr. Collister who asked for that adjournment, but that it was Mr. Lewis. As to Mr. Hayden, he might easily be mistaken on that question; Mr. Collister might easily be mistaken: it is three or four years ago as I understand, and probably a matter that he did not pay particular attention to at the time; but the man who could not possibly be mistaken is Father Hermann; because he not only remembers the fact that Mr. Lewis asked for the adjournment, but he remembers how the thing was brought about; and another man who certainly remembers the facts as they were is Mr. Lewis, that is to say if he wishes to remember; if he has any conscience whatsoever.

Father Hermann comes before you and tells you that the adjournment was not asked on account of the condition of the Judge at all, but that he caused that adjournment to be made, and he tells you a reasonable and probable story. He not only has his word, his reputation and his high standing to back him, but he tells you a story which every man in his heart feels to be reasonable and true. What is it? The action he was trying, in which he was the defendant, was one to recover for the building of a church under a special contract. Now, I take it for granted that even we can take judicial cognizance of the fact that whenever contracts of that kind are made with Catholic churches, that it is necessary in making the contract, in order to bind the corporation that it should have the approval of the bishop of the diocese, who is the head of the corporation. That seems to be so from Father Hermann's testimony, as far as it was allowed to come in. Here was a suit against Father Hermann, nominally, but virtually against the corporation, for the building of that church. It seems that there had been two sets of plans and specifications. Father Hermann relied upon a certain plan as the plan under which the church was built, and I apprehend was prepared to show that. I suppose that was what the case was about, really, that the church was not built according to contract, and that he therefore had an offset against any claim which Mr. Power might have for any balance of his pay.

Father Hermann comes into court on that theory; "here is his contract and he has not fulfilled it." He comes into court on the morning of the third; he finds specifications which have been offered in evidence,

which are not the proper specifications; which are not the ones he claims the church was built under. He discovers that morning as Mr. Collister throws down his papers the wrapper in which these specifications had been fallen down upon the table, out from the other papers. He notices the handwriting of a man well-known to him on the wrapper, that of the Right Honorable Bishop Grace and that the wrapper is addressed to Mr. Powers. The thought immediately flashes through his mind: "They will show that these specifications have been approved and that they are the ones under which the church was built, by showing that they were sent to Bishop Grace and by him returned to Mr. Powers," and it strikes him that the case may hinge right on that wrapper, and he speaks to his attorney, not after he has started upon the cross-examination as the managers said, but before he starts in, he tells him to go and drive the witness hard, so as to attract Mr. Collister's attention, and then to come back and take that paper so as to let him see if it is, as he suspects, an envelope which has been turned over; which in itself you might say, would be proof of transmission to both places,—on one side the address to Bishop Grace, in Powers' handwriting, and on the other side, the address of Mr. Powers, in the Bishop's handwriting, showing, or tending to show, that the papers contained in it had been sent to St. Paul and returned. Now, that is the testimony of Father Hermann, so far as it goes. He tells you that he considered that document of importance, and that when he first saw it he thought there might be a trick in it, and he wanted to see it and satisfy himself, so he asked Mr. Lewis to go up and badger that witness —and I apprehend that there is nothing wrong in itself in badgering a witness. He asks Mr. Lewis to do it and Mr. Lewis does it.

Father Hermann is a shrewd, keen man; he knows the character of Collister, he knows that when the witness is pursued in that way he will run to his rescue; and he tells his attorney whenever he does it, do you come back and get that paper,—not steal it. There is nothing dishonest about it. He simply desired to read it. All things are fair in war, and I suppose they are in a law suit, if they are not dishonorable in themselves. And I suppose it was not dishonorable for him if he could, by an artifice, get hold of the testimony of the other side and see what it was, to do so. If he had stolen or destroyed it, as Mr. Lewis evidently did afterwards that would be a different affair. But that was not in the mind of Father Hermann, nor is it in evidence that it was with his consent or knowledge that that thing was done. Mr. Lewis goes and does just as Father Hermann instructs him to do, and just as Father Hermann had foreseen. Mr. Collister comes to the rescue of his client. Mr. Lewis turns back, gives the envelope to Father Hermann, and Father Hermann examines it and finds it to be just what he was afraid it was, tells Mr. Lewis it was a new development in the case and that it is neccessary to get an adjournment to consult as to what course to take in the matter. Is there anything improbable in that? Is there anything improbable in Mr. Lewis speaking up and asking for an adjournment? Besides this Father Hermann is corroborated in his statement by Mr. Hayden; the other witnesses naturally not having paid attention, so that they can not say any thing one way or another about it.

Now another thing comes in here to show that the theory of Father Hermann, and the theory of the defense is the correct one, and that the theory of Mr. Collister and of Mr. Lewis is the wrong one. If it is true

that the Judge was so intoxicated that he did not know what he was doing, that he was so intoxicated that the attorneys there became satisfied from his actions and conduct that he was not in a fit condition to go on with that case, and therefore got up a sham motion and asked for a continuance there and then,—how do you reconcile that state of affairs with the fact that has come out, even in this examination, as to the remarks the Judge made at the time this motion was made? Are these remarks of the Judge, "this is an unheard of proceeding, gentlemen, to adjourn a case in the middle of a trial for the purpose of getting a witness," the language of a drunken man? Is it not the sound reasoning and the sober language of a man in the full possession of his mental faculties? Certainly it shows the Judge fully appreciated the situation of the case as it stood; that he fully appreciated the impropriety of that motion and of the proposed proceeding, and that his mind revolted against it. It seems to me that, in itself, goes to show that the Judge was there in a condition incompatible with the one that these gentlemen from Waseca, Mr. Lewis and Mr. Collister, attempt to put him in.

You will remember that Mr. Lewis was called in rebuttal to bolster up his own testimony, and if possible, to crush Father Hermann. He was called to show that there was no truth in what Father Hermann said; that Father Hermann in other words lied, or that, if he did not lie, that he was mistaken about the day and tells you of what he has no recollection about at all; that it is not true as Father Hermann says that Lewis asked for that adjournment, nor is it true that he handed him a paper on that morning, either this paper or any other; and here is another remarkable fact, gentlemen. This man Lewis says he does not remember of having handed Father Hermann a paper at all. He remembers the wrapper, but he does not remember to have handed it to Father Hermann, but if he did hand it to him, he is sure he did not do so on the third, that it must have been on the second. I ask you how that man can, in the same breath, swear that he don't recollect ever handing it to him, and then that if he did, it was not on that day. No, it would not suit his plans to have it happen on that day. But how does he know that it was not that day, if he does not know whether he did it at all or not? How can a man swear in that manner and swear honestly? Mr. Collister is also called upon the stand to rebut that occurrence, and to show when these specifications were introduced. He says they were introduced on the first or second day of the trial, according to his recollection.

But he was asked whether he had this paper there on the second day of the trial, and he said he might have had it, that he does not remember anything about it. Now, of course, he would be likely to have all of his papers there, even if the specifications had been already introduced. The question would come up afterwards, when Father Hermann's testimony was in, that the church was not built under those specifications, but under others; then, and only then, the proof furnished by the envelope would become material. So that it would not follow that this envelope would be introduced at the same time that the specifications were introduced, because all that was necessary at first was to introduce the testimony of Mr. Power, that he had built the church under those plans and specifications, and Father Hermann denying it and claiming that he built it under another, and that his had the approval of the Bishop and the other had not, it was then for Power to show by the

envelope, in rebuttal, the approval of his plan by the Bishop. Very likely Mr. Collister had the papers all the time. I do not blame him for saying that he could not say whether he had them there that day or not, because it is a matter which it would be impossible for him to remember, a small circumstance. Now, I take it for granted, that Father Hermann's testimony, corroborated by that of Mr. Hayden in regard to that adjournment, must prevail, and that you must become and are now convinced in your minds that it is not a fact that the Judge was intoxicated that morning.

That it is not a fact that that adjournment was had on account of the condition of the Judge, because Father Hermann tells you, and I think you will take his word against any set of lawyers with faces like that of Mr. Lewis, that the adjournment was not had for that reason; that the testimony of Mr. Lewis is wilfully and maliciously false.

Now, we come to Mr. Hayden. Mr. Hayden tells you that on the memorable occasion when court was adjourned, and the Judge was, in his opinion, under the influence of liquor, he took the Judge up to the hotel and put him to bed. Now, in the first instance, I desire to call your attention to the fact that Mr. Hayden on this point testifies on cross-examination, first, that the Judge did nothing out of the way that morning, that he was willing to work, as he always was during the term, and then further, upon cross-examination, admits that, as a matter of fact, he has thrown in this taking him to the hotel and putting him to bed simply for effect; simply to prejudice your minds and create in your minds the belief that the Judge was intoxicated, and in such shape that he could not take care of himself; for he tells you, upon cross-examination, that it was not a fact, that he did not take the Judge to a hotel, he simply walked up to the hotel he claims, along side of him.

There was no force, there was no persuasion, no dragging him, or anything of that sort and when they come to the hotel he does not put him to bed either. He says, on cross-examination, that he went up to the rooms with the Judge, that the Judge took off his coat and took out his teeth and laid down on the bed, and that is the extent of his labors towards putting the Judge to bed. He then left.

I now desire to call your attention to the fact that Mr. Hayden has been thoroughly impeached upon this question, and I do this, although it is a small matter, and does not amount to much, because I claim the doctrine is well established that when we find that a witness has testified falsely in one thing, we have the right to apply the old rule of law "false in one, false in all," and disregard his testimony altogether. Now, did Mr. Hayden take Judge Cox and put him to bed that day? In the first instance he admits himself on cross-examination that he did not. If he did not, did he go up with him at all? Upon that question there is four witnesses against Mr. Hayden, uncorroborated. In the first instance, Mr. Winston, who himself walked up with the Judge, tells you he walked up with him with a big crowd following; that he walked up with the Judge, talking with him, as far as the livery stable; that the Judge went over to the livery stable; that that was the last he saw of him, and that he was sober on that occasion.

That was Mr. Winston, but they claim that he is impeached. Well, we will see by and by whether he has been impeached. The next witness that impeaches Mr. Hayden in his statement is the old man Mr. Lansing, who tells you he remembers the time that the adjournment

was had; that he remembers walking up street following the Judge; that on the other occasions when they went up he generally walked with the Judge, but that this morning the Judge was accompanied by another gentleman, a stranger to him, a stout, strong, man,—a man corresponding in appearance with Mr. Winston, who tells you that he did walk up with him and Mr. Lansing swears that although he don't know who it was and could not say just who it was, yet he does know that it was not Mr. Hayden. Then we have Dan Murphy, the deputy sheriff, who was sent out of the court room to the depot on an errand for the Judge, to find out about the train; he goes away and finds when he returns a crowd leaving the court house, or on the sidewalk near the court house, —on one sidewalk as he comes down on another. He goes up to the court room and tells you that he met Del Rodell on the steps, and in the court room he finds Hayden. Now here is a crowd walking away from the court room, Hayden sitting up in the court room alone—the only man left there,—and Murphy finding him there, while the crowd is on the sidewalk.

Now, I say that that testimony impeaches that of Mr. Hayden that he walked up with the Judge and put him to bed. The manager stated in his argument that it was remarkable that Murphy should remember this fact. Well, probably it is, but if it is remarkable that he should remember it, it was certainly as remarkable that Mr. Hayden should remember walking up with the Judge. It is no more remarkable in the one case than in the other. But the learned manager says, Hayden remembers it because it was an unusual occurrence—he went up to put the Judge to bed. Yes, but Mr. Murphy remembers it because it was an unusual occurrence too. Why? He was sent down to the depot by the Judge about a quarter of an hour or thirty minutes after court had convened, to find out about the train, and when he comes back with information to the Judge he finds instead of the Judge an empty court room, in the middle of the forenoon, at ten o'clock, and only the clerk present. Certainly that must have struck Mr. Murphy at the time as something very peculiar. He must certainly have had some curiosity to learn why court happened to adjourn so suddenly, at least two hours and a half before the usual hour of adjournment, and right in the middle of a law suit. It was certainly something that would strike him as remarkable; and I should think if there was anything remarkable in Hayden walking home with the Judge, there certainly was in Murphy doing his errand and coming back expecting to find the court in full blast, and instead thereof finding the crowd going off on the sidewalk and Hayden sitting alone in the court room; and it was a matter that would be likely to impress itself upon his mind and memory. Besides these three witnesses we have the evidence of Father Hermann upon that point. He tells you that he saw the Judge leave the room; that sometime after the people had left the room, and while the witness was gathering up his papers, he saw Mr. Hayden sitting at his desk. Of course, if Mr. Hayden was writing at his desk in that room after the Judge left, it is not reasonable to suppose that he walked up with him, nor is it probable if he was found by Mr. Murphy working in the room, after he saw the crowd dispersing on the sidewalk, that he went off with the Judge, nor if Mr. Lansing and Winston walked up with the Judge, and Mr. Hayden was not present, is it probable that what he says about that matter is true. But Mr. Collister was called to testify on

rebuttal and he was the only one. It rather appears to me that he was the only one because the managers discovered, I suppose, after a while, that that kind of testimony did not amount to much.

He was called to bolster up Mr. Hayden. He says what? He says he saw Hayden going down the stairs from the court room ahead of the Judge and the Judge following. Well, what of it? What if he did? Does he claim that he knows whether Mr. Hayden came right back again or not. He says he knows nothing about it; for all he knows Mr. Hayden might have come back again immediately for he paid no attention to it. That fact does not impeach any of those witnesses. Father Hermann does not say that Mr. Hayden did not go down stairs first, and then come back after the Judge left; all he says is that Mr. Hayden was sitting at his desk writing long after Judge Cox had left and while Father Hermann was gathering up his papers, and that he sat there when Father Hermann left, and that the Judge left some time before that. The other witnesses are to the same effect. No body claims that he might not have gone from the court room to his office down stairs, or have had a talk with the Judge in the hall that day. That is all. Mr. Collister's testimony goes to show, that he did go down, but he does not know whether or not he come back immediately; so I say that that proves nothing, absolutely nothing. But they say that Mr. Winston is impeached. Well, let us see about that. Mr. Winston was asked on cross-examination how he knew this to be the 3d day of April. Now, mind you, in the first place, he identifies the occasion without any date, because he says it was the occasion on which court was adjourned in the forenoon. He identifies the occasion without any date, because it is already in evidence from other witnesses that were examined on that point that the only occasion in Waseca, or which court was adjourned in the forenoon, was this time in the Power against Hermann case.

The occasion is sufficiently identified by Mr. Winston without reference to dates at all, but he says further than that, I *know* it was the 3rd day of April. Why? Because I know that my brother-in-law came from the oil regions of Pennsylvania on the 2nd day of April, and I remember that it was the day after he came, and I remember that he had gone hunting with the gunsmith next door. That is what he testifies to, that he knows it is the 3rd day of April, not because his brother went hunting with the gunsmith, but because he had come the day before. It was the day after his brother had arrived and he knew that was the second day of April; and he further adds that he knew he went out hunting that day, and when asked how he knew he went hunting he says he came to think of it when he went to the court room, and said to his partner he would like to have his brother-in-law go with him, and that he was sorry he was out. The manager has called the gunsmith to prove that it was not on the 3rd day of April that the man was out hunting with him. In the first instance that testimony of the gunsmith proves what? Take it for granted that he says that this was the first time this man had been out hunting with him, or the only time for that matter; what does it prove? Simply this fact, gentlemen, that Mr. Winston is mistaken as to who went out hunting with his brother-in-law; but it does not prove that he is mistaken in the fact that his brother-in-law did go hunting the day after he came. It simply proves that he was mistaken as to the man who went with his brother-in-law, and that is a very immaterial circumstance. But if you will take the tes-

timony of Mr. Neibelz, the gunsmith, you will see that he did not testify to anything of that kind. What is the testimony?

Q. State the first time you went hunting with him?

With Mr. Ecob the brother-in-law.

A. I went hunting with him on the 13th of April, 1879.
Q. For the first time?
A. For the first time, that I recollect of.

Now, you see he did not even claim that it *was* the first time that he went out hunting with him; but the first time that he can recollect of. There is a mental reservation there. I suppose that was done because he was swearing on Mr. Hicks' statement, and he wanted to be a little careful about it.

Q. Can you state how long Mr. Ecob had been in Waseca when you went hunting with him?
A. I couldn't tell; I don't remember the date when he came, nor how long he had been there before he went shooting with me, but I remember I went shooting with him on the 13th of April on account of we killing a swan.

Again they try to show that he had no gun before that time, and that therefore he could not have gone out with Ecob.

Q. Did he bring that gun with him when he first came to Waseca?

The gun of his own that he had on the 13th of April.

A. When he first came to Waseca the gun did'nt 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

Rather intimating in his testimony all the way through, first that he does not recollect and will not swear that it was the first time he went out with him, but only that it is his best recollection; and again that it was the first time he went out shooting with him *with that gun*. He might have borrowed a gun before and went shooting with him, and when you come to look over the testimony it rather looks as if that is the way the man intended it,—to tell the truth but to tell it in a clouded manner, or rather not to tell an untruth right straight out but always with a mental reservation to save his conscience.

Whether his testimony amounts to much as to date I leave to you to say, because he tells you that he *knows* it was the 13th day of April because Mr. Hicks told him so. How Mr. Hicks knows anything about it, or how Mr. Neibelz could swear on the word of Mr. Hicks, I do not know. I am willing to take Mr. Hicks word for almost anything, but I do not like to do it in this proceeding, nor as to what happened down there on that occasion. Now then, Mr. Neibelz testimony does not contradict Mr. Winston. In the first instance he says, if he says anything at all, only that Mr. Winston is mistaken as to who the man was that went gunning with his brother-in-law, but he does not even do that, because he don't claim it was the first time; he is not sure of it. Now, if his testimony falls, and does not amount to anything, then the testimony of Mr. Welch does not amount to anything, because that is simply to

show that at a certain time these two men came to his stable and got a team and went out hunting. But we do not deny that they went out hunting on the 13th of April. That fact does not prove that they did *not* go out on the 3d of April; and that they got the first livery team on the 13th, does not prove that Mr. Neibelz or Mr. Ecob, or any one who went with him, did not get a team from another livery stable, or did not get the team of Mr. Neibelz, the gunsmith, to go hunting with. I desire to call your attention to the fact that Mr. Winston did not say anything about shooting a swan on the 3d of April. There is nothing about the swan in his evidence, so they do not identify the occasion when his brother-in-law was first out, being the 13th of April, by anything that Mr. Winston testified to.

The whole thing is therefore wind, wind, nothing but wind.

I desire now to call your attention to the fact that Mr. Winston, instead of being impeached by the witnesses that have been brought against him, is confirmed and supported by them. You remember that Mr. Winston's testimony was that when he walked up with the Judge from the court house that morning he went to the livery stable with him and the Judge said he had some business over there, that he wanted to get a team or something to that effect, and walked over to the livery stable. The livery stable keeper came down here with his register, and it shows that on the 3rd day of April Judge Cox did get a team at that livery stable and drove out. Now I say that Winston is directly supported by Darling Welch, the livery keeper, because the latter says that on the day Winston followed the Judge from the court house to the livery stable, Judge Cox did get a livery team, and whether it was in the forenoon or afternoon that he drove out I care not, because it goes to that extent—when he got up there he was feeling badly, was in fact sick, and he intended to lie down, and if he did not get better to order a team, probably to order it in the morning, to go out at noon or in the afternoon.

Lewis is the only one in Waseca that in the evening of that day, when the trial was finally had, makes Judge Cox intoxicated. Mr. Collister says he could notice nothing; there was no objection on his part to going on and Mr. Hayden says he was all right. And all of the witnesses for the defense, four or five of them—the two jurymen, Mr. Lansing, Dan Murphy, the deputy sheriff and Father Hermann, all testify that the Judge was perfectly sober that evening.

Now, I desire to call your attention to the fact that it has appeared in testimony here,—Mr. Brownell, too, saw him in the afternoon of that day, court having been adjourned to that time, when he went down to court. He did a little business, but, finally, feeling that his head bothered him so that he could not proceed he told them plainly, right there in court, that he suffered from a sick headache and could not go on with the case and that they would have to adjourn until evening. It is in evidence that he stated so at the time by all the witnesses for the prosecution, Mr. Hayden and others, by Father Hermann, by Mr. Murphy and by Mr. Forbes; and it is also testified by Darling Welsh that at the time the Judge was taking the ride, either immediately before or at the time he complained of his headache. Now, the counsel says that to go out riding is rather a curious way to cure sick headache. Well I do not know whether it is or not, but I think that if the learned manager knew as much about the science of medicine as he does about the science of the law he

would not make such a statement. The manager made a further statement upon that point. He said that one of the witnesses testified that when he walked up with the Judge they took a pony of beer, and he says that was a curious way to cure a sick headache.

Yes, it would have been, undoubtedly; there can be no doubt about that; but the trouble is, gentlemen, none of the witnesses swear to that. That is where the shoe pinches. There is no such testimony. The testimony about the pony of beer is that given by Mr. Hayden as to the time he was at the Judge's room at another occasion entirely, and had no reference even to this day. There is not a particle of testimony to show that Judge Cox took a glass of beer or anything else upon that day, and I don't apprehend that he was in a humor to take any. But certainly, if you have a sick headache and lie down to try the effect of that remedy and find that does not relieve you—I know myself, from experience, what a sick headache is—you will try almost anything. I know that it would be reasonable, that it would be proper, that it would be just the thing that you would try to do—to ride out and get an airing, to drive around and get a little fresh air, a sick headache being produced, in numerous instances, by foul air in a room like this, or a room such as the court room was down there—it is the very thing you need. It is true you need rest, but if you can take rest and the fresh air at the same time, that is just what you want.

Now, the counsel tells us that the Judge when he was down there at Waseca was guilty of a fearful crime!

He says that at that time there was a statute which provided that saloons should be closed at 11 o'clock at night, and we find by the testimony for the prosecution as well as for the defense, that he broke that law, he says—the testimony of the prosecution placing the Judge in saloons at two or three o'clock in the morning; that of the defense about 11 o'clock, or after that time—certain it is that the Judge was in the habit of frequenting saloons after that hour; and, he remarks, that was a violation of the statute by the Judge, and exhibited a sad state of affairs. Perhaps that statute applied to Waseca; I do not believe it did. I think that in the case of cities the matter is left to be regulated by their charter or city ordinances. I may be mistaken about that; I do not lay it down as the law, because I did not consider the matter of sufficient importance to justify the labor of looking it up. But that statute certainly does not make it a crime to be in a saloon. It makes it a crime to keep a saloon open, but it does not make it a crime to be in there; and if that is a crime, an impeachable crime, Judge Cox of my own knowledge, is not the only Judge in the State who deserves impeachment. He had no business to close that saloon. If the saloon was open he had a right as well as anybody else to go in there. He was not the law breaker; it was the saloon keeper who broke the law.

The manager asks why we did not have Baker down here to deny the statement made by the witness they brought here, the loafer Blower, the chief of police, I believe he called him once. Yes; he looked like a chief of police and he testified like one. I will tell you why we did not bring this man Baker here. In the first place this man Blower proved nothing against the respondent. He said he was drunk there some night. We cared nothing for that, we did not think we were here to answer for midnight debauches not connected with court proceedings,

and we thought we had witnesses enough from Waseca without bringing any up to contradict matters that have not been proven, or to oppose insinuations thrown out by the managers, which do not prove anything.

We thought more of the time of this Senate, and more of the intelligence of this Senate than to incur your displeasure by such actions.

Again the managers lay a good deal of stress upon the testimony of some witnesses, from whose evidence he read at great length, who were called in rebuttal of the testimony of Mr. Dan Murphy, and whose testimony, he claims, went to show that Dan Murphy was unworthy of belief, that he could not be believed by this Senate. Those witnesses testify, it is true, to a certain state of facts; some of them do not amount to much; some of them probably showed that Judge Cox, in Mr. Murphy's presence, might, in some parties opinion, have been slightly intoxicated down there, at a time when, as a private citizen, if he saw fit, he had a right to be intoxicated. Whether it amounts to anything or not they do not, however, contradict Mr. Murphy in the least. Why? Mr. Murphy did not swear to any different state of affairs. After Mr. Murphy was asked whether, as bailiff, he had been present in court at every session that term, he was asked whether or not Judge Cox was intoxicated at any time during that term. That had reference to the question we asked him, to the subject matter under discussion, viz., whether Judge Cox was intoxicated in court. That is all we cared to ask about anyhow; that is all we considered we were here to answer to; that was the subject matter under inquiry, and I framed my question in such a manner as to ask only whether the Judge was at any time during that court intoxicated.

Now, that had reference only to the term of court and in court, and had no reference to the conduct or actions of the individual, E. St. Julien Cox, during the night or when out of court. And upon cross-examination it was brought out that he had seen Judge Cox on two occasions at one time at night, in the saloon of Wallenstein & Hall, and at another time in the back room of a saloon where there were some four or five bottles of beer to be shared by six men, and where the Judge was the coolest of the crowd. When asked the witness whether or not on either of those two occasions Judge Cox was the worse for liquor or was intoxicated and he said he was not. Those are the only two occasions, outside of the court room, as to which he has testified; these are the only two occasions about which he has been asked; so that the witnesses who have been brought here to contradict him as to something that he has not said, might just as well have been kept at home.

But I desire, nevertheless, to call your attention to the fact that the testimony of those witnesses does not amount to anything. There is the testimony of Dr. Cummings. In the first instance, does he think that at that time Judge Cox was intoxicated? No! He *thinks* he is "under the influence of liquor:" that is what he says.

He will not say intoxicated; he thinks he was under the influence of liquor. I do not doubt it; I do not doubt that he was; I do not doubt that Judge Cox had drank a glass of beer. They had some New Ulm beer down there and he sent for a glass and undoubtedly drank it; it would d be a shame if he had not. But this man, Dr. Cummings, does not know anything about Judge Cox. He never saw him drunk; but he judges as he says from the fact that Judge Cox was eccentric in his conversation. He had never seen Judge Cox before, had never met him

and did not know anything about his eccentricities; and I vouch to you that to a man who meets Judge Cox for the first time the latter will, be he never so sober, appear as if drunk. As an illustration of this I desire to mention that one day last week, a Senator on this floor, accompanied by a friend, walked down street with Judge Cox, in conversation with him, and the Judge was discussing a ruling made by this Senate which he considered unjust—of course it was just and proper, but he considered it unfair—and in the course of his remarks, as is always his habit, he was making gestures, strange motions of the head and face, and after the Judge stopped and left them at the Clarendon House corner, this friend of the Senator's, a man who was an attorney and an intelligent man, turned to the Senator and said "Why, the Judge was awful drunk to-day", when the truth was, the Judge had not drank anything at all for—at least a week. [Laughter]

That simply illustrates the opinions of the man that strangers sometimes may honestly form. The man was certainly honest. The Senator told me he looked as honest as could be, and was perfectly convinced that Judge Cox was drunk, and that it was idle to attempt to undeceive him. He said he could see it and he knew he was. This same man, Dr. Cummings, does not speak the truth. I know he does not for one reason. He says Judge Cox that evening was emotional, that he was shedding tears. I declare that if he has ever seen Judge Cox shedding tears he is, I believe, the first man who ever did. I have seen him drunk and I have seen him sober, and I do not believe there is a tear in him. He is not of the emotional temperament at all. He gets full of fun, full of life, full of deviltry, but he does not get full of tears—not even when he is full of whiskey.

The learned manager mentioned another point that I desire to touch upon,—the fact that Mr. Lansing was called on the jury down there being an evidence that the Judge was intoxicated. Mr. Lansing lived in the next county it is true, and he probably was not a proper jury man; but was that a matter for Judge Cox to call attention to; was it for Judge Cox to object?

Why, if the parties who tried the case were not willing to receive him as a juror they could have had him taken off if they saw fit. A man who has not declared his intention to become a citizen is not a fit subject for jury duty, yet if he acts as a juryman, and the parties do not know it, or knowing it do not object to it, it is not even ground for a new trial. A man who is an alien, a foreigner; a man who has never declared his allegiance to this country can get upon the jury, and his verdict when rendered is as good as that of any other man; and is it for the Judge who knows he has not declared his intentions to say, "Stop, young man,; get out of here; such a man as you cannot sit upon a jury?" He has nothing to do with it. It is for the parties to say. Why, I remember a case in the trial of which the judge of my district, the Hon. John H. Brown—a man who is certainly a sober man and an able judge, one who never gets drunk—presided up in Swift county. I was trying the case, and a farmer from Kandiyohi county, who happened to be there, was called by the sheriff as a talesman on the jury. The other side did not know anything about it, and as he was a good friend of mine, I said nothing. The Judge knew the man as well as I, but did not say anything and only smiled down to me. When we had got the jury empanelled and had started on to try the case, going down to din-

ner the Judge said, "Arctander, it is not fair of you to come that kind of shenanigan on those fellows and import jurymen from Kandiyohi county." I said, "Judge, I don't care a damn, if they don't." "Well," he says, "I don't, if you folks do not."

That was certainly the remark of a sober Judge. It shows that such accidents are liable to occur and that it is not the Judge's business to interfere. A party can challenge a juror, if he has not the proper qualifications, and if they do not do so, they waive their rights; and a man would be as good a juror, and as well fitted to try a case such as that divorce case of Fuller against Fuller was, who was born in the old country or in the jail or in the moon for that matter, as one who was a regular resident of the county in which it was tried. However, it can make no difference, for it was not a matter for the interference of the Judge any how.

I desire, finally, before leaving this article, to go over the list of witnesses for the prosecution and for the defense and see how they compare with each other. I think I have already shown you that the witnesses for the defense are just as intelligent as those for the prosecution, and that their opportunities for observing the condition of the Judge have been just as favorable. Let us now see what kind of witnesses the prosecution has on this article. There is Taylor to begin with. He was, as I called your attention to, a man of very poor memory and showed it very plainly when on the stand. There is another thing, to which I desire to call your attention, because, as you will see, it goes all through this case. There were three attorneys there. Taylor, Bentley and Judge Edgerton. Judge Edgerton is away, and is out of the question. Bentley where is he? Why do they not call him?

Why do not the prosecution call him and show that Judge Cox was intoxicated at that time? Can it be because he would not swear that he was intoxicated? Can it be because he would swear that he was sober? I do not know; I have not talked with him nor inquired of him as to that, but it looks so to me. Mind you, Mr. Bentley was not snubbed at that term of court by Judge Cox. Mr. Taylor was. Why, that is the man for the managers. He had been snubbed; his corns were trodden upon at that time—before Leibig's Corn Remover had been invented, too—and he is the man to call here as a witness. Why? Because he will do the Judge all the injury he can. Why was he snubbed? His own testimony shows the reason, when he says the Judge was mistaken as to what side he was on. We have the testimony of Father Hermann upon that point, who says the Judge made a sarcastic remark to Mr. Taylor to intimate that the latter did not know what he was about. Mr. Bentley would have informed this Senate more accurately than Mr. Taylor as to what really transpired there, but the man to whom that sarcastic remark was made by the Judge, in the presence of attorneys and others, is the man whom the managers consider it proper to bring here.

And Lewis! he is a nice fellow! a nice lawyer! a man to whom you would like to confide your case? Look at his face, in the first place. Look at his eye! It seems to me that I can see them yet—false as hell! Certainly if every body feels toward that man as I do, or was impressed as I was when I first saw him, they would not trust him with either their honor or their pocket books for any length of time. A man who comes upon the stand and swears himself that he violated his oath of

office; a man who admits under oath that he violated the sanctity of his oath; a man who admits upon the stand that by falsehood he endeavored to mislead the court, as he did whether he moved for that adjournment or not, for he says himself he stepped up and told the court he knew it was true that Mr. Collister wanted a witness, that he was willing to consent to an adjournment, and that it would assist them materially in the case.

He swears so himself, although he says he knew it was a sham motion, that what he said was a lie. When he did that he violated his oath of office, and a man who will violate his oath once will do it again, and will be indifferent as to how often he repeats it. That man is here again upon the stand violating his oath. His client, Father Hermann, was asked upon cross-examination—just think of the idea of trying, as the managers have done, to impeach Father Hermann by a Lewis! Great God! What an impeachment! Father Hermann impeached by Lewis! They asked Father Hermann upon cross-examination, if he had not stated during the trial of that case that he was apprehensive of the result of his case because of the condition of the Judge, because the Judge was drunk, or words to that effect. And Father Hermann says very promptly, and very honestly, no, sir. Mr. Lewis is called upon the stand. He forgets in his zeal I suppose, for the success of this prosecution—for he seems to have been the Managers right bower at Waseca, the man who goes with the clerk and measures the court room, who hunts up the evidence and fixes it in shape—he has in his zeal probably forgotten, or wilfully disregarded the mandate of the statute, and of his oath of office, to preserve inviolate, at all hazards to himself personally, the confidence reposed in him by his client.

Here is his client, Father Hermann, during the trial of that case, making a confidential communication to him,—if ever he did—if such thing ever took place, which I do not believe and which Father Hermann denies. But suppose he did, as Mr. Lewis claims, it was a confidential communication between client and attorney whether it was made in this case or not. He had a right to confide in him and to assume that what he told him would be hidden in his attorney's breast, and that it could not be dragged out, even under pains and penalties imposed by this Senate for contempt. But Mr. Lewis does not assert his privilege. He is anxious again to violate the sanctity of his oath; he is anxious to do anything that will enable him to wreak his revenge upon this respondent, and what is the violation of a oath or two with such an object in view? Why, the testimony shows not only that he comes here and lies, not only that he violates every principle of honor, every law of decency, and the sanctity of his official oath, but it is almost conclusively proven by the testimony that in the case down there he was guilty of larceny. It seems, and the testimony will bear me out in the statement, that when Father Hermann returned to him that wrapper that it found its way mysteriously to Lewis' pocket and never again saw daylight, for it appears from the testimony of Father Hermann that the paper was never found again; that the paper was missing; that Mr. Collister was abused by his client for its loss; that he last saw the paper in the hands of Mr. Lewis after he had returned it to him. It appears from the testimony of Mr. Collister that there was a paper missing in that case. It would be like a man who swears falsely, who violates his oath without the least hesitation—as he has shown himself to have done by his own

testimony here upon the stand, taking his own word for it,—I say it would be very natural for a man of that stamp, if he saw a document that he or his client thought was of importance to the other side, and he could lay his clutches upon it, to take possession of it and place it in his breeches pocket, never again to see daylight. It would be just like him; it would be in keeping with his other conduct which has been exposed here. Gentlemen, that man has an object, also, in his testimony against this respondent. He has a feeling of revenge to satisfy. Why? He admits it himself. He admits that in the supreme court when called down there in this mandamus case, the respondent here, before the judges of the court, openly accused him of perjury in making false affidavits. He tells you that for a long time afterwards they did not even speak to each other. He tells you he may have spoken very bitterly against this respondent down there in Waseca. It shows that he has been thwarted in his plans by this respondent; that he has had his toes trodden upon, and that he has come here for revenge. A man down there has told me that when Mr. Lewis returned from the supreme court he said that Judge Cox refused to recognize him, and had called him a perjurer, but that the time would come when he would get even with him. I think he believes the time has come. You can see it in his evil eye; you can see it in his dishonest look.

Then, again, there is Hayden. I say his testimony is shown to be false beyond any doubt in one particular; it is shown to be false in one material part. I have shown you in my opening, and I do not desire to repeat it, how he tried in his testimony to hurt this respondent, to color the truth as far as possible, to put it in a most damaging way. I say that men of that kind are not worthy of belief; a man who is shown to have lied wilfully and maliciously, for it cannot have been otherwise, in one thing, cannot be believed by you in any particular.

Now there is Collister. Him I take to be an honest man. The counsel stated, I believe, that Collister's friendship for Judge Cox was very great; that he was an unwilling witness. Now, gentlemen, I did not know that Collister had any particular friendship or affection for Judge Cox, nor do I think that he so appeared in the evidence. If that is the kind of friendship that Judge Cox can boast of, I can only say I want none of it; that is all. Why it seems that Mr. Collister was even unwilling to acknowledge the merits of the respondent. He was not disposed to brag of them at all. When he was asked how he had conducted the business of the term it seems he was dissatisfied with him because he kept too long hours. I do not know Mr. Collister particularly, I saw him only once or twice, but he impressed me as being rather an easy going gentleman, who disliked to be hurried or overworked, and these late evenings and early mornings were distasteful to him—a good fellow, undoubtedly, a nice fellow, a thorough gentleman, undoubtedly; there is no question about that, it is the impression he made on every body here; but an easy-going fellow who disliked to be driven as Judge Cox drove all who were connected with the court there. Well, the managers say Mr. Collister was an unwilling witness. Why is that? Is it because he spoke the truth? Is it because Mr. Collister tells you that the only thing noticeable about the Judge was that he seemed sleepy or drowsy that evening? Is it because he will not like their witness Lewis, swear wholesale as to the whole term that they describe him as an unwilling witness?

Why, I wish for the honor of the State, for the honor of the managers, that they had more such unwilling witnesses as Mr. Collister, men who would hesitate before swearing to that which was not true. But when you examine Mr. Collister's testimony, there can be no question that it is only an opinion, only a surmise on his part as to the intoxication of the Judge on the 3d of April. He says, himself, in answer to a question by the honorable Senator from Winona, that there was no indication of it; that if the Judge had not the reputation of being a drunken man, he would not have supposed that he was drunk at that time. He says the Judge was drowsy and sleepy. He puts it a little stronger than the witness for the defense, that is all. They also say he looked fatigued and worn and wearied. The same is the case with Mr. Newell. We have not shown that he is the enemy of Judge Cox; we have not shown that he has a particular grudge against Judge Cox, and has been cursing him for the last six months or a year, so that it is not proper to comment on it here. His testimony did not amount to anything anyway, so I did not care to bring that fact out. All he said was that he believed the Judge was drunk at that time, that he looked drowsy; that is all.

Now, again, we have the witnesses for the defense; and we have one which I claim is the crowned head amongst them all—Father Hermann. The counsel remarked that Father Hermann undoubtedly intended to speak the truth; that Father Hermann undoubtedly intended to be honest about it, but that he thought he was under obligation to Judge Cox, who had decided his case in his favor, and therefore he had come up here and made his evidence as favorable as he could.

Now, gentlemen, is there any evidence here that Judge Cox did decide that case in favor of Father Hermann? It is in evidence here that he had two jury cases there; it is in evidence here that Judge Cox charged the jury in both cases. It is not in evidence that he charged them anything that is not the law. As a matter of fact, since the cases have not been appealed, it must be presumed that he charged the jury correctly as to the law. Is there any evidence that Judge Cox favored Father Hermann in the least down there,—that he showed him favors that were denied to Mr. Powers,—that he was in the least degree partial to him? There is no evidence of that kind. Even if it had been so, even if Father Hermann had been shown favors by Judge Cox, do you think Father Hermann is a man who, because of favors that the Judge had shown to him, would come here upon the stand and swear to a falsehood? Would he tell you he was confident beyond any doubt that the Judge was sober, when he knew,—as a man of his sharp perceptive powers would be sure to know,—that he was drunk? I say it is an insult to surmise anything of the kind. There is no foundation, in fact, for it. If there was there would be no foundation for it in reason. There is no foundation for it in the evidence. If there was there would be no reason for imputing any such thing to Father Hermann. I judge from a remark that was made by the learned manager who is to close this case—an indifferent remark, I apprehend—that he would attempt to rake Father Hermann over the coals. He told me that he considered him one of the monumental liars of the defense and that he would show him up; and I apprehend he will try to show him up. Oh, what a good priest that must be, who sends his attorney forward to badger a witness on cross-examination, to drive him to the wall! In the first place, what a bad thing that was!

Well, I do not think they will make much out of that. If Father Hermann was the man I take him to be he would be just the man to drive those who had charge of a law suit of his; he would fight for his rights and he would see that his lawyers did not perpetrate any skullduggery upon him; he would help along; he was a better lawyer, I apprehend, than any he could get in Waseca; he would know what was necessary to be done and would see that it was done in a proper manner.

Why, the manager, the other night, held up to me, as something fearful, (and I suppose he will to you), the fact that Father Hermann wanted to see this wrapper. Why, he says, what a dishonorable thing! What dishonorable means to employ! Well, I do not know, it may be. I never before knew that the manager had such a tender conscience that it would hurt him a bit to do that in a law suit, if he could do it without dishonor, if he could learn from an inspection of the enemies papers, obtained in that way, upon what they relied and what he had to meet. I do not think it would hurt his conscience in the least, nor do I doubt for a moment that he would do so if the opportunity was presented.

I can see nothing improper in that respect on the part of Father Hermann, but, even if there were, you must bear in mind that Father Hermann is a man who has made no study of matters of law, or of questions of professional or legal etiquette; he lives in his little priestly house and has never concerned himself with wise questions of professional conduct. But there was certainly nothing wrong in what he did. The manager further claimed to me that Father Hermann was a Jesuit, a man who considered that the end would justify the means, and who would proceed in what he did upon that principle.

I state this because I apprehend from what he said to me, that this will be the burden of his argument; and I say it because I desire to say a word for Father Hermann. I do not know whether he is a Jesuit or not; I should judge not; but, gentlemen, it would make no difference to me if he was. You may say whatever you please about those men. Many mean, untrue and unkind things have been said against them, but said by men, I apprehend, who did not know their worth. It is well known that I am no ardent admirer of any church, churches or preachers, but I know this, that when I read the travels of Livingstone, and of other celebrated discoverers, and learn that upon the very edge of the Polar sea, upon the icy coast of Greenland, in the arid deserts of Africa, in the poisonous jungles of India, on the cliffs of Patagonia, among the cannibals of the South Sea islands, all of these celebrated travelers have found the black gown of the Romish priest, the crucifix of the Jesuit,—have found him engaged in planting the cross amongst the wild tribes of the Indies, the fierce Zulus, the uncivilized Caffers,—clinging to that cross for the sake of mother church, for the sake of his Saviour, for the sake of the God he believes in; sacrificing everything,—friends, home, country, patriotism,—everything that makes life agreeable,—going amongst the wild tribes of distant lands, perhaps to suffer the death of a martyr;—I say that when I read that, I cannot help but admire those men and that church. I am not a Catholic; I do not profess to be a believer even, but I say that if there ever was a church that produced true men amongst its priests, if there ever was a true church, it is the Catholic Church. I say it is the only church for which I can have unbounded respect and admiration, because it is the

only church that is honest, and I respect honesty wherever I see it. Every church is ambitious of power. Every church is built up and maintained for the purpose of bringing power to its leaders and its priests. But none of them, except the Catholic Church, are honest enough to acknowledge it, and I admire honesty wherever I meet with it. I do not have more respect for preachers than other men, but when I find that a man is so imbued with the truths of his religion and his faith, that he is willing to sacrifice his manhood, the comforts of a home, the comforts and solace of a true, loving wife and of little fondling babes on his knee,—when forever he is willing to foresake all these comforts, all that makes life dear to man, simply because he believes that it is a command of his God, that his God desires the sacrifice—I say that a man who has that strength, that courage, has something impelling him which is more than human, he is driven forward by a divine power; and a man who so conducts himself, to whom self and all that word implies is subject to what he sees as divine will, I will respect and believe though even angels from Heaven were to come down to contradict him.

The court here took a recess for five minutes.

AFTER RECESS.

Mr. ARCTANDER. I would farther, Mr. President, call the attention of the Senate to the fact that Father Hermann was a party in the action that was then on trial. He was interested in the result of that action. He was interested in having a judge that was sober, and he would naturally watch every step that was taken in the case, because of his particular interest in the result. We lawyers may be interested in a case so far as fame is concerned, or so far as our desire to further the interest of our client is concerned; but our interest in the case can never equal the interest of a party to the action. For the time being it seems to him that everything is at stake; he watches everything that goes on, every smile upon the faces of the jurors, every movement on the part of the Judge.

This is more particularly true of a man so intensely interested as Father Hermann was in the out come of that suit. It is in his nature to be intensely interested in anything in which he is engaged. He would be more particularly so during the proceeding of that trial. We have all observed the fact that parties to an action are more deeply interested than any others, and they would be more likely than any others to notice the exact condition of the Judge who was presiding in the case. That is the reason why as you must have noticed all through this case we have, whenever it has been possible to get either one or all the parties to an action, brought them forward to testify; because we considered that as they had vital interests at stake there, they would have been more likely to have noticed the condition of the judge than the attorneys. Attorneys have their papers to examine, jurors to observe, witnesses to examine; they have all these things to care for, for the whole management of the case is thrown upon him. They have not the time nor the occasion, to look at the judge and observe his condition very closely; but there sits the client, and he in nine cases out of ten, does not think so much of the jury as of the judge who sits upon the bench. He thinks that just upon that Judge's conduct during that trial depends the future of his case, and he will watch him, observe

each ruling, look at his face when he makes a decision; and when a point is raised, or evidence comes in, he is quick to watch its effects upon the judge.

This is the reason why we have called those men here, because, in the first instance, the probabilities are they would be more honest than attorneys who have had conflicts or trouble with the Judge; and in the second place, they would be more likely to notice and know just exactly what went on. Father Hermann is a man of such intelligence, of such receptive powers, that there can be no doubt that if the Judge had been in the slightest degree intoxicated that morning, he would have known it. Father Hermann is a man that knows what he is talking about or testifying about; the manner in which he gave his testimony shows it, the intense honesty of the man, the carefulness with which he answered everything when on the stand, the consideration that he gave to every question, shows you that to him this was a matter of truth, a matter that could not be taken lightly; that he was a man who had to consider carefully before an answer was given, and I say a man that comes upon the stand and makes that appearance is entitled to credit. It is not his black gown alone that entitles him to credit, but his actions, his behavior, his intelligence, his apparent truthfulness and honesty of purpose, all appeared in his favor; and if we had as to the third day of April no other witness than Father Hermann, I would trust to him and risk his evidence before this Senate, against a whole horde of such men as Lewis and Hayden. I would risk his word against theirs every day in the week.

Now we not only have him, but him supported by other men who have no interest in this matter.

Mr. Bohen, a young insurance agent, evidently a candid man, evidently an honest man, evidently a man of intelligence, comes before you and tells you what his observations were that morning; that the Judge was perfectly sober, so far as he could observe; he noticed that he was fatigued, noticed what the other witnesses noticed but said that he was sober and he knew it at the time. Now this is a man who had no interest in the Judge; none of these men live in the Judge's district; none of them are even actuated by friendship for him. Do you think that friendship, money, or any other consideration than a desire to speak the truth and see that justice is done, would have induced Hermann to come down here? The same is true of young Bohen and of these other parties. They tried to impeach Father Hermann by Hayden. Well, that was another abortive attempt of the honorable board of managers. It turned out that Father Hermann was right when he said he had not made statements such as those they asked him about, to Hayden. When Hayden comes on the stand we find the statement had no reference to any letters introduced on that trial, but had reference to some letters that Powers had stolen from Father Hermann and that he had received back from him on an express stipulation after he had him arrested for stealing, and that the conversation was in regard to that case and had no reference to this matter. So, I say, they can impeach Father Hermann as much as they see fit. They can bring perjured lawyers and liars, who have forgotten their vows—they can bring Hayden here, as often as they please; Father Hermann can stand it, and can defy the managers, for he represents the truth and justice of this case at Waseca.

I have already spoken of the abortion which took place in the attempt

on the part of the managers to impeach Dan. Murphy. Now Dan. Murphy is not, I claim, a man of great brightness or high education; he is a common, honest Irishman. He is a *good* Irishman, and I think the old saying is correct that when an Irishman is good, he is awful good; but when he is bad, he is the meanest creature that ever was. But he is a man that bears upon his face the imprint of goodness; a good heart, truthfulness, honesty is written on every feature of his face; you can detect it also in his testimony; he is not a man to shield the Judge, he admits. And I want to call your attention to that fact, if these witnesses lie, if they tell a falsehood against the State, why do they not follow it up,—why do they not cover the whole time? For instance, Murphy is away at the time of one of the most important transactions mentioned here, viz., the adjournment on the third of April. Why was he away at that time? If he tells a falsehood, why not tell it clear through and be done with it? And again, if he told a falsehood in one thing, why did he not say that he had not seen the Judge drink anything there? No, he comes honestly before you and tells what he has seen. And when interrogated as to what the Judge drank on any particular night, he tells you how many were present, how many bottles of beer they had, or what they drank. Does that show honesty, or does it show dishonesty? This man Murphy is an old acquaintance of the Judge, has known him for nine years, I think not intimately, but still he has known him at St. Peter when he used to live there before he comes down to Waseca.

Then Lansing, an old acquaintance of the Judge, who has known him for twenty-five years, and who was a witness against Father Hermann in the case on trial. You see we can not get Mr. Power here because he has left the country, as I understand. We do the next best thing. We get Father Hermann one of the parties; then the man who was a witness, who was interested in the contract on the other side, Mr. Lansing; the two jury men, one spectator and the deputy sheriff; they are all there to testify to this action. Now, I say that they will outweigh these attorneys, some of whom only claim that the Judge was drowsy and dull—nothing more. Besides, we have Mr. Brownell as to the afternoon. Now, if the Judge was intoxicated in the morning so that he had to adjourn, is it not likely he would have shown vestiges of it in the afternoon? Nothing of the kind, Father Herman tells you, Mr. Forbes tells you nothing of the kind. Mr. Brownell tells you the Judge looked sick—looked as if he had a sick headache, but that he was perfectly sober, that he talked some with him, conversed with him and knew he was sober.

Now, they say that Mr. Brownell is an infernal liar, that he tells an untruth. How is it? How can it be so? Is Brownell one of the intimate friends of Judge Cox? Is he one of the men who go around drinking with him? Mr. Brownell is, I believe, one of the temperance men, both practically and theoretically, of Waseca. Would he go around with him and drink with him? Is he an old acquaintance? Not at all. He did not know the Judge before that term of court. Has he had any particular favors from the Judge?

Has he any reason to desire to have the Judge kept there? Not at all. He does not live in that district and is not liable to try a case before the Judge for many years. What then would be his interest or motive in

lying or telling an untruth? And if he does tell an untruth why does he not make a clean sweep of it? Why does he not come here and tell you that the Judge was perfectly sober during all the term, that he never saw him drink a drop. But he tells you, honestly, that the day the court adjourned, the Judge did get intoxicated; that he was not sober the day of the final adjournment of court. Why did he do it? Why should he do it? If he will tell a falsehood before you in one matter, he might just as well make a clean sweep of the whole field at once.

Now, then, the question is right here before you, Senators, and the one which you must consider when you come to vote upon this article, has the State proven beyond a reasonable doubt that Judge Cox was intoxicated at that time,—so intoxicated that he could not attend to the regular business, that he neglected his business, that his business was not taken care of in a proper manner, etc.? This is the question which you are to answer on your conscience, on your honor, on your oath; and now can—does any one dare to stand here and tell me that he can, with a clear conscience, with a free heart, under his oath, say that there is not here a reasonable doubt as to whether Judge Cox was intoxicated, as to whether Judge Cox was intoxicated on the bench,—as to whether, by reason of that intoxication, his business at that term was neglected, was not properly attended to, was not cared for properly, was mismanaged?

Why is not the evidence of Father Hermann alone enough to create a reasonable doubt in any man's mind? Is not his testimony enough? And take it with Bohen's, with that of Dan Murphy, the deputy sheriff; with that of Forbes,—take it with Winston's; and if we have not done more, and ten times more than the law requires of us,—if we have not established by a preponderance of testimony, that when these managers of the House of Representatives charge against the respondent that he was drunk or intoxicated at Waseca on the bench, so that he could not take care of his business, they have wilfully and maliciously charged him with what is not true my judgment of proof is not worth much. I say we have done ten times more than is required of us; and how any Senator, with any regard for himself, with any regard for his oath, when he comes to this article, with a free conscience, can say the respondent has been proven guilty of the charge therein contained, beyond a reasonable doubt, is beyond my comprehension. I do not believe anyone can; I do not believe any Senator will.

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

THIRD ARTICLE,

which is the hearing of the Gezike case at New Ulm. I did call attention in my opening, I believe, to the fact that the testimony for the prosecution in that case was so fearfully mixed, that there was really nothing left of it when our turn came to introduce evidence under that article.

I will call your attention to the fact that this is the article were Pierce is testifying, and where he has erected one of his usual monuments of lies. His testimony will probably be remembered by most of the gentlemen on the floor of this Senate, if for no other reason, on account of its dimensions. He tells you that at that time Judge Cox was "drunk as a fool," that he was "crazy drunk," that they treated him "like an irre-

sponsible person," that he was entirely unconscious of what was going on about him. Let us see what the other witnesses testify upon that subject. Mr. Webber says—and he is the next witness upon that charge, there were five witnesses for the State, Mr. Pierce, Mr. Webber, Mr. Lind, Mr. Severance and Mr. Goodenow,—the Judge *appeared* to be intoxicated. "My impression was formed more from a remark that he made at the door, than from his appearance and actions." Mr. Lind says, "Judge Cox was not sober, nor would I say he was drunk; he had been intoxicated the night before; felt dull; had the katzenjammen,—the reaction of the drunk. I do not think he was drunk; he had the dullness that follows after a spree is over; I think the liquor was dead in him; he had relapsed; the drunk was over; I did not notice any derangement of his mental faculties." Mr. Severance said he *thought* he was intoxicated, and he thought the intoxication increased during the hearing there. Mr. Goodenow, the gentleman from Blue Earth county, says the Judge was exceedingly drunk. He sat with his back to him and was busy all the time writing; but then he knows it all the same. He says the Judge was exceedingly drunk; he supports Mr. Pierce.

Now we will go further into this testimony, and see how they testify further down. Mr. Pierce says, further on, "he was interrupting habitually," "talking all the time," "making orders or decisions that nobody heeded." That is what Mr. Pierce says. Now, Mr. Pierce is an honorable (?) man; of course he speaks the truth! What do the other gentlemen say? Mr. Webber says, "he sat there and did but little; once he spoke up and wanted to know if we were going to admit such evidence. He sat there and said but little. He only said that he didn't see that there was any use in going on, if that point was good." That is what Mr. Webber said. How does that tally with Mr. Pierce? Mr. Lind says what? "I don't remember his making any orders or rulings; would have remembered it if he did; don't remember noticing anything extraordinary about his behavior on this occassion; he only interfered once; counsel objected and gave a reason and the Judge said, if those reasons were good we might settle it right there." Now how does that tally? And Severance says he did not interrupt incessantly, as Mr. Pierce says. He was asked that question. And then Mr. Pierce goes on and says further, that he was "complaining that no body would listen to him;" and "all the time mumbling to himself." Well Mr. Webber does not say anything about that; he said he "sat there and said but little, and did but little." Mr. Lind says, "did not hear any complaints from him about nobody minding him; there was no talking or mumbling while he was on the bench." Mr. Pierce goes on and says, "he evidently supposed he was trying a case right then and there; his remarks were those of a man who did not know what he was talking about; he voluntarily made his decisions then and there against Severance." Judge Severance says he said nothing of that kind. He simply said, "who is the author of that deuced paper?"

Mr. Pierce says he never knew in his life, of such a practice—of a Judge sitting and having somebody take testimony or evidence, to take it all under advisement, and not to decide the points as he went along. Mr. Lind says, "We would have done that whether he was drunk or sober. It was an equity case; it was a common thing to do that in equity cases." Mr. Lawrence says it was an every day occurrence. How do you arrange and harmonize those statements? Mr. Pierce says that

Judge Severence requested the Judge to keep quiet, "that is the way we talked to him." Mr. Lind says there was nothing of the kind and if there had been anything of the kind, he would have heard it. Mr. Webber tells you that there was nothing in the actions of the Judge, to ind cate that he was drunk. He simply sat there. "There was nothing in his appearance except that I thought he showed a lark from the night before, in his face—kind of stolid in his face." That is the testimony of those witnesses, gentlemen. Take it, harmonize it, if you can. Some of those witnesses have lied. Who is it? Severance goes on and says that his eyes were red; that his eyes were red, that his eyelids were swollen, and his face swollen and inflamed. None of the others say anything about that. He says he was not "crazy drunk," nor could he tell whether it was from liquor drank that day or the day before.

Now, gentlemen, looking over that testimony and comparing it, before coming to the defense, before seeing what we have to offer in this matter, say if it is not apparent in the contradictions that there are between these witnesses, that there is untruthfulness somewhere. If Mr. Pierce—the "honorable" Mr. Pierce—will testify that Judge Cox was "crazy drunk," and acted and interrupted them in the way he says he did, sitting there mumbling and talking all the time, how could it have happened, if that was the truth, that those three gentlemen did not discover it? If it was not the truth, how does it happen that Mr. Pierce can swear in the way he does? Now, if it was true that he did that, how is it that the other men swear as they do about the *katzenjammen* and the drunk of the night before, the results of which were then visible? Whom will you believe? Indeed, I do not think of anything more applicable to the testimony on that article than the old lines of Pope:

> "Who shall decide, when doctors disagree,
> And soundest casuists doubt, like you and me."

Those words seem to have been written for that occasion. But that is not all of the testimony for the prosecution. The testimony of Mr. Pierce was almost a god-send to us in this case; it looked to me almost as if the manager was ashamed of him; for when he was reading over his list of witnesses on the third article, I noticed that he read it once, that he read it twice, and that each time he left out Mr. Pierce's name. I thought that he was ashamed of him; and I do not blame him if he was, for there is no question about it, he *must* have lied. Every one of the other witnesses agree that there was no such state of affairs as he has testified to. But to clinch this thing, to clinch him and to clinch some of the others at the same time, we did what? We call here, right from the enemy's camp, a witness.

We call Mr. Blanchard, the clerk of court, who was present as a witness in that case, and sat there during the whole of that trial. We called him. He has been called as a witness against us. We called him who is well known to be one of the republican leaders in that county,—him who is well known to be one of the bitterest opponents, political and personal, that this respondent has in that county;—we called him, and asked him in the name of fairness, common right and decency, to give us a true version of that affair,—and he gave it to us. And he gave it to Pierce. I desire to read Mr. Blanchard's testimony,

because it not only disposes of Mr. Pierce, but it disposes, to a considerable degree of Mr. Severance. Now mind you, this is not a man who comes down here to shield Judge Cox; but a man from whose unwilling lips we had to wring every sentence in favor of Judge Cox. He is a man with whom we could not even consult before calling him upon the witness stand. What does he say? (Page 418-421.)

Q. You have been sworn before in this 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.
Q. In the month of June, 1879?
A. Yes, sir; and the case of Evans, Peik & 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.
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 house at that time?
A. He did not to my recollection leave it.

Now this is merely preliminary to the testimony of Judge Severance. Severance said he left the room several times and that his intoxication seemed to increase sensibly during the trial, rather inferring from that that he went down town during the trial and got more to drink and came back again more drunk. Now I put this question to Mr. Blanchard:

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 the former part.
A I did not.

He observed no difference.

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.

Where is Pierce? *Where* is Pierce?

A. 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 further 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 thing, 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 hold 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 d cket. 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 and 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 d cketed 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. Goodenow was taking down the testimony I didn't hear Judge Cox interrupt but once, and then I don't know as it was an interuption 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.

That is reiterating Pierce's testimony all the way through.

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?

That goes to Mr. Severance. He can put the answer to that question in his pipe and smoke it, if he please.

A, They did not, his eyes never looked red that I ever saw; I never saw his eyes look red in my life.

That is Mr. Blanchard who has known him for twenty-two years.

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 have never 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?

That's another shot at Judge Severance. He says he was talking erratically and incoherently.

A. There was not, that I heard.

Now, he was sitting right there as near to him as the attorneys and knew him as well—knowing him for more years than Mr. Severance did and do you believe, gentlemen, that he could have acted in the way Mr. Pierce and Mr. Severence testified he did, without this man having noticed it? It would be impossible of course, he cannot say that he did not. All that can be said in most of these cases is, that he did not see it, that he heard no such things, that he noticed no such thing, and as to some of the charges,—for instance, as to his eyes being red, he answers positively that they did not look red. But on other things of course he would say he did not see it, and it is then for you to determine whether this man could have sat there and heard the Judge, when the Judge was drunk and acted as these men say he did, and when he had the appearance they say he had, and yet not have seen it or

heard it. It would be irrational to suppose it, and Mr. Blanchard is not a fool.

Now here is the cross-examination, and I desire to read that to show the fallacy of the remark made by one of the managers. It is only half a page.

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.

Now before following this up, I desire to call your attention to the fact that the learned manager said that Mr. Blanchard did not say that he remained all the time in the court room; in fact that he said that he did not remain there all the time. That is what Manager Collins stated to you; and it is to show you the falseness of this statement that I read you further from the cross examination as follows:

Q. Did you say that you stayed there all the time?
A. I think I was there all the time?
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.

That shows that he was there. He testified that he was there. He is positive that he was there most of the time. I think that with the testimony of Lind, and the testimony of Webber against it, I could leave the testimony of Mr. Pierce without offering anything against it; but not being satisfied with that, I have introduced, to contradict him and Mr. Severance,—because Mr. Severance follows Mr. Pierce as well as he dares upon his high field of honor.

I have introduced, I say, the testimony of Mr. Gezike, and Mr. Behnke, a man who has been, by the will of the people of that county, sheriff for a number of years, a man who has known Judge Cox for thirty years, a man who lived with him in the same town a great number of years, a man who is a well-to-do cattle dealer,—which the managers seem to think is something disgraceful—a man who is one of the wealthiest men of New Ulm; a man who is respected and honored in the community in which he lives; a man who has a reputation, which is more than you can say of some of the witnesses for the prosecution; a man whom the people have shown their confidence in; a man in whom they show it to-day; a man of means and of credibility and good standing in the community; —we have, I say, called him and he has corroborated every word Mr. Blanchard has said. He has denied everything so far as Mr. Pierce is concerned, and he has denied everything so far as Mr. Severance is con-

cerned. We have called besides Mr. Behnke, a merchant at New Ulm, one of the most honored citizens of that community,—a man who has, I apprehend, a stock of goods up there larger than any other merchant, a man of standing and reputation in the community, and he has told you whether the facts testified to by Mr. Pierce are true,—whether the facts testified by Mr. Severance are true. I have reference now mostly to Mr. Pierce's testimony. I take Mr. Pierce's testimony and put it against the testimony of John Lind and you may be sure that John Lind, with the feeling he has against this Judge, the feeling he has exhibited on the witness stand, the feeling he has exhibited on every occasion here before you,—you may be sure that John Lind is not going to put it too mild; you may be sure he is not going to color the truth any in favor of the respondent. You may put that down as a conclusion.

Now, I say against Mr. Pierce's testimony is that of Mr. Lind and the testimony of Mr. Webber contradicting him completely; the testimony of Mr. Severance contradicting him on a couple of the main points; the testimony of Mr. Blanchard burying him in the ground; the testimony of Mr. Gezike, and of Mr. Behnke heaping a monument over him so great that he never can be resurrected or got out of the hole in the ground in which he is put. I think I can safely leave Mr. Pierce here to the mercy of my associate, to the mercy of this Senate, to the mercy of his treacherous conscience!

On motion the Senate here took a recess until 2:30 p. m.

AFTERNOON SESSION.

The Senate met at 2:30 p. m. pursuant to adjournment, and was called to order by the President *pro tem.*

MR. ARCTANDER. Mr. President, when I closed the argument at the time of the adjournment, I had shown that the testimony of Mr. Pierce on the third article,—the Gezike case,—was entirely, successfully and conclusively contradicted by all the witnesses for the prosecution except Mr. Severance, who, in some particulars, assisted him; I had shown further that Mr. Pierce was, in the most absolute manner, contradicted upon every statement that he made, by the witness Blanchard,—taken right from the enemies camp. I considered that man disposed of. I don't desire to say anything harsh about him, because I don't think there is any need of saying anything harsh about him; his record here will say worse and meaner things about him than I could, if I were inclined so to do.

The next witness the prosecution introduces is Mr. Severance,—Judge Severance,—and we are told by the managers that he is a man whose words nobody would doubt; that he is a man whose testimony would weigh against that of any set of men that might come before you, and, I admit that there is no doubt but the Senators are inclined to place weight upon Judge Severance's testimony, probably an undue weight.

I have noticed one thing, gentlemen, in this, which claims to be a democratic country, that here, where we live in a Republic, we in certain matters are more aristocratic, more monarchic, than the people in some of the countries of the old world ever would pretend or suffer themselves to be. I have noticed that there is a respect for authority here that is almost unprecedented, a respect for authority, position, riches and wealth

which I think is abhorrent to the ideas and thoughts of every true Republican.

I have observed that it has been thrown into our faces that our witnesses had poor clothes and were simple farmers, while their witnesses were rich men, wealthy men, lawyers, men who could afford to dress well. And we heard it upon this occasion as well as upon another, namely, when the Hon. R. A. Jones testified, that he was a man whose word would be law and gospel to this Senate. Why should Mr. Severance's word be law and gospel? Why should his word weigh more than that of any other common man that had intelligence enough, understanding enough, who was not blind, who had the full possession of his eye-sight, who had the full possession of his mind at the particular time, if he was equally honest? Why, I say? Is there anything about Judge Severance to show that he is such a particularly, extraordinarily, *kat' exochen* honest man? I don't know if there is. I don't know if there is any reason, except the one that he is a Judge of the District Court. A year or two ago, a *year* ago, Judge Severance was a common lawyer like myself; a man who was older, with a greater reputation undoubtedly, but he was nothing but a lawyer, that is all. Accident placed him upon the bench of the sixth judicial district. Accident, or a desire to have a man who would sit upon the railroad bond commission,—I don't know which,—placed him upon the bench of the sixth judicial district. It can not be denied that Judge Severance's being placed upon the bench at the time he was, under the circumstances he was, brought out a name that had hitherto been entirely unsullied, in connection with remarks that were not flattering to Judge Severance nor the executive who placed him there. I don't know whether there was anything in them or not, and I don't care how he came to be Judge, nor do I care *because* he is a judge. I don't pay any more attention to him for that reason, and I say it coming as I do from one of the oldest families of a country of strong monarchical and aristocratic tendencies, I don't care if a man is a judge or if he is a governor, or what he is, if he is a man, that is all I want of him. If he is an honest man that is all I want. If he is poor, if he is in rags, if he is without influence, it don't make any difference to me. His word is just as good as that of the Governor, of the Judge, of the President, or of a petty king. Now, I don't see anything that would recommend Judge Severance particularly to the special attention of this Senate, or make his word believed over and above that of a score of other witnesses except his position as a judge. On the other hand I do see reasons why I would doubt Judge Severance's word, where I would not doubt others' in this particular connection.

Senators have undoubtedly read of those men of olden times, during the rule of the Mohammedan empire, who had been christians themselves, men who had been brought up in christianity,—men who had been brought up in love of country and love for all that was honest and brave,—turning their backs to their country, their countrymen and their religion, embracing the Mohammedan religion and joining the Mohammedan hordes,—becoming renegades to their country, their religion and their friends;—and Senators will undoubtedly bear in mind that it has been found to be a matter of common observation that those men whom we call renegades; those men who become Mohammedans, abjuring their faith and their allegiance to their country, in their turn become strongest

Moslemites,—more cruel, more vindictive towards their old comrades, friends and countrymen,—surpassing in cruelty, in meanness and cowardice, the men whose religion and faith they had espoused. It is natural that such should be the case. We find in history example after example of such instances.

And I say that Judge Severance stands to-day in the same position as the Mohammedan renegade of Frank origin of 1,500 years ago. Judge Severance to-day, (it is no State secret, and I violate no confidence when I say it), is himself a reformed drunkard, he is a renegade from the company that he kept at the time; and I say that it is nothing more than natural that he, because he is a reformed drunkard, because he is a renegade from those friends and companions that he had at that time, the drinking crowd, should turn with an abhorrence greater than even the born and bred temperance man who has never tasted a gill of brandy or a glass of beer, upon those men who were once his friends and once his comrades; there is nothing more natural than that he should see through colored and magnifying glasses; whenever he sees an exhibition of the effects of drink that he should let his imagination, (for he has one, and a prolific one), run wild with him, and that he should, if he sees a vestige or slight indication of drink, magnify it into an abhorrent spree and an abhorrent drunk. It would be natural for him to do so. It is the characteristic of the renegade and the reformed man in every calling of life, and upon every occasion when thrown into contact with the company, the comrades, the vices, and the habits he has forsaken. It is natural, and I have no doubt that Judge Severance would do it, and could testify honestly and conscientiously, believing it was true, just as he did testify; but that, on account of the magnifying effect of his former habits, of his turning away from them and his subsequent abhorrence for them, he would multiply infinitely whatever he saw.

Now I say it is praiseworthy in the man. It is praiseworthy in any man, who has been as low down as Judge Severance once was, to raise up and reform from the vice that had mastered him. I say that I admire that in the man, but I say that that does not prevent me from understanding, nor does it prevent me from remarking, without any venom, and without any feeling, that the man, under such circumstances, is apt not to take the right view of those things; not to see things as they are, but to see them as his eye, fixed as it is, in a certain direction, and impelled by its abhorrence of the vice that he has forsaken, sees it in an improper light; to see it in a calcium light that gives an undue magnitude to the object of his gaze. Judge Severance met Judge Cox in the evening, and saw than he was under the influence of liquor—probably "damned drunk," as he said. I don't doubt it a bit. I don't doubt but he might have been drunk there in the evening. He was through with his court and didn't expect any more business. The manager said, within an hour after the Judge had left the bench, Judge Severance found him there drunk. That is not true. The testimony is that the court had adjourned in the afternoon; that they had waited and waited for these men to come in, but they did not come on the passenger train, which arrived at 3 o'clock; and having waited and waited, and knowing they were not coming, after having adjourned court *sine die*, probably Judge Cox went on a spree. I don't doubt it. I don't doubt it at all. It was not until about 6 o'clock, when the freight train came in, that Judge Severance found him in the condition

which he attempts to describe, and which I do not deny. But what I desire right here to impress upon your mind is that the manager states, what the evidence does not bear him out in, when he would have you infer, because Judge Cox was intoxicated at that time, that he had been intoxicated that day while upon the bench; because, Mr. Webber, even, —the candicate for judge—tells us that Judge Cox was perfectly sober during all this adjourned term.

Now, I say Judge Severence found him there, and he knows how it is himself. He sees him and he abhors the condition that the respondent is in. He would abhor the thought of seeing himself in that position. He sees him and he feels all the abhorrence that the reformed drunkard does feel at such a sight, and he immediately becomes prejudiced against the Judge, and he probably sees him that night drunker than he really is; he probably hears worse expressions than he really did hear. The next morning he comes into court, and not knowing Judge Cox as well as some of his friends who meet him daily and have seen him on his sprees, Judge Severence has an idea that Judge Cox cannot be sober. He starts out with that idea the night before. He is told by Judge Cox that if they will get an amanuensis to take the testimony he will proceed in the morning. Judge Severence thinks the respondent wants an amanuensis, because he feels that he will not be sober in the morning. That is the idea that Judge Severence entertains in the beginning, and that idea pre-occupies his mind and pre-disposes it against the respondent; he expects to find him drunk in the morning.

The respondent, as his friends have testified, may be upon a most abominable spree at night and in the morning he will be as bright as a dollar,—as Mr. Lamberton has testified, as Mr. Davis has testified, as Mr. Behnke has testified and as Mr. Gezike, I believe, has testified,—saying that in the morning, after a heavy spree, they could see no vestige at all of that spree upon him, no evidence or remnants of it. Mr. Davis has testified to the same thing, and Mr. Lamberton, their own witness, confesses it. But Judge Severence is not acquainted with this peculiarity of the Judge. He comes to the court room, as I say, with his mind pre-disposed, pre-occupied and prejudiced against the condition of the respondent; he expects to find him drunk, and he looks upon him through colored glasses; with his colored glasses he looks upon the Judge, and of course he finds him drunk there upon the bench.

Now, that is one way in which you can explain Judge Severence's testimony. And unless you *can* explain it in some way, you cannot explain the testimony of Mr. Lind and Mr. Webber, because it is in direct conflict with it. Mr. Lind says, "although I won't swear that he was sober, he was not drunk." Mr. Webber says that he had the appearance of having had a "lark" the night before. Now, it is shown that he never had such an appearance, and what that particular appearance was he did not explain. Mr. Severance is contradicted in several particulars. In his description because it gives us the expression of the Judge's face; and you see that he describes him as having red eyes and a swollen face, and you have heard that those are never indications of Judge Cox being drunk. Mr. Davis tells you so,—that his face is never swollen nor inflamed when he is or has been on a spree; that his eyes are never red. And there are five or six of his old friends who have known him for years, who swear to the same effect,—that his eyelids, instead of being swollen as Judge Severance says they were, seem to recede into

into his forehead giving them a hollow and sunken appearance. Now, how do you explain that testimony? Mr. Severance is contradicted upon that point, as I will show you hereafter, by several witnesses,—Mr. Blanchard, Mr. Behnke, Mr. Gezike and Mr. Fitzgerald. How do you explain that testimony, I say? Can you believe that Judge Severance would come here upon the stand and swear falsely against this respondent? Oh, just as well he, I suppose, as anybody else. I have no idea that because a man has gotten up in the world, therefore he is immaculate, spotless and pure and can not do anything wrong. I have seen men in authority as mean as I have ever seen them anywhere else; I have seen men who were judges as mean as any man I ever saw. But I say there is a more charitable construction to put upon his testimony and it is that Judge Severance sees through those colored glasses of his; that without a consciousness of it he tells you what is not so, because at the time he thought it was so. He was disposed to believe that it was so; he expected it to be so; he thought it could not be otherwise, and he lets his prejudices run a race with his judgment and his powers of observation.

The managers say that Judge Severance is a great friend of Judge Cox. Well, has that appeared anywhere in testimony here? Not at all. Nothing has appeared in his testimony about his friendliness or his unfriendliness. It does not appear that he is very anxious to hide anything; it does not appear in his examination that there is anything that would hurt Judge Cox that he is very anxious to hide. On the contrary.

As the manager has said that he is his friend I think it would be proper for me to say that the manager who made that assertion must have known it was otherwise. Anyone who knows the history of things in the Minnesota Valley knows that Judge Cox and Judge Severance have never been friends, knows that for a fact, and there is a very good reason for it. On the contrary, they have been personal enemies and there is a very good reason for that. It is this, that they have been rivals in practice; they have both been competing for the same aim, to be the most prominent lawyer of the valley, while they were practicing there. And undoubtedly the feeling of rivalry was a mutual one.

Why I remember the fact being generally commented upon in the valley, shortly before the elevation of Judge Cox to the bench, that for two years those men would not speak to each other at all. And why? Simply because they had been opposed to each other in a certain case where Judge Cox stood up before the jury after Judge Severance had made his argument and stated to them "Gentlemen of the jury, I don't learn my speeches from Demosthenes or Cicero standing in front of a looking glass." It made Judge Severance so mad that he picked up his books and left the court room the moment the remark was made, and for two long years those men did not notice or speak to each other, and for that simple reason. Now you may think it did not amount to much, but there is one fact that is well established and every man on the floor of this Senate knows it, that if there is a vain man in the state of Minnesota it is M. J. Severance; that he is vain as a peacock and that he would never stand any allusions or aspersions thrown upon him in the way that the Judge did in Waseca.

Now, I also call your attention to the fact that this vain man was hurt and wounded in his feelings of being the great lawyer Severance at this

particular occasion in question. It seems from his testimony that it has cut into his heart that Judge Cox should grab hold of this undertaking in attachment which he had drawn and should say "What is this deuced or infernal paper; I never saw such a thing in all my practice! Who is the author of that?" It was throwing slurs, it was giving severe cuts to the eminent counsel, Mr. Severance. "Who is the author of it?" And it seems that those words burned themselves into the memory of Mr. Severance and that is really all he remembers of that occassion or of what was said. It was another slur thrown at the vanity of Mr. Severence. He was hurt by the remarks that the respondent made.

It might have been an injudicious remark; it might have been injudicious in Judge Cox, knowing the position he was in, to give a stab to the vanity of Judge Severance, but I suppose he could not resist the temptation. I suppose it would be natural for those men to pick at each other, and especially for Judge Cox, with his disposition to tease all the time, especially when he comes in contact with a man like Judge Severance. It would be natural for him to tease him and to find a place for all the pin wounds he could give him, and Judge Severance would take it all in and feel meaner than words can express; and I should not wonder if such a stab as that, with the jealousy that existed between them, with the stabs given to his vanity by the respondent while he was practicing and after he was elected to the judgeship, opened old wounds and made them fresh and bleeding, and that that had something to do with his feeling, with his ideas and belief as to the true condition of respondent at the time.

We all know that desire can be not only father to the thought but that what we seem to see, our desire matures into thought, and before we know it, the desire has become an accomplished fact under the action of our mind. Now, very many times we are not conscious of that fact, when it really exists and is actually present in our mind; and I do not doubt, as I said before, that the prejudice of Judge Severance coupled with the stabs that his vanity received upon this occasion had considerably much to do with the horizontal view he got of the Judge at the time.

Besides that we find that Judge Severance is easily mistaken. There is a circumstance which shows it, and I desire to call your attention to it now, instead of under Article 18 where it really belongs. Before the committee, Judge Severance swore to the intoxication of the respondent at Mankato, and this testimony was produced under article six. But the managers did not have sufficient confidence in that article to let it stand. They raked the city of Mankato over for every lawyer that was to be had; I believe that even one of the members of this court was helping them in the search; but they could not find a man who would come upon the stand to swear that Judge Cox was intoxicated at the time, except Judge Severance. Now, Judge Severance is upon the bench down there and holds his iron hand over the bar of that district. As long as he is in full power, there is no one who dares incur his displeasure. He holds his hand over that bar, but there is not a member of that bar that is willing to come up and say that Judge Cox was intoxicated at that time. Judge Porter was there opposing Judge Severance. He was called here as a witness and was sworn in order to get his pay; but the managers didn't ask him a question, because Judge Porter could

not swear, I apprehend, to the intoxication of the respondent, or they certainly would have corroborated Judge Severance when they had the man right here and swore him in your presence and said they should call him after a little while, but they did not; instead of doing that they sent him home through the back door.

Now, against Severance comes the clerk of that court, who has known the respondent intimately, who has been in the army with him, who is an old army comrade, and he tells you he was present at the time when this matter came up. The managers don't know any way to crawl out of that, except to say that it must have been at some other time that the matter was up, unless you take it that Judge Severance did not tell the truth, unless you take it that he has let his prejudice and his feelings against the respondent run away with him, so that he has seen what nobody else has seen; in other words, that he has had the squinting Italian evil eye. Is it possible that any of those witnesses are mistaken as to the time, that Judge Severance speaks of one occasion and they of another? Gentlemen, Judge Severance fixes the occasion; he tells you that it was on the last day of the term of court held in Mankato in a certain year, I think the year 1880, at the time when the cyclone was there. Now, the cyclone, the people who were in the court room are apt to remember, because it took the roof of the court house off while they were there holding court. And while I am speaking of that I remember another stab that this respondent could not content himself from giving to Judge Severance. It seems that during this cyclone there was a general stampede from the court house, and Judge Severance ran down into the court yard and grabbed hold of a little tree and was holding on to it for dear life; and when he came back into the court room the respondent could not restrain himself from saying that Judge Severance was so afraid that the tree was going to be taken away that he was standing there and holding on to it with might and main. Now, of course, that hurt Judge Severance again. I say that Judge Severance has fixed that occasion as being at that term of court, and at the last day of the term; and he has not only fixed it as being the last day of the term, but he has told you what business was up, and he has said that it was the mandamus in the case of Guenther against the city of Mankato, for the taxation of costs.

Now the clerk and the deputy clerk, who were both present, fix the time beyond any doubt, as the last day but one of the term. They say that they remember when the matter was up during that term. It is true that the case had been tried before, the case had been up, it is true, at prior terms, but Judge Cox had nothing to do with it; he was not present and the only time it was brought up at this term when Judge Cox was there was at this particular time; and they swear that they remember that. They swear that they were both present, and that Judge Cox was perfectly sober; that they had no doubt about his being perfectly sober at the time. Mr. Freeman, the county attorney is called up, and he tells you that he was there on the last day of the term, and by him it is plainly shown that Judge Severance is mistaken as to the time, that it was not the last day of the term but that it was the day before that the matter came up; that on the last day of the term there was nothing done except to try the case of Luticia Webber, a case which was started in the morning, which continued until eleven o'clock, at which time the jury retired and at 11:45 came into the court room

with a verdict and Judge Cox then adjourned the court and went away, and there was no more court at all. That is shown before you, and Mr. Freeman the county attorney of that county was there and he tells you that he was there and tried that case, and that the Judge was perfectly sober at the time. So that we have covered both the last day and the actual occurrence and occasion of the motion of which Judge Severance speaks; they are both covered, so that there is no avenue of escape. You know we were very particular about this; we were very particular to find out from Judge Severance if he was not mistaken; to ascertain if it was not in the clerk's office, or if it was not at some other time that this motion was heard. We were thus particular because there had been another motion of the kind in the case before; but Judge Severance swears positively that it was right in the court house and at the term when that cyclone came.

Now I say, then, that taking into consideration the reasons he has for coloring his testimony, the reasons he has for giving testimony unconsciously which is too strong to fit the facts, and putting his testimony into juxtaposition with the testimony of Mr. Lind, the testimony of Mr. Webber, and showing how he is contradicted absolutely and point blank, in the very foundation that he lays for the opinions that he gives in regard to Judge Cox's intoxication, by Mr. Blanchard, by Mr. Behnke, Mr. Gezike,—three reputable men, all of them,—I say that taking into consideration his limited acquaintance with the respondent,—only meeting him occasionally, as of course he has in his practice,—I think there can be no doubt in your mind but that Judge Severence's testimony stands pretty badly shaken up. I desire to say nothing unkind about him. I have no unkind feelings against him and I do not desire to be so understood. But I say that unconsciously or otherwise there is a squint in his eye that prevents him from seeing clearly and correctly, as he ought to do. It is as charitable a construction as I can place upon his testimony.

The third witness is Mr. Webber. I think all I need to say about him is, that he is a candidate for the office of this respondent, that he is working hard for it, that he desires to have the respondent out of the way, and that he has a strong motive to say what is not so, and when his testimony is contradicted by men who have no motive at all, his testimony must fall to the ground.

Beside that he is contradicted upon every charge but one upon which he has testified here before you, and he has testified to nine of them. Upon every charge some men here and some men there come up and contradict him flatly. I say that this fact should have some weight. While the testimony of the prosecution is limited to a few select witnesses who come here and prove the whole case upon the respondent, with lawyers mainly, here and there a clerk of court or a sheriff sandwiched in, to kind of break the monotony of the thing, but those being the main stay and support of the prosecution all the way through, article after article, the fact that we bring fresh men for each article, some from this place and some from that, to answer each of these charges, is entitled to some weight in your minds. It shows that it cannot be a made-up defense, while it well can be a made-up prosecution.

As far as Mr. Lind is concerned I do not desire, upon this article, to comment upon his testimony nor to characterize the feeling of the man towards this respondent; it will be time enough to do that when I come

to other articles at which his testimony amounts to anything or that goes far enough to show his ill-will in the matter, but I do say this much, that when a man, who has exhibited the feeling that Mr. Lind has done in this case, comes before you and tells you that all there was the matter with the Judge was that he had been drunk the day before, that he was not drunk then, that he was not deprived of any of his bodily or mental faculties at the time, that all there was wrong with him was he felt edgewise, it goes to convince me strongly that it must not, can not be true, as Judge Severance, as Mr. Pierce and Mr. Goodnough have testified, that he was "thoroughly drunk," "crazy drunk," etc.

Now let me argue for one minute upon that question,—as to whether, taking Mr. Lind's testimony to be a fair representation of affairs there, that the Judge had the "katzenjammer," that he had been upon a spree in the evening, that he elt edgewise,—in other words probably had a headache, that tends to make out the charge. I think not. He is charged here with entering upon the trial of certain causes, and the examination and disposition of other matters and things, and presiding as Judge in the trial, examination and disposition thereof, while in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from the exercise of his understanding in matters and things then and there before him as such Judge. That is what we are charged with, and that is what we must be convicted of. If this respondent failed to perform his duty there that morning, if he failed to do what he ought to have done, and if that failure was caused by his then and there being in a state of intoxication, then the charge is proven. But if the fact is that he was on a spree and in a state of intoxication the day before, and that he did not fail on account of that intoxication, but on account of having a headache, and that headache was the cause of his not performing what he should do,—which by the by has not been proven, all that it was agreed and intended that he should do, was that he should sit there and let Mr. Goodnough take the testimony, and it is not shown that he did not do that,—but I say, even if he did neglect his business that morning, did not perform the duties of his office as he should, yet, unless they show that that was not done because he was then and there in a state of intoxication, the article is not proven. If he failed to perform his duty because he had a headache, bacause he felt edgewise, and that condition was caused by his intoxication the day before, that is not what is charged here; that is not what we are to meet.

Why, if he had been eating some lobster salad the night before, and some ice cream, and had over-filled himself, so that he felt just as if he had the "katzenjammer" (because a man may have just as bad a "katzenjammer" after excessive eating as after excessive drinking; the stomach gets out of order, it works up the head, it produces headache and dyspepsia, and makes a man feel mean and cross and just as bad), would you say that because he had done that the evening before, he could be convicted under this article, or under any article? Not at all. We are charged with being drunk on the day when this business was done. We are not charged with being drunk the day before, or with getting the headache or the katzenjammer after that drunk.

I will also call your attention further to the fact that all these witnesses for the prosecution under this article are more or less limited in their acquaintance with the respondent, at least there is no acquaintance

shown to amount to anything. Mr. Webber has know him for a few years, during the time that he has been there. Mr. Lind has known him five or six years. It is not shown how long Mr. Severance has known him. It is not shown how long Mr. Pierce has known him. Their acquaintance, of course, were all of them casual acquaintances. On the other hand, comes Mr. Blanchard, his personal enemy, his political enemy ; a man who has been down here and sworn against him ; been a witness against him here, and a successful witness for the prosecution, who has known him for twenty-two years, who had no reason to perjure himself, on *this* side certainly not, and nobody will accuse him of doing it I apprehend.

But the point comes right in here: It seems that Mr. Lind and Mr. Webber and Mr. Pierce had either seen the Judge in the evening when he was drunk or they had heard of it sufficiently to have their powers of imagination waked up; they were in the same boat that Mr. Severance was to a certain extent. Mr. Blanchard, it don't appear, had seen him drunk in the evening before at all. When he saw him therefore in the court room although he was no friend, yet he looked upon him with unprejudiced eyes; his mind had not been worked up to the standpoint at which it was expected to see him intoxicated and therefore saw him intoxicated. He knew nothing about, that he had been drunk, and therefore he did not see those wonderful exhibitions that some of the other witnesses saw that knew him to have been drunk and expected to see him drunk the next morning, but did not know of his peculiarity of sobering up.

Now, Mr. Gezike and Mr. Behnke are in the same position. Mr. Gezike is a man, who has known the Judge; has been sheriff there for years, has known the Judge for 22 years, has lived for ten or eleven years right near the Judge in St. Peter, been his near neighbor, has seen him drunk and seen him sober. And here again we have called before you upon this article old men who would have been apt to have noticed the Judge, men who had an interest in the proceedings. There are both of the defendants in that case, where thousands and thousands of dollars were involved, where Mr. Gezike had his stock of goods involved, right after his brother had died, under very unfortunate circumstances, driving them, you may say, into bankruptcy at the time. Now these men were there; they had a case that involved probably a great share of all they were worth in this world. And do you believe that those men were not interested enough in that suit to notice whether the Judge was dead drunk or whether or not he was drunk at all? Do you think that those men, who had known him for twenty years, and who said as one of them said to me, that he could tell when Judge Cox had one glass of whiskey in him, do you think that those men would not have shaken in their boots if they had had an idea that a drunken Judge would sit and deliberate over their case? Don't you think that those men would have noticed it? And if they had, would there be any object to them in coming down here and swearing that he was sober, can you see any object on their part? Can you see any motive at all upon their part to come down here and swear to an untruth and falsify their testimony? Now, the object that would be apt to lead the witnesses for the prosecution astray, would not apply to them at all. It is a simple matter of fact with them, whether he was sober or whether he was drunk. Will a man who has the reputation of the re-

spondent for drinking, the least little thing that he will do that is out of the common way, the least little thing that appears upon his face, as appearance of being sick, or anything of that kind, give an occasion to people who feel a prejudice against him, immediately to imagine that they see signs of intoxication. This principle does not work the other way, because there is not an affirmative fact, and the mind never works upon a negative. You have nothing to stare at, there is a vacuum, and a vacuum can never be the subject of the power of imagination.

As to the last witness, this man Fitzgerald, a hint was thrown out by the manager, [Mr. Collins] rather a broad hint, that he was not a respectable man and that he had done things that were wrong. Of course there is nothing in evidence here, and as I know nothing about the true facts I will pass him over for the present as if he was not in the case at all. But whether the accusations that have been tried to be brought before the Senate against him be true or not, one thing is certain, and that is that they have been brought here in an improper manner, by the newspapers, evidently for the purpose not of punishing the man, but to prejudice the standing of this respondent. As to the merits of that accusation I shall say nothing now, for I know nothing about it, but shall leave it to my associate, when our investigations in that matter are ended, when we probably can satisfy this Senate that it is a mean calumny against this witness, but if we cannot, let the man pass out of the case; if we can, we shall claim the right to vindicate him against the aspersions that have been thrown out against him by the newspapers and by the managers. I say for the present I am willing to let him pass out of the case.

And I will come now to the question—

Senator CAMPBELL. Well, I suppose, counsellor, if you will permit me, I might as well settle that question right here. I guess the most that has been said about it has been said from my town, and if there has been any injustice done I want it righted.

Mr. ARCTANDER. Well, I had reference to what the manager said.

Senator CAMPBELL. Well, what the managers know, probably they got from me, because I spoke with them, and I desire that all parties shall be dealt fairly with. In my town a man calling himself Fitzgerald has been on a begging tour, representing himself as having been devastated by the wind storms, his house and stable blown down, his team killed, his wife killed, and some of his children killed or injured and crippled, and he solicited charity there and received quite a large amount.

I spoke with parties from New Ulm, and they told me that no such party lost anything in that wind storm. He was described to me as very similar to the Fitzgerald that testified on the witness stand from Brown county: I also learned that he was the only man known in that county of that name. The newspaper in my town published him as a fraud, giving simply the name that he gave, Fitzgerald, and his location. I also learned that he had stated to gentlemen here that he had business up in our country when he left here. I also learned that he had not got home a week or ten days after he had been dismissed from the stand. I now learn, however, that that was a mistake and that it is a man by the name of Fitzpatrick and not the Fizgerald that testified on the stand; that he is very similar in appearance to this man Fitzgerald. Now, I

desire to make this explanation because there was ground for suspicion that he was the man, and the matter is liable to be investigated yet, for our grand jury is likely to take it up, that he may be prosecuted if we can find him. But in justice to Fitzgerald and that no injury may be done here, and in justice to the managers to whom I spoke about this,—for I certainly felt very indignant, for I believed he was the man and felt that he was not entitled to much credence and respect—I make that statement now, in justice to all parties.

Mr. ARCTANDER. Well, Mr. President, I am very glad of that explanation. I expected that that would be the outcome of the thing, for the reason that as soon as I saw this thing in the newspaper I immediately made investigation of it and found Judge Whitlock, I believe, of Scott county, had met this man on the train the day after he was through testifying going up to New Ulm and Sleepy Eye, and consequently he could not have gone to Meeker county.

I therefore felt that Fitzgerald would be vindicated against any asperasions thrown against him by either the newspapers or the managers. Besides, I felt, from my knowledge of the man, that he was not such a man. And when the matter was brought up I immediately set about and wrote to Sleepy Eye, to the most prominent men there, asking them to find out about his whereabouts immediately after he left the stand here, and how long he had been in Sleepy Eye since he had left the stand if he had been there at all; but Senator Campbell stating that it was in his county, and probably largely through his instrumentality the matter was brought out, feeling incensed about it, as he ought to do, if it had been the fact, now the matter having been called up, and it having been shown that he is not the man at all, I think probably Fitzgerald stands in a better light than if he had not been attacked at all.

Now then, I desire to simply call your attention upon this article,—to the testimony outside of that of Mr. Pierce that I claim is contradicted by our witnesses. Mr. Pierce is disposed of; Mr. Blanchard did that, if nobody else did. Mr. Webber testifies that he thought the Judge's "lark" of the night before, showed in his face; that his face looked "stolid." Mr. Lind testifies also that he felt "edgewise" that morning, that he had the "katzenjammer;" and Mr. Severance says he was very much under the influence of liquor. Now, against that is the testimony of Mr. Gezike, the man I mentioned who was there all the time. He says that the Judge was "perfectly sober, if I am any judge at all;" he says, "I could tell if he was intoxicated;" that his appearance was "just as usual; nothing uncommon about him; he was as sober as I ever saw him in my life." That is what Mr. Gezike testifies to, and he is a man who has seen him sober and seen him drunk, and who knows all about him and has known him for twenty-three years.

Mr. Behnke says, upon that subject, that he was there all the time during the trial; "that he hadn't a bit of doubt that he was straight and sober; that he was positive that there was nothing in his appearance that showed that he had drank any; that there was no differance from other times when he knew he was sober in either his appearance, his manner, his conduct or his actions."

Mr. Fitzgerald—and I had intended to leave him out of the case, being under a slur, as he was at that time, but now I will take him in,—says he met him going into the court room; that he talked with him there; that he was in there until about 11 o'clock in the forenoon; that he had

not the least doubt in his mind about the Judge being sober; that he was just the same as he had been during the two days previous in court as far as appearance, actions and language was concerned. This Fitzgerald was the prosecuting witness in a forgery case that had come up that term, had been present there in court during the two days previous,—and he tells you, that there was no difference in his condition at all as far as anybody could see.

Now we will go further in the testimony. Mr. Severance says that Judge Cox left the room a couple of times, that his intoxication increased sensibly during tne trial. That is denied by Mr. Blanchard, as I read from his testimony this morning; it is denied by Mr. Gezike; "he did not leave the court room at any time except at noon recess; there was no difference in his condition between the latter part of the trial and the first part." And Mr. Behnke says the same thing; that he was not out of the court room except at the noon recess, and that there was no difference in his condition and appearance.

Mr. Severance is clearly contradicted by those two men and Mr. Blanchard. Judge Severance says, also, that he railed at that paper—that undertaking—several times. Mr. Blanchard says that that was the only time that he spoke. Mr. Blanchard says that it was only once that he spoke up there, and it was about that paper, and never anything said afterward. Mr. Gezike says the same thing. He only heard him speak once. Mr. Behnke says the same thing. That he spoke only once, and that then it was about the attachment, and that the lawyers treated him as usual. Contradicting some other testimony, Mr. Fitzgerald tells you that while he was in there he spoke up about the attachment—called their attention to that undertaking.

I now come to what I claim shows conclusively that Mr. Severance has not given us a true version of the true condition of the Judge at this time. He is desirous of giving you infallible signs of the Judge's drunken condition, and on account of his limited acquaintance with the Judge, and the usual indications of drunkenness on his part, he falls into the pit he has dug for the Judge, and tells us, what we who know him well, know must be false ; that the Judge's eyes were red, his eyelids swollen, and that his face had a swollen and inflamed appearance.

Now, that is denied by Mr. Blanchard; it is denied by Mr. Gezike; it is denied by Mr. Behnke; it is denied by Mr. Fitzgerald; and it is shown by the testimony of Mr. Davis that such a description would never fit him when he was intoxicated; that he would be haggard and his eyes hollow, and not otherwise. Mr. Gezike tells you "I should have observed it if his appearance was any different from usual, his eyes or his face;" and Mr. Behnke says "I am sure that he looked as sober as he does to-day;" and the fact that Mr. Behnke, when he was asked when he thought a man was drunk, said that although in his opinion a man was intoxicated if he had been drinking any liqnor to any extent, yet he thought a man was not drunk before he was lying in the street, does not go to impeach his testimony as to whether Judge Cox was sober or not, because if he did not know the right definition of drunkenness, he would any how know whether a man was sober or not, and that is all he testified to.

Again, Mr. Severence tells us that his talk was erratic and incoherent at the time; that he was uneasy and eccentric in his movements. Mr. Blanchard tells you it is not true; "if it had been, I should have heard

it and seen it." Mr. Gezike tells you that "there was nothing unusual about him at all;" that it is not true. Mr. Behnke tells you the same thing. I think I forgot to speak about Goodnough. He don't amount to anything any way, so probably it was unnecessary for me to call your attention to the fact that the managers have not in that case, deviated from their usual practice to be sure to bring men to swear against the Judge, that he has offended or upon whose toes he has trodden some time or other. Why, you remember, as appears from the testimony of Mr. Webber, that when he was proposed as the man to take the testimony there, Judge Cox turned around and said "Well, if you fellows want to trust a man like him, you can; I wouldn't. I wouldn't trust a man that is a confessed ballot-box stuffer."

Now, of course, the man didn't like that and the managers have taken this same man Goodnough, who is a prosecutor himself, who tells you upon the stand, on the cross-examination, that in 1878, when Judge Cox demanded an investigation before the House, he came, without anybody asking him, and stuck his nose into it, and suggested to the committee what questions to ask of witnesses and acted as a private prosecutor of the Judge. It shows what kind of character the witnesses they have got down here possess; it shows that they have not cared anything about truth or justice, but that they have only been anxious to get men that would swear to anything that would suit them, and anything which might convict this respondent.

I now come back once more to my remarks upon Gen. Cole. The managers say, why, we couldn't call him, we had five witnesses without him. I say, gentlemen, and you know it, that when Pierce was called, who was the first witness on that article, Gen. Gordon E. Cole sat right over there and heard Pierce's testimony, and was here in the room and stayed here in the room, and was kept here for days and days; and it was not until over a week afterwards that the managers telegraphed for Goodnough to come down, and he came down and made their fifth witness, while they had Gen. Cole sitting here waiting to be heard: and yet they say that they had their five witnesses without him, that they couldn't get him in unless they were allowed more than five witnesses. Mr. Pierce, as the record shows, was called on the second day after the introduction of testimony was commenced in this case; and I remember, at that time, when he was examined upon that article and no other, when he was afterwards followed by three other witnesses upon that same article, Webber the next day, Lind the day after that again, and so on, Gen. Cole, during all of the time, sat right here in the court room. If they had wanted him why did they not call him, instead of waiting awhile and then telegraphing for Mr. Goodnough?

Now the managers say why didn't the defense call him? They had not used but four witnesses. It is true that we have only used four witnesses upon this article, but that was all that I considered necessary. It is true also that we subpoenaed Gordon E. Cole; it is true that he was here; but it is also true that on account of our business being set back by my opening argument drawing out longer than was intended, we gathered a crowd of witnesses here and that we could not reach this article in the order in which it should have come according to our calculation. The day Gordon E. Cole was subpoenaed to be here, he was here in court. I had a talk with him, and I concluded to call him upon the witness stand; but he asked me to let him off for two or three days

on account of having a case in the district court here. I did not believe the article would be reached for some time, and I told him "Of course, General we will have to accommodate you;" and he went away, and the article came up in his absence. I called the witnesses on that article, as you will have noticed I did all the way through, one after the other, and we got through with them, and after we had commenced to introduce evidence upon other articles and when I considered this article busted anyway, Gen. Cole came back—about a week afterwards—we had gone into other business, and I did not consider it of sufficient importance to open up that article for thepurpose of calling him. If he had been here when the article was under consideration, he would have been called upon the stand, and I think the managers know it.

I think, we have clearly demonstrated to you, Senators, that when that article was left to us by the managers, that when the State was through, that article stood trembling in its own weight, and really no proof in it; because the testimony was so contradictory that you couldn't help but disbelieve it; you couldn't help but say "Good gracious! is any man upon such testimony to be convicted?" If we had not offered one scintilla or one iota of proof you would have had to say that that testimony was so contradictory that you could not say that the man was guilty beyond a reasonable doubt, on your oath and your conscience.

We have shown you by overwhelming testimony, not only by that of the defense, but by that of the prosecution itself, that Mr. Pierce is a liar; we have shown you by overwhelming testimony that Judge Severance is prejudiced and mistaken; we have shown you by overwhelming testimony, by the testimony of Mr. Blanchard, by the testimony of Mr. Behnke, by the testimony of Mr. Gezike, by the testimony of Mr. Fitzgerald that Mr. Webber and Mr. Lind are mistaken, that there was no signs of any drunkenness; that although the Judge might have been on a drunk the night before, that he had recovered and that there was no exhibition in his face, in his action or in his conduct. And I desire to call your attention to the fact, gentlemen, that the proof shows, and Judge Severance's testimony shows that this man was not called in from the land office on account of the condition of the Judge, because this was agreed on the evening before. Mr. Pierce says so too, that it was agreed on the evening before that he should go on and try that case. Mr. Severance says he refused to go on with it, but finally said, if they would get some one to take the testimony he would go on in the morning.

Now, then, the reason he did not decide the points as they came up then and there, and take the testimony himself, was not that he was drunk that morning, but it was for some reason of his own, some reason that he gave there, and it has already appeared in testimony that at the time he had a lame hand, and that he told them his hand was so lame that he could not write. That appears even in the testimony of Mr. Pierce, so that this drunk of his did not cause that amanuensis to be employed, but it was the condition of his health which caused it, because he could not write himself.

I had forgotten to call your attention, in connection with Judge Severance's testimony, to the fact that Judge Severance has told, I may say, two stories in this matter. It is upon an immaterial point it is true, it don't make any particular difference, but it strikes me that it shows how

Judge Severance may be mistaken, that he is nothing but a mortal after all, if he is Judge, and that he may forget and be prejudiced and have the same feelings and the same dislikes as we other mortals. What I have reference to is his telling before the judiciary committee that he found the Judge sitting in an old barn behind some building, and now telling you that he did not so find him, nor that he did not so testify; that he found him standing up by a fence talking with a man. Now how can it be? Is it likely that he could be mistaken about it, that Judge Severance should have said that he found him standing by a fence talking with some one, and the shorthand reporter should have got it down that he found him sitting in a barn? Is there a similarity of sound in the two statements which would bring it wrong in the reporter's minutes? Well, I think between the two I would rather take what was taken down right at the time. Judge Severance, it is true, may not have paid any attention to it at that time, he may not have thought particularly of it since, but it shows how easily we can be mistaken, and how easily even great men, whose word the managers ask you to take as law and gospel, can be mistaken.

I do not desire to reiterate anything I have said, and yet at the same time I feel it my duty to ask you whether or not Pierce's testimony is sufficient for you to convict upon, contradicted as it is by all of the others? I will ask you to state whether or not Judge Severance's testimony is sufficient to convict upon, contradicted as it is by all the others? I will ask you to state whether or not Mr. Goodonough's testimony is sufficient to convict upon? Whether or not Mr. Webber's testimony is sufficient to convict upon. Certainly, Mr. Lind's is not; and even he, contradicted as he is by as good men as Blanchard, Gezike and Behnke, leaving out Fitzgerald, if you please, taking him in if you want him, I will ask you to state upon your honor and your oath, when you come to vote, if you decide this case upon the law and upon the evidence, whether or not you can liberate your mind from a reasonable doubt as to the Judge's guilt under this article; whether or not there is not a reasonable doubt in your mind as to Mr. Pierce's testimony being true; whether or not we have not succeeded in creating a reasonable doubt in your mind as to whether or not Judge Severance may not be mistaken; whether or not we have not succeeded in creating a reasonable doubt in your mind as to whether or not this charge has not fallen to the ground. I do not believe that any honest and conscientious Senator can answer that question in any other way than to say: "We can not convict; we will not convict; there is too much of a reasonable doubt about this article for us conscientiously to convict the respondent upon it."

I desire now to call the attention of the Senate to

ARTICLE FIVE,

Reserving my remarks upon Article four until toward the close of my argument.

ARTICLE FIVE

is the so-called Long mandamus case. You will notice, Senators, that as I premised, when I made my opening statement in this case, we have

offered no testimony upon our part under that article. I don't know if we could, if we had tried, and we did not care to try if we could, because, as I stated then, that article has entirely failed; that article and the proofs introduced by the State amounts to nothing. I don't desire to call your attention to the apparent conflict in the testimony between the two who testified,—Mr. Long, the fellow who has got a grudge against the Judge, because he did not allow and settle his case, and Mr. Lamberton who might have other reasons for feeling unfriendly toward the Judge. I will come to him hereafter; I do not care to call attention to him—I will take it for granted, for the sake of the argument, that their testimony is true, take every bit of the testimony of those two men, take it in connection with the writ of mandamus of the supreme court—which is in testimony as part of the cross-examination of Mr. Long—and I say if you can harmonize the testimony of those two men, —and I suppose you can, I suppose there is not probably a very great difference between them, except that one tries to exaggerate a little more than the other,—if you take that testimony and take the facts as they stand proven and make the most of it, you cannot convict this respondent, because there is nothing proven against him. This article is not substantiated. It is not shown that he acted as a court; it is not shown that he held court as it is alleged; it is not shown that he exercised the powers of a judge. And I do not need to read that writ of mandamus again, that writ of mandamus in which he was commanded forthwith, upon the receipt and service of it, to sign and certify a certain case therein mentioned as of a prior date—when it should have been signed —and commanded, under the seal of the clerk of the supreme court of this State,—a command that this respondent had to obey or resign. He had either to obey it or resign; there was no question about any action upon his part; there were no powers of a judge for him to exercise; all that he had to do was like any school-boy when the master says "Come;" he has to come; when he says "Write," he has to write. And the judge of the district court of the State of Minnesota, when he is judge, when he is acting as judge and exercising the powers of a judge, is not a school-boy; he is the master himself. But in this case he was divested of his judicial powers. The supreme court, by their order and their act, divested him of all his judicial powers in that matter, and told him "You have got nothing to say about this, my dear sir, you have got to obey our order, and do it pretty quick, or we will be after you with a long stick," or words to that effect. That is about the meaning of that thing, and the Judge had no alternative but to do it or resign; and if he had resigned, they would have compelled his successor to do it.

I desire to call your attention, Senators, to a fact that I did not in my opening address, and it is this: that this article evidently was drawn with intention to cover the time when the Judge had this case first presented to him in May, when he should have signed it. It seems to have been intended by the managers, when they drew it, to do that; because they say that he

Did then and there examine and *disprove* of matters and things then and therein 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 theretofore been tried before him as such judge, in which one Albrecht was plaintiff and one Long was defendant, while he, the said E. St. Julien Cox, 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.

Now, that is the article. That article evidently intends to charge the time that Judge Cox had this case presented to him, and when the lawyers were there and argued the motion for a new trial, and when he disapproved it, because they say that was what he was about doing; they say that, they charge that, but at that time they have not shown him intoxicated at all, consequently he can not be convicted on that. The article has failed entirely. They have found that they could not prove intoxication at that time, and then they have swung around to the time when the mandamus was served upon him, and when he had to sign that paper,—when he acted not as a judge, when he did not exercise the powers of a judge, but when he simply obeyed the mandate of the Supreme Court.

Now, even if this was any judicial business of his, I suppose the managers will so claim it, for it seems that they are going to rely on the technical point that he signed that as the judge of the ninth judicial district, acting as and for the fifth judicial district, that he had to make an official signature, and that he acted as judge in making that signature. That is pretty thin, gentlemen, but whatever there be to that, whether there be anything in it or not, whether you take any stock in it or not, yet does it appear here that the Judge did not do what he had to do? That he did not do what he was commanded to do? That he did not perform the duties of his office there at that time, even if he was drunk? That he did not perform the duties of his office in a satisfactory manner? That is what they charge,—that he couldn't do it. What does the proof show? The proof is here before you, his signature to that document,—and what document? To the document that the Supreme Court commanded him to sign. Well, now, he did just what he was commanded to do; he signed the right document; if he had any discretion in the matter he exercised it.

Well, who is it, then; that complains? What ground of complaint is there even if he was drunk? If you are going to say that the court can be held upon the street and the sidewalk and in saloons and in stores, and that when Judge Cox signs an order in a store, or signs a case there, that he holds court there, is exercising the powers of judge there, and that if he is drunk when he does it that he is liable, you cannot get any farther anyhow, if he did not make any mistake, if he did not do anything wrong, if he knew what he was about, if he did it right, that ends the matter. And the evidence shows that he did it right. The evidence of Mr. Lamberton shows that he knew what he was about. Why, the testimony of Mr. Lamberton of the fact that the Judge wrote his name,—and that he had knowledge and sense enough to dictate to Mr. Lamberton what should be written thereafter—"Judge of the Ninth judicial district acting in and for the Fifth judicial district" shows that he knew what he was about, that he understood his business. Immediately when the man came up there, he knew what it was. He came there with the mandamus, and as soon as the Judge saw it he told him "Ah, ha! You are up with a writ of mandamus, are you?"

Now all these things go to show that even if the Judge had been drink-

ing, even if his handwriting was bad, even if he was a little muddled and boozy, yet he knew what he was doing; he did not do anything wrong, nobody suffered from any act he did there, and he did what he was commanded to do, and as a matter of fact he did not do it as Judge, but he did it because, forsooth, he was commanded so to do, and couldn't do anything else, had no choice, no discretion and he exercised no judgment. Why, gentlemen, do you speak of a Judge without a judgment? What is a Judge for if he could have no judgment? Well, that is what you have him for, I suppose. But here is a man who is told "You can not use your judgment; we have superceded your judgment. Now, here, you do just as we tell you; if you don't we will incarcerate you; we will put you in jail." And he has to do it, and he does do it, and does it right. What more is there about it? The article is busted. There is no one who can say that this article, if it charges anything at all, is proven, and it falls to the ground of its own weight. It would be to waste powder, to waste wind, to waste expense to have brought witnesses down here to show that Judge Cox was sober at the time—which I doubt myself—but if he had been, it would have been wasting powder to bring them down here. And we chose to rely, and choose to-day to rely upon the position that there is nothing proven against us on that article for which we can be impeached.

The sixth article having been dismissed, I now proceed to the

SEVENTH ARTICLE,

the Dingler case.

Whom do we meet in the Dingler case? The managers say they meet two or three saloon keepers and they are awful mad because we introduce them into such poor company, feel chagrined about it. We, on our side, don't like the company they present to us any better. Who were the witnesses for the prosecution? Why, the eternal Webber, the eternal Lind, Ladd—the miniature candidate—and Downs, the henchman of another candidate. It is a regular joyful meeting of the candidates on this article. They seem to have it just as they want it. Outside of their own sweet midst they can find nobody to cherish them, nobody to cherish their hopes on this article. They must rely upon themselves and their own resources. Nobody outside can be found to help them out, and I believe I do strike here, for the first time the little Ladd.

Now, he is a remarkable and curious character; he wants this office badly. He has wanted it and cherished a forlorn hope for it for the last—well as long as he has been there,—twelve years, I believe. He has sought it long, and sought it in vain all the time. There has always been somebody the people of that district preferred to him. He hasn't understood it and he has always felt very much hurt; he thinks that finally his hopes are going to be fulfilled, and he is anxious to see it done. He is getting old, worn out; he sees it won't do to live on hope; it don't pay; no nourishment, and to bring this matter to a focus, he comes to St. Paul in the month of December, last, and he swears, and swears like a trooper against the respondent. He swears so much, that some of the articles that he swears on, the managers even have been ashamed of and have withdrawn them, and don't dare to let them see daylight even in this court. One, the special term at New Ulm, which he swore to, when the Judge should have been up there and held the term, and he

was so drunk that he didn't come, so there was no term at all, looked the ugliest charge of all; and he swore the Judge was drunk, that he had been to the depot and taken the wrong train, and he went up there and found no Judge, and came back and found the Judge was drunk, and that was the reason he had not gone. And then he suddenly discovers that the day he swears he went to New Ulm, and that the Judge should have gone and was too drunk to go, there was no trains going at all. And how had the little Ladd, jumping on his short legs got there? And where was the negligence of the Judge? And he finds that he has to swallow the train and the term of court and the Judge and his lie and all, and he does swallow them all, and with good grace. He tells you now, that he testified before the judiciary committee that he was not certain about all of these things, and now he of course cannot swear at all.

Now that kind of a man's testimony I would take with a great deal of allowance even if he was not a candidate for Judge, even if he was not well known to have hated this respondent from the day he first put his eyes on him, as all that is low and small and mean hates all that is great and grand and able and noble, with that hatred he has hated the respondent from the day that they first met. Now, you may speak as much as you please about, that there may be a great soul in a small body and a noble soul in a small body; but I say if you ever see a little hunch-back like that man Ladd is, you can make up your mind that there is no room for a great soul in that body; there is no body to support it. Whenever there is a great soul there is a body to support it; if there had been a noble soul in him, that would have shown itself in a noble face in the eyes and forehead and the brow of that man, instead of its showing ambuscading, cunning, meanness and anything but what is noble and grand. Now, that man comes upon the stand and he swears upon this article. Mr. Webber comes upon the stand and he swears. Mr. Lind comes upon the stand,—he is Webber's henchman,—and swears—and he swears strongest of them all. Mr. Downs, the ex-sheriff up there—who is henchman for one of the other candidates, travels the district for his candidate, and is equally interested with the others, the man who didn't know anything about this occurrence of drunkenness in the Dingler case in the month of November, 1881, who in the month of November, 1881 stated publicly that he had never seen the Judge intoxicated on the bench, and who now comes and tells us that he had forgotten it in that month and didn't know about it, and that he has learned it since, an occurrence that took place in 1879,—that is a man whom you can place reliance upon; a man who swears upon information from somebody else rather than from his own knowledge and his own memory and his own observation—

Senator MEALEY. Who is that?

Mr. ARCTANDER. Thomas Downs, the ex-sheriff of Nicollet county.

Mr. Manager DUNN. Hadn't you better state the evidence and not what you know?

Mr. ARCTANDER. I think I have stated the evidence. Mr. Downs, after testifying upon page 51 of the twenty-second day, upon direct examination, was asked:

Q. I wish to call your attention to a case, or to a proceeding there—the case of Dingler vs The County Commissioners, on the 10th day of December, 1879. Do you remember it?

A. I do.
Q. What Judge presided at that meeting?
A. Judge Cox.
Q. You may state his condition as to sobriety during the hearing of that case.
A. I think he was intoxicated.

It is only he "*thinks.*"

Q. Do you mean he was drunk, or sober?
A. Well, if you confine it to those two words, I should say he was drunk.

Examined by Mr. ARCTANDER.
Q. When did you first find that out?
A. At the time.
Q. Had you forgotten it in the month of November, 1881?
A. Had I forgotten what?
Q. That the Judge was intoxicated during that time?
A. Yes, sir, I had.
Q. Mr. Ives was the one who reminded you of this fact, was he not?
A. No, sir.
Q. Didn't you tell Charles Davis, in front of the postoffice in St. Peter, about three weeks ago, that your talking with Mr. Ives, and his reminding you about it, was what brought it to your mind that Judge Cox was drunk at that time, or words to that effect?
A. I did not.

But he admits that he had forgotten all about it in the month of November 1881.

Now, then, those are the four witnesses for the State. They are entitled to all the credit you see fit to give them; I don't think it will amount to much.

Now who have we on the other side? In the first instance we have Mr. Davis, the county attorney of that county, who has known the respondent for twenty years; who has been his law partner for three years; who is presumed to know him more intimately and better than any other man that has been on the stand on either side; a man of high standing in the community; a man who has got a reputation for truth, honesty and honorableness that competes favorably with that of any other man in the city of St Peter; a man who was himself beat in this very case, gentlemen, a man against whom the decision was in that Dingler case, and who tells you to-day, that he did not think then it was good law and don't think so now. Of course he didn't. Why? Because he got beat. He didn't think it was good law because he got beat. That is his own language. But he tells you, as we will show hereafter, that the Judge was entirely sober at the time.

I want to call your attention to the fact that this witness, Mr. Davis, does not attempt to shield this respondent in the least; he does not attempt to shield him from what is right and what is just. Did you notice, when he was asked upon cross-examination, if he had ever seen the Judge intoxicated, did you notice, I say, how he told readily and fairly to the managers, without a moment's hesitation, "I have, sir"? Did you hear him tell, as willing as any body could have been, before we could get a chance to object even, that he had seen Judge Cox intoxicated during that very term of court, later in the term, when Judge Dickinson was there? I think it was the same term of court, at least it was a term of court at which Judge Dickinson was there and tried the case of the State against Loomis. That the Judge at that time, when

Judge Dickinson was presiding, while he had nothing to do there, was inside of the bar, in a state, as Mr. Davis then thought, of intoxication. Did you hear him say it without any attempt to shield and cover up the acts or misdeeds of this respondent? Now I say, a man who acts in that way is worthy of belief. He shows that he is not unjustly prejudiced one way or the other. He shows that he wants truth and justice and nothing else; and in my estimation a man like Charles R. Davis, a *lawyer* like Charles R. Davis is worth eight Ladds with one Webber put on top of them, and will outweigh them.

The next witness for the respondent—we have got eight of them in this case, against the four for the state—the next witness is Mr. Hatcher, the deputy sheriff of that county; who was present in court, who is the next neighbor to the respondent, and lives right near him; he has been his neighbor for twenty-three years. He knows him personally and intimately; an honest farmer when he is not attending court, and at the same time, as you certainly noticed upon the stand, a keen and a sharp man; a man who is no man's fool; a man who remembers what occurred; who remembers what was done; remembers conversations that he had with the Judge, and tells it to you in an intelligent and straightforward manner; and a man that tells you, too, that he was sober; a man who says if a man takes one glass of liquor he considers him under the influence of it; a man, then, that is not apt to give definitions which don't suit these managers, and a man who has seen the Judge drunk as he tells you, and has seen him drinking. In speaking of the Judge,—I don't mean, of course, the respondent as judge—I mean E. St. Julien Cox, and I want to be so understood hereafter whenever I mention the Judge,—I don't refer to the official, but only to the individual. The witnesses did not refer to the official, nor to the man while holding office, but to the individual solely. Because they were asked: You have known him twenty or thirty years; have you ever seen him drunk during the time you have known him? and they said Yes; we all call him Judge; it comes natural to us. But they did not meant that they had seen him drunk since he has been Judge, but simply meant that they have seen the man drunk, whom they call Judge. Now, I say, a man like Hatcher is a good witness; his opinion is worth having, especially when he gives the facts as well as his opinion, as he does.

Now, this man Hatcher says that he went home with Judge Cox that night, and the managers made quite a point at the time; thought they had made a very happy find when Mr. Harff, the hotel keeper at Minneapolis, who was at that time a hotel keeper at St. Peter, testified he went home with Judge Cox that night, too, and that there was only one who went home with him.

Now, I don't consider that that amounted to anything at all. I have no doubt but that Mr. Hatcher was correct and Mr. Harff was mistaken, because Mr. Hatcher was the most intelligent of the men, the one that seemed to remember best everything, and he undoubtedly was correct. Now, if this had been done for the purpose of cooking up a story, and it was done to show how they came to know about the Judge's condition, how they had happened to see him, etc., then it would look suspicious. If they had been witnesses that had come, one without hearing the testimony of the other, and had told anything of the kind, it might look suspicious, because it would show that the witnesses were reckless,

probably, and it might be that you would think they had fixed up something, that they did not remember exactly; but, in this case, gentlemen, as you will notice, Mr. Harff was called as a witness immediately after Mr. Hatcher; Mr. Harff sat right here and listened to the testimony of Mr. Hatcher; he heard Mr. Hateher say he had gone home with Judge Cox, and yet he came up and said he went home with him. What does that show? That it is a made-up story? No; it shows, probably, that the man is mistaken in the date, but that he is convinced that he did go home with him. If he had not sat here and heard that story, and then come in and told it, it might have looked suspicious, but as it was it showed the honesty of the two men.

Now, another thing. It shows, gentlemen, that the hints that have been thrown out here against us by the managers, against me personally, I think, more than against any one else, that the witnesses were coached, horse-shed, as we call it, were not only ungentlemanly but totally unfounded in fact, because, if that had been done they would have dovetailed in better.

It shows that the testimony came natural, from their own observations and their own knowledge, and that no attorney, scrupulous or unscrupulous had tried to dove-tail them or get them to swear to what was not true. It shows that they swore to what was true or what they thought was true, and that no improper influences were brought to bear upon them. It is true that I have,—as every good attorney should, as every attorney that claims to be an attorney would,—examined these witnesses; I have tried to examine every witness before he was put upon the stand, to see what he could testify to; but every witness has had to tell his own story and not to get it from me, nor any information nor any encouragement. I have known what was coming, as a general thing, because I was prepared for it; but I think that this instance shows that the witnesses have come upon the stand and have acted upon their own impulses, upon their own recollections, upon their own remembrances, upon their own consciences and not upon either the respondent's or his counsel's.

Now, this man Harff, as well as the next man, Meyers, were jurors in the case. The manager made a mistake when he stated,—I suppose from inadvertence,—that Mr. Meyers was not on the jury. Mr. Meyer was on the jury. Mr. Harff was on the jury in that case. Mr. Meyer, the next witness, the man who has known the respondent for thirty-four years, been in the army with him, living next neighbor to him, was on the jury. Mr. Koelfgen, who is a saloon keeper, (poor Mr. Koelfgen, he gets it from the managers on that account) was on the jury. Then there is the shorthand reporter of this respondent, Mr. Ware. Now, here are men in various occupations—Mr. Harff the hotel keeper, Mr. Koelfgen, the saloon keeper, Mr. Lehr the stone cutter, Mr. Meyers the farmer—who lives in St. Peter, but who owns a farm there—all of those men were on the jury. They are good respectable men, men that are well thought of, men whose word is good, and all of those men who sat there had known the respondent intimately and noticed him particularly and we picked them out for two reasons. It was suggested by the managers that it was remarkable that there should be two saloon keepers upon that jury. In the first instance we did not have two saloon keepers because I insist that Mr. Harff, who owns a hotel in which there is a bar, is no saloon keeper, but it does not make any difference if he was. Now, I say we

called four of those jurymen, and from those men we chose those who had known the Judge the longest and been most intimately acquainted with him. We did not want the farmers out over the country who had seen him only once or twice a year, we wanted his neighbors, men that could tell whether he was drunk or not, and could tell it honestly, knowingly, and intelligently, and that is the reason we picked out the men we did, all men, who had known him from five to thirty years. And the reason there happened to be a saloon keeper among them was because we desired not only to get his acquaintances but those easy to get at; we did not want to go out into the country and procure men if we could find them right in the city of St. Peter. And I think you will find that there was none of the jurors than those we have called from the city of St. Peter. We did not have time to go out thirty or forty miles into the country for jurors, as we might have done. You did not give us time enough to scour the country all around for witnesses. You did not give us time enough to leave the railroad to go out through the country and see witnesses and prepare ourselves in this case, as we might have done if we had had a full and fair opportunity.

The last witness is a respectable young man,—Mr. Ware, the shorthand reporter of the Judge. He has followed him from term to term, he has seen him under different circumstances; and he says he has seen him drunk on one occasion too. He is a man who has the ear-marks of honesty stamped upon every feature of his face,—a man whom nobody accuses of favoring or fearing anyone, or acting from favor or fear to or of any man. In addition to this he is a man who is known for his temperate habits,—a man who never drank a drop of liquor in his life, and who is a practical and theoretical temperance man.

Those are the witnesses we bring forward in behalf of this respondent on this article,—besides the record, which speaks more than witnesses, and which shows the infernal lies which have been concocted by the witnesses for the prosecution against the respondent under this article.

On motion of Senator McCrea the Senate took a recess for five minutes. After which Mr. Arctander proceeded with his argument as follows:

Mr. ARCTANDER. Mr. President, I was just about going to state what I understood to be the testimony introduced on both sides under the seventh article,—the Dingler case. I desire to call the attention of the Senate to the fact that although Mr. Webber, Mr. Lind, Mr. Ladd and Mr. Downs have testified to the condition of the Judge at this evening session when the road case, the case of Dingler against the county commissioners of Nicollet county, was brought up for argument upon a motion of Mr. Lind, although they all have sworn in effect that the Judge was intoxicated, yet some of them are a good deal more weak in the position they take as to his intoxication than others. Mr. Webber, for instance, says only that "it was my *opinion* that he was intoxicated." Mr. Ladd says positively that he was intoxicated, while Mr. Downs says, as you heard from that part of his testimony that I read, that he "*thinks* that the Judge was intoxicated at the time; *thinks* that he was under the influence of liquor."

Now we will see upon what Mr. Lind, Mr. Ladd and Mr. Webber base their opinion as to the intoxication of the Judge. The story is a short one. Mr. Lind appeared for this Dingler in that road case, and in the

forenoon, after the jury had been empanelled, he made a motion to have the order of the county commissioners laying out the road vacated.

The county attorney, Mr. Davis, asked for a recess for a short time to examine the records. Then after a recess of some fifteen minutes, as the records will show, he begged a further recess, and a recess was then taken until evening, to give him full opportunity to examine the records. In the evening at 7 o'clock, the jury having come there in the afternoon, and being ordered to return in the evening, sat in their jury box while this motion to reverse the order laying out the road was argued. The points in the case were, that the road going through a village incorporated under an act of the legislature, the county commissioners had no authority or jurisdiction to lay out the road.

Mr. Lind tells you, and he is corroborated by Mr. Webber, at least partly, that the Judge interrupted him, and that he attempted to make a decision that night, and that the decision that he attempted to make was to this effect: That he would set sside that road order as far as the village or Redstone went, but that he would sustain it as far as the balance was concerned. And Mr. Webber,—the immaculate candidate for Judge of that district,—is particularly anxious to throw out the slur and the hint to this Senate that the action of the Judge was ridiculous in so doing, for the reason that that would take out the middle of the road, and leave two ends of the road standing, and that was the ridiculous action that a man who was sober would not be guilty of.

It appears from the testimony of Mr. Davis that one end of the road was in the town or village of Redstone; that that was the starting point of the road, consequently making that order, if any such order had been made, would simply strike out or make null and void a portion of that road, one end of it, and leave the other end standing.

I don't say that that cuts any particular figure in the case except as it goes to show the animus of those witnesses. Mr. Lind testifies to the same thing, and he ought to know better, because it was his own case. He certainly ought to know better, and I think he did know better. I say it don't amount to anything, but it shows their animus. It shows their desire, even at the cost of truth to prejudice this Senate against the respondent, and to convince you at all hazards that the respondent must have been under the influence of liquor at the time.

Now it is claimed upon the part of Mr. Lind as well as upon the part of Mr. Webber that the Judge on this evening was more talkative than usual; that he interrupted the attorneys very frequently. This is contradicted by Mr. Davis. He says that there was no such thing; that the Judge was just as usual. It is contradicted by Mr. Ware, the shorthand reporter, who sat right there and heard all that was going on. It is contradicted by the four jurymen, Mr. Meyers, Mr. Lehr, Mr. Koelfgen and Mr. Harff. They contradict it absolutely, and say it is not the fact. Mr. Lind desires you to believe that the Judge during the evening frequently interrupted him and also made suggestions that were entirely irrelevant to the case. Mr. Davis was asked about that, and he says it was not the fact; that the Judge would put questions to the attorneys as he always does; "he would make suggestions upon points that puzzled him and puzzled us." Now, the manager says, how any attorney who has ever had anything to do with a road case could be puzzled by anything that came up there that night is more than he could see. Well, I flatter myself that I have had something to do with road cases myself, proba-

bly not as large an experience as that of the learned manager, but I must say that when that question was first brought up, although I of course spent no time and have not now in looking it up, yet it puzzled me as to what would be the correct ruling and the proper practice under the particular circumstances of that case.

In the first instance, whether or not the mere incorporation of that village, when it was not a village in fact, would bring the road under the statute, whether that would prevent the county commissioners from laying out the road. That is one point. The next question is, if a part of that road was invalid, on account that they had no jurisdiction to come in there, would it make the whole road invalid. I think there is a puzzle in that, too; because, mind you, if the commissioners had had no jurisdiction at all, if they had proceeded illegally, with no foundation for their action, without a petition, without the proper application, without having obtained jurisdiction in the premises, then I admit that there could be no question, but that their whole action must fall. But here was a question not of jurisdiction, but whether or not they had a right to stretch their hand beyond their jurisdiction into the incorporated limits of that village. And there is a question in my mind to-day, and I am frank to confess it; as a lawyer, there is a question in my mind, although I have thought some of it, whether or not it would not have been the proper ruling on the part of the Judge, to hold that order good as far as the extent of their jurisdiction; namely, to the limits of that village, and hold it invalid as to the balance. But we are not here to decide what is proper and what is correct, except simply as far as the testimony upon their side throws any light, and as our argument can throw any light upon the true condition of the Judge that night. Now, if that was correct, if that was the correct rule of law, if that was the correct view taken of it in law, that they had a right to go until the limits of that village, but no farther, then, certainly, the action that John Lind claims the Judge did take upon it in the evening was a correct one, and that action shows that the Judge was not intoxicated, but that he was sober, if he *did* do any such thing; but I think it has been established conclusively before you that when John Lind states that, he states what is not true. Even Ladd comes before you and says that he cannot recollect of any decision being made by the Judge, but he says that the Judge "intimated" what his decision might be; that he intimated the way that he might be likely to hold; and that was perfectly proper for him to do. It was perfectly proper for him to do, in order to get at the views of the counsel, to get all the information and all the light they possibly could throw over the subject matter, because that he was entitled to, and he ought to have it. But we do not rest upon Mr. Ladd's testimony here. It would be too weak a foundation indeed to rest upon. We call Mr. Davis and he tells you that he is positive that that decision was not made in the evening; that the Judge intimated even no decision that night; that he listened to them patiently, that he made no irrelevant suggestions, no interruptions or remarks, but that he heard them patiently and that when they were through he told them "Gentlemen, this matter I will take under advisement until to-morrow morning;" and that when he came in in the morning, and when the jury came in, he then ordered the clerk to enter an order reversing the action of the county commisssoners and dismissing the case from further consideration. Now, if we only had Mr. Davis' testimony to rest upon,

you probably might say that he possibly might be mistaken, considering the positive testimony of Mr. Lind, corroberated as Mr. Lind is by Mr. Webber, although Mr. Davis is corroborated by Mr. Ladd; because some of our witnesses when they were asked upon cross-examination as to this, said it was their idea that the case was dismissed, that the road was "busted" that night.

Well, it would be very likely that they should make such a mistake; very likely indeed, after three years had elapsed. It would be unreasonable that these witnesses could be certain as to just what was done, how it was done, and what time it was done; that they could remember that, and would state it one after the other, common men, as they are, men that have no particular calling in connection with the court,—and even if they had been men who had callings in connection with the court and were interested in the result of the suit, even then, very likely, they could not have told it with any degree of certainty; but there is one thing, gentlemen, that does not lie, and that is the records. The testimony of witnesses may be made up to suit one side or the other of the case, but the record that is made up at the time when the matters transpire, made up by a competent clerk, (as nobody denies the clerk of Nicollet county was at that time, not the same one that is clerk now, it is true, but one that was just as competent, and just as able as the one that is clerk now, if not more so), can not be made up to suit any side. I say we have the record, and when the learned manager stated, in referring to that record, that he regretted very much that he did not have the original records in court, I say he stated what he knew was wrong, because they did have the original records here. They had the records in the handwriting of the clerk, they had them here in the book, and when I called their attention to it Manager Dunn said it was a copy.

I ask the manager how he knows that those are not the origina records. Is there any testimony here that the records of that court were transcribed? Is there any evidence of that kind from which there is any presumption that they were? The records are the records, and I think it has been the practice in that district and I am positive that it was at that time and under that clerk, to enter the records on the docket at once in the minutes, and they are so there entered, and they are certainly the records of what took place there at the time. Nothing else would be in them. The learned manager goes on and says that he derives considerable comfort from the order in those records. Well, if he derives so much comfort from it, I do not see why he is not satisfied with it the way it stands. He says that the record shows that there were two orders, that the record shows that there was an order sustaining the road, as to all that was outside of the village and reversing it as to what there was in the village, and that the record shows it. I desire to call your attention to the record itself on page 455 and to read exactly that order. I will read first the motion of appellant on the bottom of page 454 to show what the proceedings were. It shows that in the evening, after court had convened pursuant to adjournment, the appellant made his motion to the court. I won't take up the time of the court by reading it because it has been read already. It was simply his motion to dismiss the proceedings and reverse the order, "Motion argued by the respective counsel. *Motion taken under advisement.* Court ordered recess till 8:30 a. m. to-morrow." Does that show that any order was made by

the Judge? What is the testimony of Mr. Lind in that regard? That an order was made in the evening, and an order that he claims was a drunken order, and that in the morning the Judge entered an order without any argument reversing the order that he had made in the evening, and granting the motion as he had made it.

Let us see the order that was made in the morning. There is no order appearing in the record as having been made in the evening, and Mr. Lind admits if it had been any more than a simple suggestion to the counsel as to what he would probably hold, that it would have been addressed to the clerk and entered in the minutes of the court; that that is the invariable practice, Mr. Lind so testifies. Now, we find nothing of the kind, but we find it stated in that record that immediately after the argument by the counsel the motion was taken under advisement. Does that look like an order was made that evening? Now the next morning, in regard to appellant's motion we find the following entry on record: "In regard to the appellant's motion the court made the following order:" Now let us see if there is any reversal of any order made the evening before. "The order of the court is that the appellant's motion in this action is sustained,"—the appellant's motion was to break down the whole road—"and the order of the board of county commissioners laying out the road, so far as relates to the south-half of section 35 is concerned, is reversed, and the court further orders that the laying out of the 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," etc.

Now, you see the first thing that comes in there is, that the appellant's motion is sustained; then follows that the order of the board, laying out the road through that section, as far as it relates to the south-half of that section, is reversed; and then the court further orders that the laying out of the road itself be reversed. First, that the order laying out the road was reversed as far as that half of the section was concerned, and then that the laying out of the road, not an order laying it out, but that the laying out of the road, entirely, be reversed. Now does that show that there were two orders? Does that show that the Judge reversed any order that he made in the evening before? Is there any reference to any such order? On the contrary, it seems to me that the whole subject matter is here treated in the only way that it could be. It shows in the order itself why the Judge reversed the laying out of that road. It was because he did not sustain the motion as far as laying out the road through that section was concerned. It shows the ground for the decision; it shows nothing else.

Mr. Ladd, it seems looks at this respondent, whenever he has had a chance, through a pair of specks that are colored, from the interest that he takes in that position. He tells you (and it is denied by Mr. Davis and all the other parties,) that the Judge's talk that night was incoherent; he tells you that there was a peculiar gleam in his eye that evening. He was not in the case, mind you, but simply there as a spectator, and we know that when attorneys are in court as spectators, they pay less attention to what is going on probably than anyone else in the room. It is very natural, because they have got their business in court, and when they have, it occupies their time and they are sick of the thing,

when they have nothing there to do, and therefore do not pay any extraordinary attention; but he tells you there was a peculiar gleam in the eyes of the respondent that night. On cross-examination he has to admit that he had never seen the respondent in court an evening before in Nicollet county, and that he did not know how far the gleam from the lamps and the light might affect his eyes.

Mr. Davis tells you that there was no such thing; denies it point blank. Mr. Ladd tells you in one breath that the Judge did not seem to have the full control of his faculties, and immediately prior to that, that the Judge had to strain every nerve to walk straight; and then a minute afterwards that he understood well enough the points that were raised. "There did not seem to be any trouble about that." Now just imagine a man that is that far gone that he has to strain every nerve to walk straight and this same man has raised before him complicated legal points like those that were raised in this case, and yet he understands the points well enough, and this a man like respondent, of whom it has been testified that he never gets drunk in his legs, and always can walk straight. no matter how drunk he is. Mr. Davis denies all of this; Mr. Davis denies that he had lost any control of his faculties; he denies that he had any trouble in walking straight at all.

Now, I think I have shown that every matter that has been brought forward by the witnesses for the prosecution,—by Mr. Webber, Mr. Lind and Mr. Ladd,—has been point blank denied by the record and by the witnesses produced here for the defense. They have been buried so that there is no hope any more of their resurrection.

Now, I think we have gone further than that. We have shown conclusively that the opinion and conclusion they come to, independent of the facts which we have shown, was false. We have called before you those four jurymen, they are good men, even if they are not men of as strong intelligence as Mr. Webber, Mr. Lind or Mr. Ladd (although God knows it would not take much to measure strength with Mr. Ladd, I should judge, as far as intelligence is concerned, at least). Now, we have called the deputy sheriff who sat there and watched the Court, we have called the short-hand reporter, we have called Mr. Davis, who can compete and compare with all of them. We have called these men, I say, and brought them before you to picture that scene. You see before your eye those jurymen sitting in the box. Now, do you think it possible, if Judge Cox had been in the condition the witnesses for the prosecution testified he was in, that these men could have sat there and not have noticed it?

They were friends of years acquaintance and men who had seen him drunk and seen him sober, had known him for from nineteen to thirty-five years. Do you think those men could sit there and look at the Judge that evening and not observe if he had been in that state or condition? Do you think that the deputy sheriff could have sat there and not have noticed it under the circumstances? Do you think the short-hand reporter could have sat there and not have noticed it? Do you think Mr. Davis, his old friend and acquaintance, could have stood there before him and argued that motion and the Judge have been drunk as they have testified here and he not have noticed it? It would be impossible.

It is true those jurors cannot give the exact law points raised. They

probably could have told if desired the reason why they knew the Jndge was not intoxicated; that if he had been intoxicated or shown the least signs of intoxication, as the witnesses for the state have testified, they would have know it, they would have observed it, and would not have been apt to forget it either.

At the suggestion of a Senator upon this floor the prosecution asked most of these witnesses the question as to whether or not their attention was called at the time to the possible sobriety or inebriety of the Judge. It was first brought out and mentioned to the managers by a Senator that seemed to take an interest on that side. Well they asked these men that fact and they said "No." Why of course they did not. But do you believe, is it reasonable to believe, is it probable to believe, that these men could have sat there, those seven men that we have brought in as witnesses, the four jurymen and the others sitting right there in court, watching the Judge, that he could have been drunk, as the witnesses for the prosecution have testified here, so as not to know what he was doing and not to be able to walk straight, and those men not notice it at all? Why it is not so in the nature of things.

Of course what action took place, exactly what was argued, the title of the cases, all of those men of course did not pay attention to, and after three or four years could not remember. But if the Judge had been drunk do not you think it would have been indelibly stamped in their minds, and that they would see it to-day as clear as they saw it at the time? That they would have known it and that they could not have helped but see it? Now you must say that these four jurymen are liars; are purjurers; that the deputy sheriff is a perjurer; that Mr. Ware, the official short-hand reporter, is a perjurer; that Mr. Davis, the county attorney of that county, is a perjurer; you must say that, in order to convict the respondent upon that article. And I leave it to you to say it if you dare, if you think your conscience will allow you, if you think the rules of evidence will allow you. Now I say we have not only been able to create a reasonable doubt as to the guilt of the respondent upon this article, but we have shown beyond a reasonable doubt that he was sober. We have shown it by the records which do not lie, which were made up at the time and not now. We have shown it by the witnesses that were there,—by one of the attorneys; by parties present in court, interested in the proceedings,—parties that knew the Judge and would know whether he was sober or whether he was drunk.

I desire under this article,—the remark of the manager coming under it, although not belonging there—to call attention to a statement he made and show the falsity of his premises. He stated in the first instance in regard to the short hand reporter, (a young and honest man from Kasson, the short-hand reporter really of the Fifth Judicial District as well as of this respondent's district,) that it was a suspicious circumstance to him that the minutes of that reporter were not here,—the minutes he took of the trial; that those ought to have acquitted or convicted this respondent. Well, I suppose the manager did know, he at least ought to know (because he is a lawyer of practice enough to know, and I suppose a lawyer who has practiced where a short-hand reporter has been used,) that a motion of that kind would not find its way even to the shorthand reporter's minutes. Indeed it would be out of place because that shorthand reporter is not there to record motions or decisions, but

he is there to take down only the evidence that is introduced and the objections and exceptions on the trial. He don't take down the arguments of counsel; he don't take down the harangues that the court may see fit to give when he gives his decision; he don't take down anything else but the evidence, objections and exceptions and the charge of the Court. Another thing, the shorthand reporter has no right to those minutes; he don't own them; he has not got them in his possession, I apprehend, because we must presume, at least, that he is following the provisions of law, which require that he shall file his minutes of each case with the clerk of court of the county in which the case is tried. That, I understand, is the law of this State. Now then, the shorthand reporter's minutes were not in his possession, and it would have been necessary, in order to get those minutes, to send him (at our expense, I suppose), to St. Peter to pick them out, (for, of course, the clerk did not understand them, and could not pick them out) and ascertain in which was the proper one, and then to have come down here to testify again. Well, we took it for granted that we had better testimony than the short-hand reporter's minutes, for we expected, if we had brought them in, that the learned manager would have done just what brother Dunn did when I did try to introduce a short-hand reporter's minutes here,—he told us they did not amount to anything, that we could not get them in, that he could not read from them, that all he could do would be simply to refresh his memory from them, and this is what Charlie Ware did not need to do for he had a memory independent of those minutes—if there was anything in them—and we do not know whether there was or not. But, you see, the shoe pinches on the other foot this time. The minutes were not here and now it is: "Why were they not here?" And, if they had been here it would have been: "Why, it don't amount to anything; what did you try to get in such stuff as that for?"

The learned manager further says, that it appeared from the testimony of Mr. Ware, as well as from that of half a dozen other witnesses, that the respondent's own witnesses have seen him drunk on the bench at times which the managers had not discovered, and that shows the entire degradation of the Judge; and this is not all, "They have seen him drunk," he says, "at some times we have not discovered before. If we had found them and brought some of those charges on, then probably they would have found some other witnesses that had not seen him drunk at that time." I think that is the position he takes. I call your attention to the fact that this man Charlie Ware, honest as he is, when he was asked if he had ever seen the Judge intoxicated upon the bench, stated honestly, "Yes, I have seen him when I thought he was under the influence of liquor," and the manager tried to get in his mouth that it was upon several occasions, but when he was called back for cross-examination, he asked leave to explain, and said that the manager had tried to make him swear to that and he was not going to succeed, because it was only one occasion, and when asked when it was, he first explained that at that time all he noticed of the Judge was that he was sleepy or weary; and we asked him what time it was and he says "That third day of April down at Waseca that has been testified to." Now, is that another time than any of the managers knew of that he brings out? Honest as he is to bring it forward, it should recommend him to the consideration of

the Senate. It shows that he does not try to shield this respondent nor to conceal the truth nor to tell what is not the truth. But, I say, I challege the managers to put their finger upon a single instance where any of our witnesses have sworn that they have seen the Judge intoxicated on the bench at any other times than those that they have brought forward here. Mr. Davis admitted, it is true, that he had seen him drunk once in court, but the Judge was not upon the bench. Judge Dickinson was there and Judge Cox was only a private citizen there; and he had a right to be drunk at that time.

But outside of that, Mr. Davis tells you he never has seen him drunk in court. No one else of our witnesses testifies to having seen the Judge drunk on the bench, except Judge Weymouth, and he don't claim it was on the bench, but at some time when he should have done some duty but could not do it (and I will come to that hereafter.) But outside of that you cannot find one of our witnesses who has admitted or been compelled to admit, or said anytihng about seeing Judge Cox drunk at any occasion upon the bench, outside of the occasions that have been brought forward here, nor outside of the occasions upon which they have been brought to testify. It is not fair upon the part of the managers to throw out insinuations and inuendoes which they know are not true; it is beneath the dignity of the great State of Minnesota, to act in that way, I apprehend.

Senator MEALEY. Mr. President, I move we adjourn.

The motion was seconded.

The PRESIDENT *pro tem.* It is moved and seconded that the Senate do now adjourn. As many as favor that motion will say aye; contrary, no. The motion prevails.

FORTY-FIFTH DAY.

ST. PAUL, MINN., Friday March 10th, 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, Bonniwell, Buck, C. F., Case, Castle, Clement, Hinds, Howard, Johnson, A. M., Johnson, F. I., McCrea, McLaughlin, Mealey, Miller, Morrison, Perkins, Peterson, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, 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.

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:* Mr. Arctander, you may proceed.

Mr. ARCTANDER: Mr. President, before proceeding any farther in my argument, I ask leave, in consideration of the fact that not only through the newspapers, but also by the managers, aspersions and insinuations have been thrown out against a witness for the respondent, in justice to that witness as well as to the respondent, to read to the Senate certain affidavits transmitted to me by mail this morning. I have reference to the witness, Patrick Fitzgerald, upon whom one of the newspapers of this city contained a few days ago a violent attack, the paper taking particular pains to inform the Senate and the public generally, that this man was one of the witnesses for the respondent, E. St. Julien Cox.

The President *pro tem:* I suppose there would be no objection on the part of the Senate to have the communication read.

Mr. Manager DUNN: Mr. President, I would state on behalf of the Board of Managers, to avoid the necessity of encumbering the records with an affidavit of this kind, that the Board of Managers entirely disclaim anything that might have crept into the mind of the manager who opened this case, relative to the earlier statements as to this Patrick Fitzgerald. We make no claim that his evidence should be at all discredited on account of the newspaper articles against him. We have arrived ourselves at the conslusion that those articles were false, and were made under a misapprehension of the facts in the case.

Mr. ARCTANDER: Under those circumstances, the managers disclaiming anything in relation to the matter, I don't know as I will press the affidavits, although I am ready and willing to submit them.

The President *pro tem:* The remarks of Mr. Dunn will appear of record.

Mr. Manager DUNN: I am satisfied that it was an error on the part of the newspapers.

Mr. ARCTANDER: Mr. President, I desire now to take up the

EIGHTH ARTICLE,

Charging the respondent with being intoxicated and unable to proceed with business during the trial of the case of McCormick against Kelly, at the May term of the District Court, in and for Brown county, in the year 1880.

The only witnesses for the State in that case are Mr. Webber and Mr. Lind, who were attorneys, one on each side of the case. They are met, on the part of the respondent, by the witness Rinke, a merchant at Sleepy Eye, by Col. Baasen, an attorney residing at New Ulm and who was the justice before whom the case was tried, and who was present in court and sat listening and watching the proceedings in the case with an interest that was natural and reasonable, because he had tried the case below and it was claimed that he had committed errors in law, for which reason the case was appealed. We have brought before you also J. J. Kelley; the defendant in that case, Mr. Webber's client, and his brother who was a witness in the case—both gentlemen being on the jury panel of that term and acting as jurors in two cases, at least one case, immediately before this Kelley case was taken up. I think that there can be no question—in fact the manager who opened this case admitted it, that the preponderance of testimony on this article is in favor of the respondent. He could not get over that position. He tried, however, to impress upon this Senate the fact that attorneys who were engaged in the case should know better than others in what condition the Judge was and were more competent to judge. Now, I apprehend that that is a false premise. It is within my own observation, my own personal experience, that whenever I am engaged in a case, I have my books, I have my papers to attend to, I have the jury to look after, I have to examine the witnesses and I have to keep my eye upon them. I have to watch the witnesses for the prosecution and try to learn what is their peculiar characteristics, where their weak points are, how I shall attack them, in short, to perform the duties almost of a judge, at least a judge of human nature.

I have to keep in my head the testimony as it is given by those witnesses and preserve in my mind the testimony that I desire to meet and the points upon which I desire to cross-examine the witnesses. I have to keep the whole mass of testimony in my head so as to lay it clearly before the jury. I am bothered at the same time with the law in the case, in short, my mind, my eye is so occupied with the matter under consideration that I would be a very poor hand, indeed, to pass judgment upon the condition as to sobriety or inebriety of one of the jurors or a person in the court room or the Judge upon the bench, or of the particular condition in which he would be as to sickness or health, or as to showing symptoms of anything that did not have a direct bearing upon the case. Certainly it would be almost impossible for me so to do. I believe I am able to do as much as anybody in that direction and to keep as many things in my mind and have my mind fixed upon as many different objects at a time as either Mr. Webber or Mr. Lind; but I have within my own personal experience found it impossible to get

my attention away from my case upon the small circumstances as to what is the condition of the Judge as to sobriety or inebriety or health or ill health or anything of the kind. As a matter of fact, when we try lawsuits, if we are true lawyers, if we try lawsuits as we ought to do, if our whole heart and whole soul is in it, we are so pre-occupied by the suit, that all those small circumstances outside do not enter our mind at all. We would be poor judges to be called up to show observations of those matters that do not directly concern us. Therefore, I claim that the premises of the counsel are false in this respect. I claim that it is not true that attorneys trying a case are better witnesses and better judges as to the condition of the judge than the witnesses that sit in court and watch the proceedings. More particularly so, if these men are equal in intelligence, or nearly equal in intelligence and power of observation to the attorneys.

We have some men here certainly who are so. All the four witnesses for the respondent are in that condition. They are men who have known the respondent for a number of years. Mr. Rinke, I think, testified that he had known him for six years. Mr. Baasen has known the respondent for twenty-five years; he has known him in adversity and prosperity; he has known him intoxicated, and he has known him sober; he has undoubtedly partaken with him of the flowing cup; he has served with him in the army; he has shared with him the troubles and tribulations of the battle-field and of the camp, and he is apt to know and apt to tell and be able to tell, with greater certainty and greater accuracy than anybody else, who has been brought here, what the condition of the Judge was at that particular time. He had a particular reason for watching the Judge at that time. He was interested in that case, you may say, almost as much interested in it as the client, at least as much as a lawyer can ever be, because here was a case that he had passed upon as judge himself, and the old colonel is a man of considerble pride; all of us, who know him, will admit that. He is a man, undoubtedly, who although not a practical lawyer to any great extent, I presume, yet being a lawyer and a justice at the same time, had particular pride in seeing that his decisions were upheld. He had tried that case, and it was claimed he had made mistakes during the trial of the case by his rulings upon the subject of agency, etc. It was claimed by John Lind that he had entertained mistaken ideas of the law. He comes in there and sits and naturally watches the Judge. It is not the jury he is after; it is to him not a question how that jury will decide the case; it is not a question, how the lawyers argue; that is not what he is interested in; he is interested in seeing what the Judge will do upon these questions that come up.

He is interested in finding out that, and he is naturally watching the Judge every time he makes a decision or ruling, his eyes hanging you might say on the lips of the Judge, observing him. Now, if the Judge had been intoxicated, as these gentlemen claim, is it possible, gentlemen of the Senate, that the Judge could have sat there during that trial ruling upon matters of evidence one after another, ruling upon the question of agency, giving his decisions, and old Col. Francis Baasen, who had known him for years and years and who had known him so well and intimately, should not see that drunkenness exhibit itself in the rulings he made, in the language he used, in his appearance at the

time he made the ruling? It seems entirely incredible that such could be the case.

And these two Kellys, not only was one of them a party and the other a witness, but the one who was the witness here was a brother of the defendant. He was certainly interested almost to the same extent as his brother was. He was interested in behalf of his brother, if there are such things as natural ties, which certainly ought to exist between brother and brother. He is there on the stand to do his brother a favor, if he can by telling the truth, and he, of course, takes a great interest in the event of the trial; for his brother, the client, had at stake what might be a small amount to some of us perhaps, but what might to him seem, when the matter of injustice cut a figure in it, to be very great. They sit there and watch the proceedings closely. They have nothing to do with the witnesses, nothing to do with the examining or cross-examining, or the making of speeches. They sit there and listen and watch and look and what would be more natural to them than to look at the Judge; to watch the Judge? He was to decide their fate more than the jury was. Of course, when the arguments were made to the jury then came their turn to look at the jury and watch their expressions; but as long as the law questions of the case came up one after the other, it was the Judge that was the object of their gaze, because it was the Judge that was deciding their case.

A certain ruling upon the question of agency or warranty, or upon any of the questions that came up there, might have sent them kiting out of court. It was the Judge to whom they looked at the time, and what more natural, than that their eyes and ears should hang at his lips, when he was making his decisions? It seems to me, therefore, that there can be no doubt that those men were more apt to notice if there was anything out of the way with the Judge, for the lawyers had only the reputation of winning or losing the case at stake, while the parties had a great money consideration at stake and their rights as they understood them. It would be natural, I say, that those men should watch with jealousy the condition of the Judge, knowing him as they did, knowing the liability there was upon his part of taking a drink, knowing the liability that he might take a drink too much, it would be reasonable that they would watch and watch carefully. Now, let us see what is the testimony.

I call your attention to the fact that there is considerable contradiction in the testimony of those two witnesses for the State. Mr. Webber tells you that the Judge was intoxicated both days that the trial lasted. Mr. Lind tells you he was only intoxicated during the latter part of the trial, which lasted two days, as you will remember. Now, upon the question as to whether he was intoxicated the two days. We have Mr. Rinke, the merchant, who sat there during the whole case, who heard the charge, and he states upon his oath that the Judge was perfectly sober, and that he has no doubt of it. Upon Mr. Lind's testimony that he was intoxicated the latter part of the trial we have the testimony of Mr. Rinke that there was no difference in his appearance, his conduct, his language, or his manner the second day from the first day—that he was just the same.

Nor, as a matter of fact, was there any difference from the way that he had been the days previous to that, when he had been trying other cases,—Mr. Rinke stating that he had been down before and then went

back again, waiting to come up as a witness in this case, and he tells you, and he gives it in a very natural way, that he looked as much upon the Judge there as he would upon any judge sitting upon the bench.

Now, I do not need to argue, because it is within the personal experience of every one of you, that when a man enters a court room, even as a spectator merely, the judge is the man his gaze is first passed upon. He sits in a prominent place. When a man comes into this Senate chamber who would be the first man his eye would fall upon? It would be your president, because he occupies a prominent position. And yet more so would it be the case with the judge in a court, because the judge there is the central figure. The president is not the central figure of this court. This court consists of forty one members, or those of them who choose to be present, while there the court consists of the judge. He rules and acts. There is an appeal from the president to the Senate. He is by sufferance allowed to rule occasionally, but the court consists of the whole number. Not so in the ordinary court of justice. It is true that there are the auxiliaries to the judge, the jurors, but everybody knows what the jury amounts to. Everybody knows that the jurors are directed by the court to do just as he sees fit; that it is he who is the central figure of the whole concern. It is therefore natural that your eye should first fall upon him.

When you hear the attorney speak you would probably look at him; when you hear the court answer him you look at the Judge; and you would look at him with a great deal more intensity and observation than you would at the attorney. The others jabber, probably, the others talk, but he adjudges every time he is called upon. It is, therefore, natural that he should be the center there in the court room, and there is no doubt but what he is.

Mr. Rinke goes on and states, that if Judge Cox had been drunk or under the influence of liquor, "I would most certainly have remembered it; I have seen him under the influence of liquor. If he had said or done anything out of the way I know I would remember it." And mind you Mr. Rinke is an intelligent man; he certainly must have made that impression upon everybody that heard himhere.

Now, he is not the only one. There is Col. Baasen; he states that he had no doubt but that the Judge was sober. He contradicts Mr. Webber; he had no doubt but that the respondent was perfectly sober during both the days. He contradicts Mr. Lind. He says there was no difference in his actions during the two days, that they were just the same. On cross-examination he says, "If he had been under the influence of liquor I certainly would have noticed it." And it was drawn out of him upon cross-examination, and I desire to call your attention to the fact, that he did not remember that he was present when the Judge charged the jury. Now, this is the time that the witnesses for the State claim the Judge showed absence of mind and was not right. Webber himself says he remembers nothing out of the way that showed intoxication in the Judge, except that his charge was a little peculiar, that there was a latent conflict between his charge and the request of one of the counsel; a little peculiarity in the expression he used, that when a person bought a threshing machine, he bought it for threshing grain and not for thrashing boys.

Now, that being the time when they claim the Judge's intoxication exhibited itself, at least to Mr. Webber, and Mr. Baasen says that he

don't remember whether he was in and heard the charge, I was compelled to ask him upon re-direct examination questions so as to place the circumstances before this Senate, showing that he must have been there, or at least that if he was not there at that time, that the Judge had had no occasion to become intoxicated in the meantime. I therefore asked him if he remembered whether he had been present and heard the argument of Mr. Lind. He said he was; that he was there and heard Mr. Lind's argument in that case, in fact he heard both of the closing arguments on the part of the attorneys. Well, then I knew that I had him placed at the right time, for the record that has been introduced in this case by the State, the record of the court, shows that Lind's argument was made immediately before the giving of the charge to the jury. I will call your attention to the testimony on page twenty-five of the 17th day. It appears that the case of McCormick against Kelly was on trial. In the afternoon certain evidence was introduced and court then adjourned until the next morning. Certain witnesses were then called and testified, the defendant having rested.

"B. F. Webber then addressed the jury on behalf of the defendant. Court then took a recess until half past one o'clock P. M. Court convened pursuant to adjournment. John Lind addressed the jury for the plaintiffs. The court then charged the jury and they retired in charge of Jacob Nix, a sworn bailiff, at three o'clock P. M."

Now, it appears that court met at half past one o'clock in the afternoon and John Lind made his argument to the jury, which would likely last about an hour, the Judge then charged the jury and they retired.

It does not appear that there was any recess in between, and as a matter of fact there was no time for a recess. If there had been, it ought to have been shown; it is not shown that there was any recess. We have shown, then, that the argument of Mr. Lind was in the afternoon; that the charge came immediately after that; we have shown by Mr. Baasen's testimony that he was present during Mr. Lind's argument, and whether he heard the charge or not would be immaterial, for he was present up to the time of the giving of the charge anyhow. The liklihood is that he heard the charge, and there being nothing out of the way in it, he does not remember it; but it don't make any difference, he was there on that occasion.

Now, I had intended to bring out, gentlemen, and argue upon this alleged latent conflict between the charge of the Judge and one of the requests,—I think of the defendant's attorney in the case. That matter was brought forward by Mr. Webber as one of the evidences to him, of the Judge's intoxication. It has appeared in evidence already that the Supreme Court discovered that point for those attorneys; that although they did claim the Judge to be drunk, they did not discover anything about any conflict between the charge and the request at the time. Their briefs upon a motion for a new trial show that they did not raise that point at all. Those briefs were introduced in evidence. I don't know whether they were ever printed or not, but they were read. The question was put to Mr. Webber whether there was anything of the kind in those briefs. Mr. Webber was not allowed to answer. The manager objected and claimed that the briefs were the best evidence and should be introduced. They were admitted and read in evidence, and you

will remember that there was not a word said about any inconsistency or latent conflict between the charge and the request upon either side.

But it seems that the Supreme Court of the State of Minnesota discovered that thing, as they have made many happy discoveries before, so they made one there. Now, it is a fact, of course, that it must be taken for granted, that the Supreme Court is right, as they are the court of last resort in our State, that they are right in the decision that they made. It is presumably so. But when I heard that thing, and more particularly when I examined that charge and the request, in which the Supreme Court finds an irresistible conflict, I could not help but think of the remark made to me four or five years ago, by one of the learned managers, a man that I esteem very highly as a lawyer and as a gentleman, the Hon. James Smith, Jr. When we were once talking about one of the judges of the district court of this State, that he had been reversed a certain number of times more than he had been sustained, and when I claimed that as proof that he was not a very good lawyer, manager Smith told me: "Young man, whenever the Supreme Court and the district court differs, I am willing to bet almost anything that the district court is right." And it struck me more so yet, when I read through the decision of the Supreme Court and the paper book, it struck me as if the saying of the honorable manager was one that was applicable indeed. I had intended to bring that matter up and show to you that the Supreme Court was mistaken; I had intended to bring this up here and argue to you, and show how those charges were perfectly consistent if they were only read in the right way. It is true that it might seem to the naked eye, when you look carelessly upon them, that there was an apparent conflict, not only a latent conflict but an apparent conflict; but when you come to put the charge and request together, and weigh every word that is in every one of those charges and requests, you cannot help but come to the conclusion that they state the law as it is and ought to be, both of them, and that they are not necessarily in conflict with each other.

But I don't want to take up your time with it, because it would simply be an abstract argument anyway and I don't think it is necessary under the state of the testimony in this case. Besides, let us take it for granted, that Judge Cox was wrong at that time; let us take it for granted that the Supreme Court is right in their decision—that the charge that he gave, and the request by one of the parties, were in conflict with each other. I ask you to state upon your oath whether or not you will say that is sufficient evidence, or evidence at all of the intoxication of the Judge, or that he is not a good lawyer for all of that. Just imagine, gentlemen, the hurry in which those matters are carried on in the district court. There is no opportunity for consideration, no opportunity for carefully weighing either the law or the propositions that are made. A *nisi prius* court proceeds, you might say, in the hurry of the day; the witnesses are brought forward, they are examined, and then towards the close of the trial, is shoved up to the judge some requests—drawn queerly, very many times—by ignorant attorneys very many times; but good or bad, the better the attorney, the more apt he is to catch the judge in a trap by those requests. I know that I would undertake to take the best and soberest judge in this state, and I would undertake I say to sit at my office during the still hours of the night and draw up two requests, one for the defendant and one for the plain-

tiff, that apparently both stated the sound rule of law, that were apparently both of them sound and seemed to be exactly right and no contradiction in them, and I would shove those up to the best and soberest judge in the land, and I would bet almost ten to one that I could make him charge both of those requests and that he would not see the latent conflict that there might be in them. Why?

Because, you take up another man's writing, you look it over in a hurry as that is done, with probably five or ten minutes for consideration, and in the mean time the parties arguing the case right by your side, disturbing you; you hear the attorney standing there and declaiming and raising old Ned, so that it reverberates through the whole court room, and you sit right by trying to study up the requests, besides making up your own charge upon the law, certainly you cannot get the full benefit of your mind. The judge must sit and get the law that fits the case from the store that he has got in his mind and memory. Now, I say that it would be the most excusable thing in the world for a judge, if he could not, under the circumstance, study over the language as you would do when making up the charges, and if he should be mistaken. And if the judges were not sometimes mistaken in their charges and in the requests they give, why, there would be no need for us to have a Supreme Court. In looking over the Supreme Court reports of this State you will find that there are more cases reversed just upon the charge of the judge to the jury, or upon his refusal to give certain requests, or upon his allowing certain requests to go in, than upon any other ground; that four-fifths of the cases in the Supreme Court are reversed, if reversed at all, just on those grounds. It is impossible not to err sometimes in such matters; it would be more than human not to do it. It would be asking and demanding of the judge what you could not ask or demand of any other human being. So that it proves absolutely nothing, even taking for granted that the Supreme Court is right and the Judge was wrong on that charge—which I won't admit,—but taking it for granted it proves nothing. It don't prove that the Judge was intoxicated in the least; it don't prove that he was not a good lawyer in the least. It proves that he fell into a trap that many a judge just as good, and better than he, has fallen into time and time again, and that is all.

I desire to call your attention further to the fact that Mr. Webber, who should be an intelligent man, and a man of good recollection, while he comes here and swears positively as to the condition of the Judge, cannot even tell you what cases were tried before that case or after it; cannot tell you a single case, althongh they were cases that he was engaged in as attorney. He don't know anything about it; all he remembers is this McCormick against Kelly case; that is the only thing that he knows anything about. He don't know when the Judge commenced to drink. As a matter of fact, he don't think there was anything to be seen of drinking upon him before that time, and he don't know when he quit. He don't know what cases were tried before, nor what cases were tried after. He can't give a single case that was tried at that term except this case of McCormick against Kelly. Now, is it not remarkable that this man should not know anything about all that? That he should know nothing about anything except just here, where he wants to catch the Judge drunk; while this man J. J. Kelly and this man W. W. Kelly, who were present in court and had an interest in the case, and were also jurymen upon other cases, remember and can give the

title of other cases, when they were tried and what they were about? Now, does not that show, that those men, if they are not his equals in learning, if they are not his equals in intelligence, (and I would not say they are not his equals as far as intelligence is concerned,) are more than his equals at least in power of recollection and in power of observation, and does it not entitle their testimony to more credit than his is entitled to?

I desire to call your attention also to what W. W. Kelly swore to. He says that the Judge was perfectly sober that day; that there was no difference in the two days. And he testifies in regard to his position in the court room, that he could observe the Judge; that he had all the opportunities for observing him. He also testifies that he had private talks with the Judge; that he met the Judge and talked with him. He also testifies that he has seen the Judge under the influence of liquor. He testifies that he had never heard it charged that the Judge was drunk at that time until this impeachment trial came up, and when it came up he could not believe it was true, because he was right there, observing him, and had talked with him, and knew that he was sober. J. J. Kelly, the party that was interested in the case, tells you how he sat facing the Judge, and near up to him, and that he had no doubt in his mind then, and has none now, but what the Judge was perfectly sober. Mr. Kelly also denies the statement that Mr. Webber at any time during that term of court told him that the Judge was drunk. He says that he never told him so; that all he told him was that he thought the case was all right, except that the Judge had slopped over during the last part. Now that expression of slopping over, I suppose, don't mean, when applied to a Judge, that the man was drunk; I have never heard it so applied. I never heard a man of sense, and a man that knew the meaning of language, apply it in that way. It means making a mistake, going too far, and evidently that is what Webber thought with reference to the Judge's charge; that it was too favorable to them; that he had done something wrong, that he had given something that was not good law. That would be the meaning of the expression that he had "slopped over."

The fact of Webber testifying that he told his client that the Judge was drunk does not prove anything, except that Mr. Webber is not a truth telling man, because he says he has done it and brings it up to strengthen his testimony and to make you think, that is a father ground, why he knows now, what was the condition of the Judge. But when that is denied by a man who certainly has no interest in this prosecution, it acquires some weight. Take and compare those two men, Webber and Lind, and their interest, against that of Mr. Baasen, Mr. Rinke and the two Kellys. What possible interest could they have in seeing the Judge retained or deposed? None at all. While Mr. Webber and Mr. Lind have every reason in the world to desire that the Judge be removed,—Mr. Webber to get his place if he can, Mr. Lind to have his intimate friend Mr. Webber there, so that he may own the Judge that he has helped to make.

Now, I say that there can be no question, gentlemen, and on this article, we have gone far beyond the requirement of law, we have gone far beyond what the law would ask of us to do to clear this respondent, we have gone far beyond creating a reasonable doubt in your mind as to his guilt on this particular occasion, we have shown even by a prepond-

erance of testimony that he was not drunk at that time,—nay, we have gone beyond that, and we have shown beyond a reasonable doubt that it cannot be so, and I will not spend any more time on this article.

The ninth article having been dismissed I will now apply myself to the consideration of the

TENTH ARTICLE.

That is the so-called naturalization scene at the special term at Marshall, on the 12th day or May, 1881. I could not help but smile when the learned manager who opened this case, with an apparent earnestness that certainly was to be appreciated, told you that the naturalization of foreigners was one of the most important moments in their lives; that when they became citizens of the United States it was a solemn occasion to them, and he told you that, as far as his practice went, the naturalization of foreigners was one of the most solemn and most impressive occasions that ever took place in courts.

Well, I don't know what the practice is up in that district where the learned manager resides, not in his county at least,—I know it is not so very solemn in some other counties in his district, where I practice,—but it rather struck me at the time he told us that I could see how that matter must be transacted up in that county; it looked to me like he would have you believe that the old chivalric custom of heraldry was revived up there, that it was an occasion like the opening of parliament in England when the queen rides in state to the house of parliament, when some high titled gentlemen are dressed out like monkeys, in long scarlet robes with sable trimmings and hats with long ostrich plumes, seated on armoured steeds and blowing the bugles and announcing to a gazing populace that "Now comes the queen to open parliament!" I imagined that I could see some of those heralds up there riding in front of Judge McKelvey's court, through the thoroughfares of St. Cloud and that I could hear the blast of their bugles and hear them announce to the astounded people of that little town that now should Ole Oleson become naturalized, or now should Nels Peterson take out his second papers and in stentorian voices command all parties to hush and keep still and come and witness and listen to this impressive ceremony. [Laughter.] It struck me that something of that kind must be transacted up there in that court. My experience in regard to the naturalization of foreigners is that it is one of the most matter of form proceedings that is ever gone through with in court or out of court.

Why I know that up in my district they come in, a whole horde of them together, they see the clerk before court opens and give him their declarations, and then he fixes up their papers, writes out an affidavit, and they sign it in the book; he brings the first papers into court and lays them upon the judge's desk for his inspection and examination; and when the judge comes and has examined them he quietly returns them to the clerk and then there is a recess, and half a dozen are naturalized in about five minutes, some in Norwegian, some in Swedish, and some in English. As a matter of fact, the whole thing is a ridiculous farce and don't amount to anything; and most of those men, standing up there and swearing allegiance, haven't got any idea of what they are swearing to at all. As a matter of fact, it is true, that the laws of the United States are to the effect that the naturalization of foreigners shall

be had in open court. I do not know why the law so provides, but one thing is certain, there is no judicial act, there is no order to be made, there is no order made by the judge, (at least not where I have practiced,) that anybody be naturalized, it is a matter of fact, just simply a matter of right they have got to come in and swear, and then get their papers. I never heard of an order being made or entered in any record, when anybody was admitted to citizenship. And, as a matter of fact, the practice, I understand, has been, in most of thecourts of this State, at least it has been in the county of Ramsey, not to go into open court at all.

There was a case that went to the Supreme Court upon that question some years ago. One of the judges of this State went to the clerk of the court and procured his second papers to become a citizen of the United States, and did not go into court at all. He went to the clerk and got his papers and handed over his dollar and a half fee,—and really, the solemn and important part of the naturalization ceremony is the fee which the clerk gets ; at least I know that up in our counties it used to be especially in early days, a regular festival for the clerk when there was a term of court, because he would take in sometimes forty or fifty dollars in naturalization fees. I say one of our own judges, as it appears by the reports of the Supreme Court, went down to the clerk of the court, and gave him his dollar and a half and got naturalized in a very quiet manner, and the matter was brought up afterwards and it was claimed that it was not a valid naturalization because it was not made in court. A writ of *quo warranto* was issued against him, and the Supreme Court held that he was properly naturalized. So it seems that the matter of naturalization is not one of such great solemnity and importance as the manager would have you believe. I could not at first for my life understand what the reason was that they were so anxious of showing by those witnesses that this transaction took place in the court room ; I couldn't see just what was up, but I found it out bye and bye. Why it became necessary for them to make you believe, in order to warrant you in finding that the respondent had been guilty of any thing that he was accused of, or attempted to be accused of, that there should have been some kind of court there.

They felt that the matter of naturalization being simply a matter of form, which really the Judge had nothing to do with, was of such small importance that unless they could impress upon you that this was done in court, that he was in court and consequently acting as a judge, you would say that the matter was of too little consequence, that it was too small a matter to bother you with a week, a day, or any time at all. That was the reason, I apprehend, that the learned manager, in asking their witnesses questions, put into their mouths that it was in the court room. "You saw the Judge in the court room, did you?" "Yes." "That was in the court, was it?" "Yes." And they seemed to have their witnesses fixed up for that particular thing, so it should appear it was in court anyhow. But, when we come to the cross-examination what do we find? Why, we find that this solemn occasion, this solemn ceremony, took place in a drug store, amongst the shelves and the counters and the bottles and the medicines and the whiskies of this man Wilcox; in one corner of the store, near a little cubby-hole, where all the express matter of Marshall was kept—the empty beer kegs and all the other express matter—where there was just room enough for one

man to stand inside and write, and to stick out through a little hole the book in which the witnesses should sign their names.

And that is where this solemn and impressive ceremony was had; there is where that solemn court was held. We find, upon examination of the witnesses or the respondent, that there could have been no term of court down there because court had never been held in that drug-store, and of course it was not necessary. A drug-store, of course, would be just as good a place as any other to hold a term of court, provided it was empty, but to hold a term of court there, while it was full of people and business going on there,—I don't believe the respondent would have been guilty of any such indiscretion. We find, I say, that a special term of court never was held down in that drug-store, but it so happened that the clerk kept his office there, and that these men came around to get naturalized, and the clerk, thinking it would be necessary to have the Judge there, called upon the Judge and he came down and stood there and looked wise, while the clerk was drawing up the papers and having the men sign and swear to them.

Now, that is all there was of that occasion. We have shown you, on the part of the defense, that it is true there should have been a special term of court held there that day; that the Judge came up there for the purpose of holding that special term of court; that he was ready, that he was sober. There is no neglect, then, upon his part. He comes there at the proper time, he comes to the proper place, and is ready and willing to hold his court. He does what? He is not satisfied with performing the duties of his office as required of him—to go to the place where they generally hold the special term of court, sit down and wait for the clerk and the attorneys to come up, and see if there is any business to come up, and finding that there is none there adjourns court.

He is more circumspect in his actions, he pays greater deference to the attorneys. He knows they are not liable to be there in time, and that if he should adjourn court after waiting a while, they might have some business which could not be brought up, because they had not come in time; so he goes around to the attorneys who practice in that village, and inquires of them if there is any business. Not satisfied with that, he goes with Judge Weymouth to the clerk's office, and inquires if there is any business to be done at that term of court, and he finds that there is no business. He finds that the clerk has no business. He then goes up to the office of Messrs. Forbes & Seward, where they usually hold the term of court, and he says, instead of having the court regularly called and adjourned, "Well, boys, we won't hold any term." He goes up there, at his own expense, to hold court, to accommodate those men as he has done time and time again, both before and after.

I think it has come out in evidence that he has established in four of his counties special terms besides the general terms that the law establishes; that at least in three of his counties, and I think in four, he has a special term every month for the accommodation of the attorneys. He don't want to have business brought up at any time, when he don't know whether he can attend to it or not, when he may be away or otherwise engaged, probably be on a spree. He don't want that to happen and therefore he fixes the times for special terms, as a judge has a right to do, and as the rules give him a right to do, as the law gives him a right to do. He fixes special terms and determines that business shall

be brought up at those terms, and that outside of those special terms he will not transact any chamber business, and that is the reason why he went up there,—to accommodate those men. Once a month you would see him go regularly up that route, as long as the road was open. Of course in the winter, when the snow blockaded the road, he could not go, and so he would go to the other places. Well, he comes there and he finds no business at all. After adjourning that term of court, as he really did when he said "boys, we won't have any term of court," there was no term of court any more there, in fact, there was none held at all. Now, if after he had found that there was no business, if he found that there was nothing to occupy him judicially, if he found that there was not going to be any term, he did go on a spree and drink a few glasses of liquor, or probably many, whose business was it? Is it a fact that because he happens to be clothed in the judicial ermine, that he must lay aside all his inclinations as a man, that he must not be human any more but must become divine and immaculate? That he must lay away all his tendencies and inclinations, all the passions, all the desires of a man, and that he must become a graven image, and stay so, not only when he is performing the duties of his office but when he sleeps, when he eats, when he feels inclined to drink, when he hunts, when he takes a walk, a morning constitutional?

He is always *Judge* Cox, is he? He is not *Mr.* Cox any longer. He can't take his drink. When, before he was elected, he sat down to his dinner, he had a right to take a glass or two of wine if he saw fit to help his digestion; now, he is *Judge*, he mustn't do it for the bad example it sets, I suppose. He is Judge when he sits there at his table, is he? He is Judge when he plays with his children? He is Judge when he kisses his wife [laughter]? or when he kisses somebody's else wife [laughter]? and if that be so, then his wife, or somebody's else wife, gets a *Judicial* kiss, does she? [Laughter.]

I find, Mr. President, that it is necessary for me to husband my strength, and if the Senate would be kind enough to accommodate me with a recess of five minutes I would probably be enabled to go on better.

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

After recess Mr. ARCTANDER continued his argument, as follows:

Mr. President: I think I stated, in my opening argument in this case, that the respondent could be perfectly willing to rest upon the failure of proof upon the part of the State upon this article; that whatever proof they have introduced may amount to as showing that Judge Cox was drunk, or intoxicated, or under the influence of liquor, it could have no bearing upon the case; that it does not fill the bill that this article requires of them; that they did not show by a single witness that Judge Cox did anything of what they charge he did do in this article.

The article charges that on the second day of May, 1881,—of course that is wrong, but then dates don't make any difference,—acting as and exercising the powers of such Judge, did enter upon the *trial* of certain causes and the examination and disposition of other matters and things then and there 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 was in a state of intoxication, which then and there rendered him incompetent and unable to discharge the duties of his said office," etc.

Now, you see it is charged just as if it was a term at which the Judge presided, a term at which business came up; and that he entered into the trial of causes and the examination of matters before him, and that he could not do it properly because he was drunk. Now, I say that the managers have failed to prove that article altogether. What they have proven is, that he stood there in the drug store and looked wise while some Norwegians and Dutchmen were naturalized. That was all. It is shown that he did not "preside at the trial of any causes," nor did he "enter upon the trial, examination and disposition" of any causes, nor was he in a condition that disqualified him from performing his duties. Is it true that those poor foreigners up there were not properly naturalized? Is it true that they could not get their papers? Is it true that there were mistakes made? Not at all. They claim that they have been naturalized,—one of them claims to have got a licking from the Judge in the bargain. Then what are they complaining of? They have got their papers, they have got what they came there for, and one of them has got more than he came for. And what has this State to complain of? Didn't those men get all they wanted? Didn't they get all they came there for?

If this respondent was intoxicated, was he in such a state that he could not understand, and is it shown here that he was in such a state that he did not understand, whether or not they were proper subjects for naturalization, whether or not they were entitled to be naturalized? Was he in such a state that he could not see that, and has it been charged and proven here that the respondent did not see that the matter was done right, or that it was done wrong through any fault of his? Not at all.

Now, what are we charged with then under the evidence? Simply with being drunk; simply with being drunk in a cubby hole in a drug store. Not in a court room, not upon the bench, not presiding even at chambers hearing a case, but simply standing there looking on at those fellows getting naturalized. Now, it seems to me that the matter is so trivial and ridiculous, that it is not worth while to spend words upon it at all. It is most certainly a fact that when you come to vote on this article, you must vote not guilty. Why? Because that article charges him with entering upon the trial of certain causes, and presiding at the trial of certain causes in that court, and with being disqualified from performing his duty, and that he did not perform his duty on account of being drunk. Can you, under oath, can you under your conscience, upon the proof that has been introduced here, vote that the article is true,—that the charge of that article has been proven? I apprehend not.

Now, let us see, without regard to what is charged, has any misbehavior in office been proven: the Judge came there to hold court; he was in a proper condition; he was sober; he went around and found out that there was no business; he concluded not to hold any term of court; there was no necessity for opening court or adjourning it; there was no necessity for holding a term of court when there was nothing to do.

He is not one of these parading fellows. Then he goes off, probably and gets a few drinks; and then this Ole Skogan and William Mark and some others come in and they want to be naturalized; and the Judge tells them as Skogan says, that there was no court there, that court had

adjourned. He hasn't got it in that language, but he says when he came down there to him in the bar-room of the hotel the Judge told him that there was no court there that day. Of course there wasn't, court had adjourned. Well, these men come around begging and say they have come quite a distance, and we thought we could get our papers to-day. And the Judge, to accommodate them, goes up there and says, "Well, boys, get your papers." And they pay their two dollars, get their papers and walk away. Skogan tells you that he walked up to that bar-room and that he got the Judge and took him along with him up to the court, to this clerk's office, this cubby-hole. Very well; he goes up with him, he brings the Judge up. Well, this Marks isn't satisfied with having Ole Skogan bring him up there, but he must come down and tell you that *he* brought the Judge up there, too. Now, they don't either of them claim that they were in company, but they both went down and brought the Judge up to the court room. Probably there were two or three editions of court there; but we should rather infer from the way in which it comes out, that all of those men were naturalized at the same time; at least, Judge Weymouth, a witness for the defense, tells you that he was there as a witness for Mr. Skogan, and that there were several others naturalized at the same time; five or six men present in there. I say it shows that the witnesses for the prosecution don't even discriminate, they are so anxious to get the Judge drunk and so anxious to get him into court that it takes two of them to bring him up there, and I apprehend if the clerk had been sworn on the same article, that he would have brought him up there the third time.

Now let us see what the testimony is as to the intoxication of the Judge. Ole Skogan,—and he is undoubtedly an honest man,—says he *thinks* the Judge was drunk. That is as strong as he puts it. He does not testify to any wrong acts of his at all. There is another thing to which I desire to call attention, and it is this: Ole Skogan, who was presumably there at the same time as the others, says not a word about the Judge slapping the face of William Marks, and it is remarkable that he didn't. Mr. Weymouth is an old friend of the Judge,—has known him for,—well, before some of these men were born; of course knows him much more intimately than they do. Marks said he had not seen the Judge more than once before, I believe; Ole Skogan hadn't seen him before at all. Neither of the Markses had seen him more than once before. Those men, then, are not able to judge as to the condition of the Judge; they can not tell whether the Judge was intoxicated or not. They don't know about his eccentricities, they don't know about his funny actions, that Judge Weymouth knows all about and has seen so many exemplifications of. Now, then, he should presumably be a better judge than anybody. He comes and tells you he was there as a witness at the time when this naturalization went on, and that he could observe nothing in the condition of the Judge to show that he was intoxicated. Now, he won't swear that the Judge might not have drank any, he won't swear that the Judge was pe fectly sober, but he tells you, and tells you honestly, that he could not observe anything in the appearance of the Judge which indicated that he had drank or that he was intoxicated at all.

Now I take it that his testimony on that goes farther than that of four or five Markses and Ole Skogans, who have never seen the Judge, who don't know how he acts when he is sober, nor how he acts when

drunk. Now, I take it for granted that strangers could come into Judge Cox's court at any time they see fit, at times when he had not drank a drop for six months, and after looking and seeing the antics he would cut up once in a while, they would undoubtedly swear that they believed he was drunk; they would not think it was caused by anything else but drunkenness. The easy manner in which he behaves himself, being as full of fun as he is of jokes, his whispers to the attorneys, his turning around in his chair, his grinning, and all that—the grim aspect of his face, which I have noticed often when he sits on the bench—it would all indicate to a stranger that he was drunk, especially knowing his reputation as a drinking man. It would be a natural thing for a man that would come into his court under any of these circumstances, when Judge Cox was as sober as a man could be, to think that he was drunk, and go and swear he was drunk, and do it in good faith too. Now, I say that Judge Weymouth would know, if he was cutting up capers, whether they were the result of drunkenness or drinking, or whether it was simply natural Coxonian capers. And he tells you that he notices nothing. Now William Marks says that the Judge was drunk, and tells you that he slapped his face up there in the court room. He says that when they were standing outside of the cubby hole the Judge slapped his face and that he grabbed hold of the Judge's collar and pushed him back, and that the Judge said they had had enough of that fooling. Charles Marks says that he *thinks* the Judge had a little whiskey in him—that is as drunk as he makes him—and it is a little remarkable that he stands by there, when this happens and never hears or sees anything about this slapping affair. So with Ole Skogan.

Mr. Wilcox, this willing witness that was down here, with malice and hatred in his eye, stands at the other end of the store, and he says that the Judge slapped this man Marks, and that it could be heard across the store. Charles Marks, who stands right by his brother, says that he did not hear it nor didn't see it. Mr. Hunter, the deputy sheriff, the man who can distinguish the flush upon the Judge's face and the color of his eye in the darkness of the night, an hour and a half after sunset in the winter, is in this store, and he says he saw the hand of the Judge lifted up and he didn't want to see any more and he turned his back. Well, I don't blame the man for doing that, for a man that can see as well as he can certainly must have eyes in the back of his head too, so that he would not need to stand and look and see to perceive anything of the kind. He turns his back, this man, who can see through the darkness, he is unwilling to see what goes on there, and he tries to make you believe that he turns his back and did not see the Judge strike. But if he did turn his back, he certainly did not turn his ears, and yet he did not hear any slap there. Now, I say the witnesses for the State, William Marks and Wilcox are contradicted by the silence of Skogan; they are contradicted by the fact that Charley Marks did not hear or see any slapping; they are contradicted by this man, this all-seeing Hunter, this man, who turns around and don't see anything; and they are contradicted by Judge Weymouth, who was present there, and who says he saw and heard nothing out of the way. Now, I say that slapping is false, that it is made up. It is made up to injure and destroy this respondent. There was no such affair ever took place there.

Now, it is very likely that the Judge in his excitement,—as he was

when he walked down the street with the Senator the other day, when a man thought he was drunk on account of his movements,—that he standing, talking and discussing something with Mr. Marks, may have gestured too near his face, and that this Marks, who is a ruffian, thinking that it was an insult to him, resented it and said you can't slap me if you are Judge, just as Mr. Hunter says. I say it would be natural, if the Judge had got over excited and gesticulating, for Marks to say "If you are Judge Cox you can't slap me, if I am a Dutchman."

Mr. Wilcox says that William Marks gets hold of the Judge by the throat; Marks says he grabbed hold of his collar, and Wilcox further says that he pushed him back about eight or ten feet into the wall, and that the Judge crawled out of there and didn't seem to know what had been done to him and Marks says the Judge then said "We better quit this." Now, I say if it was a fact that Judge Cox had been handled in that way by Mr. Marks, as Mr. Marks and Mr. Wilcox claimed, that they had better quit that fooling, it would show to any sensible man, any unprejudiced man that if that took place, and Judge Cox said and acted in that way, that he certainly was sober.

For do you think a man of his courage and his dash, if he was drunk, was going to stand that little whipper-snapper of a William Marks shoving him into the wall and then crawl out and ask nicely for his life or ask him to quit? That is not the way of Judge Cox. The testimony shows, if anything, that the story is made up, because, if Judge Cox was intoxicated, he never would have said anything of that kind; it indicates that he had judgment and possessed the calm conservatism of a sober man; it shows that he was a man of cool judgment, who when this drunken man pitched on to him did not want any trouble. For do you think a man of his dash and courage when drunk would have taken such an insult from a Dutchman or any other man? Not at all. If he had not had his cool judgment, if he had been drunk, he would have shoved that man as far as that store went and gone for him hot and heavy and never have begged off in that way. Gentlemen, these men in inventing that story did not have the sagacity and assistance, I apprehend, of my learned friend the manager, because he would be a better judge of human nature than Patterson and Wilcox—who knows a good deal about drugs but don't known anything about human nature—a man who parts his hair in the middle and feels "too—too." He made an impression upon me, when he was upon the stand, of being a regular fool, and I think he was; and certainly that kind of men are not the best judges of human nature; they have not made that subject a study; and those men, in making up that story and getting those Markses down here to swear to it for a drink or two,—(men that are shown to be revellers—no I don't believe it was shown—we were not allowed—the managers didn't want that to come in; we were not permitted to show that they were drunk every time they came to town;) in inventing these stories and making the Markses tell them, they did not make calculations upon human nature; those men didn't know enough to make up a good story, and it falls to the ground by its own weight, for the reason that they were not smart enough to make it up so as to stick.

Why, if they had known it, and wanted to show Judge Cox intoxicated, and shown a reasonable story, they should not have made him get up and slap that man Marks, but they should have made him throw him over the counter, against the shelves, among the beer kegs, and de-

molish all the bottles of the drug shop keeper. If they had told such a story, it would have been a reasonable one, and one that could have been believed. But their lack of judgment, and lack of knowledge of human nature, has made them tell a story which no sensible man would believe for a moment. Nor are Patterson and Wilcox successful in their choice of witnesses. This man Marks is a remarkable man in many particulars. He is so anxious to show that he was sober at this time, that he tells you first he had a drink before he went and saw Judge Cox, and afterwards he takes that back and tells you when he went down with Judge Cox he had his first drink that day. Then he tells you afterwards, when he saw our evident purpose of showing he had been in town quite a long while (although it has been shown to you by the witnesses for the prosecution to have been in the afternoon, and by the witnesses for the respondent to have taken place about three or four o'clock in the afternoon), that he had not been in town more than an hour when he did get the Judge, and he tells you, upon re-direct examination, that when he started from home it was 6 o'clock in the morning. "How did you come?" "With a horse team." "How far do you live from town?" And I expected to hear that he lived about fifty miles away, it being from 6 o'clock in the morning until about 4 o'clock in the afternoon before he makes his appearance there; but he tells you he lives *seven* miles from town! That he had started at 6 o'clock in the morning, with his team, and he had got in there between three and four o'clock. He must have driven like Jehu! Then this man Wilcox tells you that the Judge talked nonsense, and that he slapped this man Marks to get his attention!

Well, that is the most peculiar way of getting a man's attention I ever heard of in my life—to give him a slap in the face to get him to listen to you! Well, that is the testimony of Wilcox,—that he didn't pay any attention to him and that the Judge slapped his face to get his attention. Well, he undoubtedly got it if he did, but it is rather a novel way of doing it. And he says that Marks grabbed him by the shoulder and throat and pushed him back eight feet into the corner. I would like to see that Marks push this Judge, and then I would like to witness the scene of this respondent crawling out of there, as he said he did, not seeming to know what had happened. The manager says why, it is not a lack of courage that they charge him with, but that he felt ashamed that he, a judge of the district court, had so far forgotten himself. Well, I say in the name of heavens, if he was drunk, is it reasonable to suppose that he felt very much ashamed? If a man is drunk and don't know what he is about, would it be reasonable that he would feel the color of shame tinge his cheeks? Why, not at all. I think he would have let the judgeship and all go to the devil just at that moment if he was accosted in that way by a man, and that a feeling of shame would be about the last thing that would reach him if he was drunk. Now, this same Wilcox, (and I mention it simply to show his animus) says, that he thinks the Judge knew at that time about as much about naturalization as he did, and that he didn't know anything,—trying to raise the inference that the Judge was in such a condition that he didn't know anything that was going on there, the merest thing being done there by the clerk. Now, Mr. Marks testifies that when he came down and asked the Judge to come up to court, the Judge asked him whether he had his first papers, and he told him he hadn't, but

that he had his soldier's discharge, and that the Judge said that was sufficient and all that was necessary.

Now, does that show that the Judge did not have his mind about him at that time, that he did not know enough to transact that business? We all know that under the United States law the discharge takes the place of the first papers, and that it is unnecessary to have the first papers under those circumstances. It shows at least that the Judge had his wits about him, that he knew enough to transact the business he had to transact at that time. Now, then, this same nice young man Wilcox gets caught again; he says the Judge was telling some war reminiscence, and that he (Wilcox) didn't get any sense out of it. How does he know what it was, if he could get no sense out of it? And then a little while afterwards he says he stood away off himself, and then tells you that Marks paid "no attention that I could see." Now does that tally? Again he says: "The two Marks were standing near by the hole and were sworn or examined at that time; the clerk asked them questions. He administered the oath to them."

Now, the clerk up there, on another occasion, swears that he never administered the oath in his life to any one upon naturalization. Now how does that testimony tally?

Then again, after he has made the Markses stand close "by the hole" and the clerk asking questions and administering the oath to them, he tells you in the next breath that Marks stood eight feet from the hole when the Judge slapped him! Now, that young man has got badly mixed up, and I think he will find, before he gets through with this thing, that he is worse mixed than some of the mixed paints that he is selling. And then the explanation he gives as to how he knows about this thing that has been testified to, shows his animus,—"I was watching them, I was watching very particularly!"

Is it reasonable that a paint man and a drug man, surrounded by his customers and his business, would be watching the Judge? But of course he has to say that to explain how he happens to know all these things so particularly, and remember them a year afterwards.

I maintain, then, gentlemen, that the witnesses for the prosecution have told an unreasonable story; that they have told contradictory stories; that they have contradicted each other; that they are contradicted by the only witness that was there besides them, the only one we have been able to get hold of at least, viz., Judge Weymouth. They are contradicted by him. And when you come to the final consideration of it the whole thing is immaterial, the whole thing don't amount to anything, the whole charge has fallen to the ground, because the Judge is not shown to have performed any judicial duty there at all. The learned manager can stand here and argue from early morning until late at night, but cannot convince this Senate, nor any one with sound sense, that a Judge standing by and seeing a man get his naturalization papers is performing any judicial duties.

Now, if the Judge was only standing there, if it was only required that he should be present and stand there, then I say that he was not performing any judicial duty, and he could not have been drunk while in the performance of such judicial duty; and if he was not, he cannot be convicted on the article; for he has certain rights even if he is a Judge; even if he is an officer, he has got certain private rights which every man is bound to respect. But whether that be true or not,—take

it for granted that it was a part of his judicial duties to do it, yet I claim that the article has not been made out. You are to judge, not whether Judge Cox has been guilty of what they have proven against him, but you are to judge whether he has been guilty of what is alleged against him, and whether the proof sustains the charge against him in this article of impeachment. And I say that no man whose conscience is dear to him, whose oath is dear to him, who has any regard for his own actions, and what posterity will say about him, upon the testimony of the State, even, can upon his oath make a decision that this article has been proven; that upon this occasion the Judge has entered upon the trial of causes and decided causes and presided at the trial of causes, because there was was nothing of the kind. You cannot find him guilty, as I said before, upon the article; you cannot find him guilty of anything; you must upon your oath find him guilty of the charge contained in the tenth article or not at all; you must find that everything that is material to make out that article has been proven,—every word of it, every syllable, every period. If he is not guilty as charged there he is not guilty at all. If they have not proven everything charged against him under that article, if they have failed in the proof of any material part of the allegations therein, he is not guilty, and your verdict must so be.

I now desire, Mr. President, to call the attention of the Senate to the

ELEVENTH ARTICLE,

in which it is claimed that during the hearing of a motion for new trial in the case of John Peter Young against Charles R. Davis as administrator of an estate, at the general term of court held in and for the county of Nicollet in the month of May, 1881, Judge Cox was intoxicated so as not to be able to perform the duties of his office.

Now what is the proof upon the part of the prosecution? All the witnesses they see fit to introduce is Mr. Lind and Mr. Ladd again. You will have noticed that they have figured quite conspicuously so far, and probably we have not got through with them yet. Now, upon this occasion Mr. Lind is very moderate indeed. He tells us that he *thought* the Judge was intoxicated. The testimony of both these witnesses is very short; I did not cross-examine them at all; I didn't think it amounted to anything, and their testimony is embraced in about two or three questions. Mr. Lind says he remembers the trial of the case, and a motion for a new trial and that at that time he *thought* the Judge was intoxicated. Well, when Mr. Lind only *thinks* that the Judge is intoxicated I think the Judge must be sober indeed; he must be entirely sober when Mr. Lind only thinks that he is intoxicated. Mr. Ladd states that he was intoxicated. He is a candidate for judge himself; he is not a henchman for somebody else, and he is sure to put it strong enough; he says he was intoxicated.

Now, that is all the evidence there is upon the part of the prosecution. It does not give any of the details, does not describe to you any of the actions of the Judge, does not describe anything wrong, does not claim that in deciding that motion for new trial the way he did, that he acted wrong or contrary to law. As a matter of fact it has appeared before you in evidence I apprehend that that case was never appealed, that his decision there was never appealed from, and presumably Mr. Lind,

when he got a little cooler, as he did, when he walked down stairs, after he had been beaten by the Judge, when he ground his teeth and said he would like to cut the damned drunken guts out of that man, undoubtedly, I say, when he got a little cooler he came to the conclusion that the Judge was right and that he had no case to go up to the Supreme Court on, and that was probably the reason why he didn't go. Now, I say they have shown no circumstances, no actions, nothing from which you could judge as to the condition of the respondent; it is their simple opinion that the Judge was drunk at that time. Against that testimony we have what? We have the testimony of Mr. Ware, the official shorthand reporter of that district, the testimony of Mr. Davis, Judge Cox's life-long friend and acquaintance and old partner, we have the testimony of Ben Rogers, who has known the Judge for twenty-four years, who was an army comrade, who has seen him under all kinds and manner of circumstances. We have not only their testimony as to the fact that he was not drunk but we have them describing the Judge's appearance. Mr. Davis tells you that there was something out of the way with him; that the Judge was not as he usually was; that he saw there was something wrong with the Judge, that his attention was called to it at the time, and that he leaned over to Mr. Rogers and said, "Why, what is the matter with the Judge? He hasn't been drinking, has he?"

Now, why did he say that? In the first instance of course it is with Judge Cox's friends as with his enemies. If he happens to have a boil or a sick headache or a back ache, or happens to be a little lame in one foot, of course he must have been drinking, that is, as a matter of fact, the first conclusion they arrive at,—he must have been drinking, he must be drunk. That is the first thing a man would guess at; and it is so with everyone who has the reputation that he has got, who has got it justly or unjustly. It is always so. That would be the first thing they would attribute it to when there was anything unusual or out of the way with the Judge,—that he had been drinking. And undoubtedly if Mr. Lind and Mr. Ladd noticed this thing,—which they don't seem to have done, because they don't tell you anything about it,—that would probably give occasion to perhaps an honest belief upon their part, not investigating it any farther, as they did not, that the Judge had been drinking at the time and was intoxicated to a certain extent. But Mr. Davis, who knows him well, tells you that the actions of the Judge struck him as peculiar, because they were *not* the actions of Judge Cox when drunk, they were not the actions of Judge Cox intoxicated. He says he was abrupt towards Mr. Lind, he spoke short; he seemed to be absent-minded, seemed not to have his mind upon anything going on before him, but upon something far off, something outside of what was transpiring before him. And he tells you that he was very abrupt to Mr. Lind; that he told Mr. Lind that he did not desire to hear from him on the facts, a very unusual thing for him to do. Now, under the testimony of Mr. Lamberton it would certainly be unnatural for him, if he was drunk, to be abrupt as Mr. Davis tells you he was to Mr. Lind. We have heard the testimony of his friends that when he gets a little under the influence of liquor, gets intoxicated, he gets to be over-polite, so very pleasant, so very polite indeed.

Now, you see that would stand out in contradistinction to his actions at this time, when Mr. Davis, with great right says, that his actions were not those of Judge Cox drunk at all because there was an abrupt-

ness that he was not used to at all. He tells Mr. Lind "I don't want to hear you, sir, if you haven't got anything but the facts; I have the got facts in my mind: if you have got any law bring it forward." He was not civil to the man, didn't treat him with the civility that he would show when he was sober, when he was not in this state of mind, much less with the civility that he would have shown if he had been drunk or intoxicated in the least. Now, Mr. Ladd and Mr. Lind went off mad at the Judge,—hating the Judge as both undoubtedly do and did at that time, hating him as Mr. Ladd has, as long as he has known him,—Mr. Lind hating him at this moment because he refused him a new trial, if for nothing else,—madder than the Dickens, mad as mad can be, even so mad that he forgets his position as a gentleman, forgets his position as a practicioner and uses such mean language as we wrung out from Mr. Ladd upon this witness stand, that Mr. Lind had used,—which he could not deny, because he had happened to use his mouth a little too much and spoken about it at St. Peter, so he had to bring it forward, as much as he hated to do it, and as much as he tried to volunteer explanations and excuses for it,—language that "he would like to cut his damned drunken guts out,"—language that no gentleman would use against another man if he was in his right mind,—language that no man, no lawyer would think of using about a Judge or about anybody else. I say they went off mad; they went off satisfied that they had got something to hang their hat of discontent upon now, that the Judge was drunk from his actions.

Now see the difference with those who have not got this malice and hatred in their hearts. See the difference with Mr. Rogers and Mr. Davis. They are not satisfied with these appearances, that might probably be explained, as evidence of drunkenness. They are going to examine into the matter. And Mr. Rogers goes first and afterwards Mr. Davis into the Judge's private office and have a talk with him. Mr Rogers had no idea from the start that the Judge was intoxicated; he told Mr. Davis when he asked him if he had been drinking "I guess not," but he went in anyhow to satisfy his curiosity and see what was the matter with the Judge. He did not notice, very likely, that there was something abrupt about the Judge's manner that day. He goes in, and Mr. Davis goes in, and they examine the Judge. They talk with him and have a conversation with him a while privately. They find out what is the trouble with him. They find he has been sitting up all night worried by this man Boardman the grand juror, and they then immediately understand what is the trouble. They both of them say to you that they wouldn't say Judge Cox might not have taken a drink that morning, this was at two o'clock, mind you, they wouldn't be safe in saying that, probably; but they talked with him, they sounded him, and they find out what is the trouble, and they find out that, sensitive man as he is, he has been hurt by the rude behavior of this grand juror, whom he fines for contempt because he had not attended court at the right time and made the grand jury wait upon him, and who, because he is fined goes to the newspaper and writes a squib against the Judge and abuses and calls him names, &c. The newspaper being published there right during a term of the court, he naturally feels aggravated. Nobody can wonder at it.

He was sitting up, as Mr. Davis told you, all night, hunting up authority and examining the matter with a view of bringing this man up

before him on contempt proceedings in order to stop the abuse of his enemies around there. Then going down the street and hearing this same grand juror, as Mr. Davis tells you, having reviled him in the newspaper, reviling him to the other grand jurors as he goes by, seemingly taking pleasure in doing it. He hears that as he goes down to the court house to hear this motion, and can you wonder that he is excited; can you wonder that he is abrupt and thinks about that instead of thinking upon the matter that is before him? Now, I say, here are two intimate friends of his that have known him for two years; that have met him every day in St. Peter, as Mr. Rogers has testified, an intimate friend, a co-democrat, a man that sympathizes with him all the way through. He has known him and seen him every day, and he comes in there and examines into this matter, and comes to the conclusion, and tells you under his oath, that Judge Cox was perfectly sober at that time; that whisky was not what troubled him. Mr. Davis tells you the same thing. He had a doubt at first, probably, although it was not very strong, for if he thought the Judge was full he would not have gone in and asked him if he was full. Now, these men, both, after a thorough examination of the matter, come to the conclusion that Judge Cox is not intoxicated at all.

Mr. Ware tells you that there was nothing in his appearance at that time he would take for intoxication, knowing him as well as he does, having seen him day after day, week after week, and year after year, following him when he goes the rounds of his district in the performance of his judicial duties. He says he could notice nothing of the kind.

Now, the question is, will you take these men who have investigated the matter, who investigated it thoroughly, who know what they are talking about; the question is, will you take those two men, supported as they are by Mr. Ware, will you take them against the candidate for office and the man who is so mad against the Judge that he desires to cut his drunken guts out, the man with murder in his heart and murder in his thought? For so it is, in spite of the attempt upon the part of the learned managers to show here that it was not the Judge's guts he wanted to cut out, but it was the guts of his habits. Too thin, wouldn't wash.

I desire, before I leave this article, to contradict a remark made by the learned manager. He says the Judge had trouble with this grand juror, and said that was no unusual thing for him; that he has had trouble right along with the grand jurors and petit jurors. I will ask you to state, gentlemen, if that has appeared here in testimony anywhere? It certainly is not in the case; it has not appeared in testimony, nor is it a fact that the Judge has had any trouble with his grand jurors or petit jurors. It is not a fact, as the learned managers would have you believe, that those men look upon him with contempt, that they disobey his orders, that those men treat him, as the learned managers would have you believe they would treat a drunken man; it is no such a thing. With all his levity, with all his being full of fun, with all his want of dignity, as some would call it, I venture the assertion that there is no court in the State of Minnesota in which order is better preserved, in which business is better carried on, in which it goes on with more heart and more of a will than it does in the respondent's court. And I say if it is true that once in awhile he treats the attorneys as equals,

that he treats the jurors and suitors as equals, it don't hurt the proceedings in that court in the least.

That those men love the respondent, that they think a great deal of him, does not interfere with the management of business in his court. Nor have I ever, as long as I have practiced before him,—and I think I have practiced before him from the first year that he was Judge and in several counties of his district,—seen an instance of insolence upon the part of any attonrey, upon the part of any juror, upon the part of any suitor towards the Judge. I have never seen an instance of want of respect. It is true that he and I, as well as the others that have been present, have thrown jokes back and forth over the Judge's bench once in awhile, when the proceedings have got too dry; it has served to put a little life into us when we were pretty near going to sleep in a tedious case. And it don't hurt anything, it is good once in awhile. I have seen judges who sat with such sour mugs on the bench that you would all feel like going to sleep or drinking vinegar; but that is not the way with the Judge. Nor does that help business on. It don't impress us in this country to have the Judge sit there with a sour face upon the bench and look wise and old and mean, that don't enhance the beauty of the proceedings in the least. If he wanted it that way, if we felt that was a necessary requisite to the administration of justice, we had better get the gowns and the tipstaff and the horse-hair wigs back again. Now, I say it is the worth of the Judge as a Judge. It is the fact that he can see a point quick; it is the fact that he can decide correctly and without driveling and snivelling along and without making half-and-half decisians. That is all what makes a Judge; that is what makes business go on like fury in the court and go on properly, and not whether he can put up a sour and serious face or not.

I never saw business injured in the least by jokes passing back and forth between the Judge and the attorneys; I never saw that he was any less respected for it, I never saw that he was any less respected because when he comes into the court room, when he meets Ole Peterson or Dan Murphy or any of those men, he goes over and shakes hands with them and says "How do you do?" and acts just like a common man and never puts on airs. I never saw that it hurt the proceedings in his court or his dignity or the respect which the jurors and the citizens have for his court. So it is false when the manager says that he has trouble with his grand jurors and his petit jurors, that they hold him in contempt. It is reserved to his personal enemies at home to insult him and express contempt for his court, those men on whose toes he has trodden too much, those men that hate him probably, because, perhaps, at some time or other, as attorney, he has taken a case against them and abused them and shown them up in their naked hideousness. It is reserved to those men to treat him in that way. That is not the way he is generally treated in his district.

Now, then, to come back to this article: I say, gentlemen, that there can be no question in the mind of any honest Senator, any Senator who is going to try this case upon the law and the evidence, any Senator that has not decided this case and was ready to vote before he heard a particle of evidence, any Senator who will act as an honest man in this matter, any Senator who will act like a judge and feel that he is under oath as a judge and decide this case upon the law and the evidence, there can be no doubt, I say, in the mind of any such a Senator, but that this

article is disproven; that what might have apparently appeared as an act of drunkenness to the perverted and prejudiced sight and eye of Ladd and Lind, disappears as the snowflakes melt and disappear before the rays of the sun, when you come to inquire into it.

When you come to examine the men who did inquire into it at the time, who did make an honest investigation, and you have the result before you, there can be no question, I say, but that this article is totally disproven; but that much more than a reasonable doubt is raised in your mind, but that you must be convinced, and fully convinced, that this article has been totally disproven and that there was nothing to it and that it never ought to have been brought in, nor would it ever have been brought in if it had not been for the fact that the managers allowed themselves to be led away by the enmity and hatred and malice of these men who felt themselves injured and injustice done to them by the Judge, or in whose way he has stood, in whose way and ambition, in whose way to office and honor it has pleased him to stand. If the managers had not shown such a want of judgment, that they had allowed themselves to be led away by these men, this article never would have been brought in nor would it ever have been insisted upon.

Mr. President, I have come now to the 12th article. It will probably take me an hour or so to dispose of it. I am pretty well tuckered out now, and if the Senate would do me the favor to adjourn now, I think I could probably proceed faster and more satisfactory after dinner.

The PRESIDENT *pro tem.* The Senate have heard the remarks of the attorney for the respondent. What is the pleasure of the Senate?

Senator POWERS. I move that we take a recess until half past two o'clock P. M.

The motion was seconded, and the Senate then adjourned to 2:30 o'clock P. M.

AFTERNOON SESSION.

The Senate met at 2:30 P. M., and was called to order by the President *pro tem.*

Mr. Arctander then continued his argument, as follows:

Mr. ARCTANDER: Mr. President, I now proceed to discuss the

TWELFTH ARTICLE.

The term of court in Renville county, held in the month of May, 1881. The witnesses produced by the State in that case are Mr. Holtz, the tavern and saloon keeper up there; Mr. Coleman, whose name has got to be somewhat familiar in these proceedings; Mr. Sam R. Miller, the county attorney of that county, and George Miller, his brother.

Against those witnesses the defense produced Col. Megquier, the attorney from Bird Island; Mr. Whitney, another attorney; Martin Jensen, the sheriff of that county, the Hon. Henry Ahrens, formerly a member of this Senate, and a respectable miller and farmer there; James Greely, the court commissioner of the county and the justice of the town, and Mr. McIntosh, the deputy sheriff.

I desire first to call the attention of Senators to the fact that William McGowan is on the list as one of the witnesses for the State, but he has really not sworn to anything, except simply to identify the record. He

was not asked one question by the managers, when they swore him upon that article, as to the condition of the Judge, nor as to how matters proceeded. All they called him for was to identify the records, and they have introduced the record in regard to the conviction and fine of Andrew Anderson, and the subsequent remission of the fine, so that Mr. McGowan is not a witness at all under that article.

You will notice, when you look at the testimony of Mr. Holtz, that he does not locate the drinking of the Judge at that term, but manager Dunn asked me during the progress of the case if we would admit that it was intended for that article, as I had placed him under that head in the index. He said that in that case it would not be necessary to call Mr. Holtz down here again, and I told him certainly, we would rather do that than have Mr. Holtz called down again.

I see that Mr. Holtz was afterwards called down as a witness, but was sent home again without being sworn. I do not know if the manager desires that agreement to stand; if he does, I am willing to stand by it. I didn't know but perhaps his calling him down here might relieve us of it; but we will consider that the testimony is under article 12, and that the testimony of Mr. Holtz, whatever it amounts to, applies to the time that this term of court was held in Beaver Falls. We will now see what the testimony is. Mr. Holtz was not with his feet inside of the court room at that time; he so testifies. He does not know what was the state or condition of the Judge in court,—and of course that is all we are here to respond to,—not what the Judge may have done out of court, not that he may have got drunk there some night, or been on a spree some night, or playing cards some night; I apprehend that we are not called hear to defend against any of that. We are called under this article to defend against intoxication, while he was presiding upon the bench, and while he was trying cases.

I desire to call the attention of the Senate to the fact that Mr. Holtz's testimony cannot be taken into consideration at all in the case, for the reason that although he says that there was not a day there during that term of court at which Judge Cox was not intoxicated, yet he does not locate it, he does not locate any of his intoxication in the forenoon, at noon, or before any sitting of court, nor during any session of court; for we must presume that when the prosecution called him upon the stand and asked him about the intoxication of the Judge under this article, that it was their intention to bring out all they could; I certainly have a right to presume that, for I think that I can safely say, and that I will be borne out in the statement, that nothing has been left undone in this case by the managers, that could be done.

I desire from the bottom of my heart to compliment them for the way in which they have managed the case, upon the ability with which they have drawn out everything that could possibly have any bearing upon the case, and drawn it out in as strong a light as it possibly could be done. In truth and in fact these gentlemen deserve to be better remunerated than they are by the state for the labor that they have done in this case. Certainly nobody will be more willing than I to accord them all the praise they deserve and I think they deserve considerable for the eager and zealous manner in which they have prosecuted this case. I think you hardly could have found seven other men in the state, that would with more zeal, with more eagerness and with more ability, work up the case that they have worked up here against the ac-

spondent. I believe that they will have that record as a monument left them when this case is disposed of, whatever be the result, that they have not left one stone unturned that could be turned, in order to destroy the future usefulness of this respondent. I apprehend that they take it to be their duty so to do, and it certainly is their duty to do all in their power within the bounds of honor and truth, to prosecute the case that they have been appointed by the House of Representatives to prosecute, and I think they have done it well and done it faithfully, and that nobody could ask for anyone to do more than what they have done, and that we can rest assured that, when this case is disposed of, when this case is ended, the managers will have the praise, whatever the result be, even if they are defeated, (which I certainly expect and believe they will be,) that it is through no fault of theirs, but only because they have a poor and miserable weak cause to stand upon. Now I say it is fair to presume upon the theory which has been manifest all the way through, that if this man Holtz had seen the respondent at any time during the day, or when he was liable to be called upon to perform his duties, during this term, in a state of intoxication, that the managers would have drawn it out, that they would have shown it.

They certainly would not have left that stone unturned, and when they limited themselves simply to asking him whether during that term the Judge was intoxicated, we must presume that it was at the time when the Judge was free from the labors of the day and from the burdens of his official position, and when he had a right to be jolly with the boys, if he saw fit. There is, therefore, nothing to the testimony of Mr. Holtz; it might just as well have been left out of the case entirely; it cuts no figure one way or the other.

The next witness we find upon the list of the managers is Robert W. Coleman; and I say that he has taken a prominent part in this prosecution. I think that when the prosecution rested he did cut the most prominent and eminent figure of any witness in this case, but I think when the defense rested, and when this case was closed, that he had got to occupying a position that certainly no Senator upon this floor, nor any man with any respect for himself, would envy him,—a prominent position, but prominent in the wrong direction; that he then occupied the position as one of the most classical liars that ever had graced or disgraced this witness stand. Why, it was shown, gentlemen, by testimony that you can not dispute, by the testimony of honorable men, and men who are gainsaid by nobody but by Coleman himself, that at this time, when Mr. Coleman claims he was in court in Renville County, he was not within several miles of Beaver Falls, the county seat of that county. It has been shown by five or six witnesses that Mr. Coleman did not show himself in court during the time when he and Mr. Miller claims that Judge Cox was intoxicated, and that these exhibitions he gives us,—being really the only one, we might say, that gives any exhibition of what Judge Cox did or said or acted during those times,—that those are the offspring of his vivid imagination, prompted by his feeling against the Judge or by the money of somebody who was interested in seeing the Judge prosecuted and convicted. I say that it is undisputed, it stands undisputed in this case, that Robert W. Coleman was not in that court room during the days when he claims that the Judge was intoxicated. He does not claim that he was in the court room on Monday of that term, but he claims he was there Friday and Saturday,

and that at that time the Judge was intoxicated and cutting up his capers, as he describes them.

Now it is in testimony by Senator Ahrens, who was in the court room and acted as juror on Saturday and Monday, that Coleman was not in that court room during any of those days. If he had been there, he must have been, he said, under some bench—drunk, I suppose,—but he certainly was not there nor in sight. Mr. Ahrens would be likely to know.

It is in testimony by Mr. Jensen that he (Jensen) was in the court room constantly Friday forenoon and the whole of Saturday. He was absent Friday afternoon from the court room but Friday forenoon and the whole of Saturday he was constantly in the court room. He is the sheriff, he knows Mr. Coleman well, everybody that has seen Mr. Coleman upon the stand,—a sight that some gentlemen here lost,—and I am sorry that they were not here to hear his valuable testimony,—knows that a man like Coleman, six feet high and about three feet wide, certainly would not be very apt to be able to hide himself in a little small school room such as that, especially those that were well acquainted with him and who were around and watched the proceedings there themselves. Now, Mr. Jensen swears positively that he was not in the court room during those days. Mr. Megquier, the attorney, swears that he was not in the court room either Friday or Saturday at all. Mr. Whitney swears that he was not there either Friday or Saturday, and that in fact he was not there after Wednesday; but of course we had no interest in anything else but Friday and Saturday.

But Whitney goes further and swears he was not in the court room on any day after Wednesday. We have the testimony of Mr. Greeley, who says he sat there in court, and who was on the jury there. He says he was not in court Friday or Saturday. We have the testimony of Mr. McIntosh, the deputy sheriff, who was in court constantly, with the exceptions I shall mention hereafter. He says that he saw him in the court room there Wednesday forenoon, and that he, McIntosh, was in the court room all the time during the court except Wednesday forenoon and Saturday afternoon, and that while he was in court after Wednesday, Coleman was not there. The time he was away, you see, is covered by Mr. Jensen and the other witnesses. Now, in addition to that, it has been shown conclusively by Mr. McIntosh and Mr. Greeley, that they both saw Mr. Coleman hitch up his team and drive away from Beaver Falls on Thursday afternoon. Now, how is it possible, that this man, with that testimony against him, can dare to come down here and claim that he has a right to testify as to Judge Cox's intoxication in Beaver Falls, and an intoxication which he himself, as well as the two Millers, supposed to commence on Friday morning and last to the end of the term. I think that there can be no doubt in the mind of any Senator that these men would not come down here and swear as they have done, positively, that Mr. Coleman was not there, unless it is true and they know it, and that anybody will take their statement as against his own unsupported testimony. It is true that the managers called down this Herman Zumwinkle and tried to show by him that Coleman was in court,—no not that he was in court, but that he didn't go off from town before Saturday; that it was not Thursday but that it was Saturday. Now, I will ask you to state, taking for granted that Zumwinkel is correct, that he did go off Saturday, and that Zumwinkel went with him, does that prove that he did not go off Thursday too?

Does that prove, that because he went off Saturday, he was in court Friday and Saturday? Does it prove any such thing? Not at all. But what does Zumwinkle say, when we come to examine him? This Saturday, as he thought it was,—and I don't know but what the managers put it right in his mouth when they examined him,—gave him the date probably,—this Saturday, on whatever date it was, was the day that the court finally adjourned he says. He tells you that the Judge was off the bench and he saw him down town, and the jurors were most of them gone home, had been discharged; the court had been finally adjourned at the time. He don't seem to be mistaken about that; he was very positive of it. Now, it is in evidence that the court did not adjourn before Monday noon, and the liklihood then is that it was Monday afternoon that Zumwinkle went off with Coleman and not on Saturday afternoon. And that is corroborated again farther by the testimony of Mr. Mc Intosh, who says that Coleman came back Sunday from this first trip he made, when he went away Thursday afternoon; that he came back Sunday and that he left again either Sunday night or the next day. I say, then, Zumwinkle's testimony as to its being after court had adjourned is corroborated in a measure by the testimony of Mc Intosh, because he said he did come back; that he had a conversation with him upon Sunday, in which he asked him how court was getting along. Now, I believe it was in testimony by Mr. Jensen that he had not only searched in his own mind about this thing, but that he inquired,—after this came up down here, and he found that Coleman swore he had been present at all that term of court, feeling confident that Coleman had not been there those days at all,—of every juror he had been able to find, and that more of them remembered to have seen Mr. Coleman around after the second day. Didn't that come out in testimony, Manager Dunn?

Mr. Manager DUNN. No.

Mr. ARCTANDER. Well he told it to me personally then probably, and I have got the two occasions mixed.

Mr. Manager DUNN. Well, go on put it in, I don't mind it.

Mr. ARCTANDER. I should not be surprised, gentlemen, if I was mistaken in this particular, and that the witness stated it to me in private conversation, and not on the stand. I was under the impression that it came out on cross-examination, but I don't desire to state anything, not the least, that is not correct, in regard to the testimony, and therefore, cheerfully withdraw that statement, as my learned opponent says, that it it was not in evidence. Consider it, Senators, as if it never had been made.

I apprehend that it is clearly and beyond any reasonable doubt, if it were necessary, established, that Coleman was not there; that he lies, makes up out of whole cloth, whatever stories he tells about the Judge those two days, Friday and Saturday. But we have not rested here; we have not rested by showing that Coleman was a liar in those particular statements, I don't think I could afford to rest there, with testimony that Mr. Coleman gives upon other articles. I considered that the interests of my client would demand that we should show to the Senate as fully and completely as we could, what kind of a man Mr. Coleman is; that he not only lied in this particular instance, not only had told you that he was in court and that the Judge was drunk, when he absolutely could know nothing about it, because he was not there, but that we should show to you also, that he was a general liar any-

how,—a man that was not known to speak the truth,—a man who was not known to tell the truth even when it was for his own interest to do it; and we therefore introduced witnesses, (and I think witnesses, who will stand in your estimation high, witnesses, who you will understand, none of them had any grudge whatever against Mr. Coleman,—as appeared in their cross-examination,—who none of them ever had had any trouble with him, who none of them ever had any animosity or feeling toward him, and all of them men that stand high, and are of the best men in the community from which they came.)

Who could tell you what kind of a man this Coleman had the name of being? We called the honorable Henry Ahrens; we called the sheriff, Martin Jensen; we called Mr. Berndigen the merchant, in fact the only merchant there; we called McIntosh, the deputy sheriff; we called Mr. Greeley, the court commissioner, and we called Mr. Kirwan, the county auditor of that county.

Now, I apprehend that nobody will claim but that these men are of the best men in Beaver Falls, where this man Coleman lived and has committed his practices during the last two years or two and a half. Now those men come before you and unhesitatingly and unqualifiedly characterize him as a liar, as a man whose general reputation in the community in which he lives for truth and veracity is bad and very bad, and they are enabled to do what hardly ever is witnessed in a court of justice, they are enabled to give in evidence names, times and places, and conversations of people in that town, and give not only one or two, as we generally hear the evidence limited to in courts of justice, but give to you from six to fifteen instances, each of them, of men who have spoken about him. Now, I apprehend that you will understand that a man to have *such* a general reputation as a liar, that any man called upon the stand can give from six to fifteen of his neighbors that he remembers and distinctly remembers has spoken of him, must be a man who has an infernal reputation indeed. I am sure that you can each of you think of some man in your own community that you feel confident has a reputation and a general reputation of not speaking the truth; I am sure that there are such men in every community; but it would probably bother you considerable if you should name upon the stand from six to fifteen men in the town in which you live that you had heard speak of it; it would be hard for you to call to mind probably more than one or two or three, unless indeed the matter was so general that everybody spoke of it, unless indeed the man had been brought forward prominently as a liar and unless it was the general talk, so that almost everybody, when they men ioned him, and at every time they spoke of him would speak of him in that way.

Now, I think that when each of these witnesses can name you from six to fifteen persons,—most of the witnesses giving different names from those mentioned by the other witnessas, and that in a little village numbering with women and children about one hundred inhabitants—who have expressed their opinion as to the lying capacity of Coleman and that the best men of the village, county officers, witnesses that were down here for the State,—Mr. Miller, his brother, and the other county officers there,—that it is pretty thoroughly established, that that man has a reputation and a standing at home, where he is best known, which certainly is not enviable.

Now, evidence of this character is allowed in law. It is not allowable

for us to show that the man has lied upon different occasions; it is not allowable for us to show individual lies, but the law says, that we may introduce hearsay evidence, as you may say. It is the only instance in which the law allows hearsay evidence, when the question of a man's generel standing and general character comes up. For the law argues in this way: Where a man lives, in his neighborhood, there he presumably is best known; he may come out from that neighborhood and put on a nice clean shirt and a nice coat and behave himself nicely, and yet he may be the biggest scoundrel in the world; but those who live with him day in and day out, who witness his deeds, who witness his sayings, who witness his lies, those men are apt to know and put an estimate upon him which the law has got use for, that is the reason of the theory upon which that kind of testimony is allowed; that those men who know him the best and have the best occasion to judge him shall be his judges, and they give their judgment by the general repute. Now, what one or two men say, or what a few men say, don't make the general repute, but what is generally said in the community, that establishes a man's general reputation, and that is allowed by the law as the only measure of, whether a man is fit to be believed or not.

Now, I think that the neighbors of Mr. Coleman in that town,—the most prominent men in the town,—his nearest neighbors, who have witnessed his misdeeds and lies, have given him a certificate of character that is worth having. I have no doubt, if we had been allowed to ask the question whether anybody would have believed him under oath that everyone would have answered that they wouldn't for any price. You noticed that we asked it and it was objected to and ruled out. I don't know but it was proper that it so should be. Now, then, when a man is attacked in this way, there is a way by which he can defend himself against that attack. When a witness has been attacked, and it has been shown that his reputation for truth and veracity in the community in which he lives is bad, and his testimony therefore should be overthrown and not taken into consideration at all, because he is a man that is not worthy of belief, then he has got the privilege,—and the State in this case had the privilege,—to bring other men to show that these men that we had down here, testified falsely, that these men that were brought down here on the part of the respondent testified to what was not true,—in other words, that the general reputation of Mr. Coleman in Beaver Falls, in the community in which he lives, was not bad but that it was good. That privilege he had, and that privilege they had; and we have witnessed how they have availed themselves of it.

Not one single man do the managers bring down and put upon the stand to prove that our witnesses testified falsely and that his reputation was good. Now, if they had rested right there and not brought any witnesses at all, then they probably, with some degree of reason could have asserted that they did not consider Coleman impeached and that it was not necessary for them to do it. But what do they do? They don't rest upon that. No, they feel it in their souls and in their hearts that he has been impeached, if ever man was impeached in court of justice, and they go and search for witnesses to bring forth, and they call down here Sam Miller, George Miller and Carl Holtz, and several men from Beaver Falls—you saw them here, they were here and allowed to draw their pay on the last day in rebuttal—but they were not called upon the stand. Why? Because they

would have corroborated the testimony brought out by the respondent because they can't find a man in the town of Beaver Falls, and I know them well, they cannot find a man woman or child, that would swear that Mr. Coleman's reputation in that town for truth and veracity is good. They can't do it, and what do they do? Why they have shown you their disability, they have shown you the impossibility for them to find any such men; they have shown their good will to try and rebut that testimony and try to save and hold up the character of Coleman, and they have found that they couldn't do it; what is more they have succeeded in showing you that they couldn't do it. Why? Because, instead of calling his neighbors and those of his town down to testify, they do what? They get men who live 15, 16 and 20 miles away and call them down—men that live in other towns, in other villages, men who have no communication, business or otherwise with Beaver Falls.

Why, they call upon the stand Mr. Lincoln, from Olivia, who lives fourteen miles from Beaver Falls, and he says that he has been down there probably once or twice a month, on a visit, on business, or for some other purpose, and they prove by him what? That the reputation of Coleman is good? No. He says "he won't vouch for his reputation." That is what he says. Well, they ask him, have you heard it questioned? "No, sir, never heard it questioned." Very well, and they rest, there they rest. Now, what does that prove? Does that prove anything? It is true that our Supreme Court, in the book that I hold in my hand, in the case of State against Lee, in the 22nd Minnesota, held that you might show that a man's reputation for anything bad was never brought in question and that if nothing was said against him that was the best evidence that there wasn't anything to say against him; but before you can do that, before you can show a man's character by such testimony, you must show that the parties who testify are in such a position that they would be likely to hear all that is said about him, good or bad; and that is what is necessary. Of course such testimony is not worth a picayune. It wouldn't carry conviction to anybody's mind unless you show that the witness is so situated that his not hearing anything said showed that as a matter of fact, there was nothing said. If a witness should come upon the stand, I living in Wilmar and the witness living in Atwater, Litchfield or Minneapolis, and swear that he had never heard my reputation questioned and that being all he would swear to, wouldn't it amount to a great indorsement, to a great certificate? I should say so! Why, I might have the worst of reputations in the town in which I live and that man might never have heard it questioned, for he might never have been there, or if he should come there occasionally on a visit, he might not have been there at all at the time or under the circumstances when my reputation or name was brought up.

To show you that I do not state as the law what is not the law, I will read from that decision, the decision under which they claimed they could bring in this class of evidence. This man Lee was accused in the county of Ramsey of the crime of rape, and indicted and convicted. The late lamented Gen. Gorman defended him, and defended him bravely. Upon the trial he claimed, that you could show character in the way that I have already indicated, but was overruled

by the district court, and he appealed in behalf of the defendent to the Supreme Court, and the following decision was given.

Judge Berry, Associate Justice, says:

Defendant also proposed, in the language of the record, "to call other witnesses, who have been acquainted with defendant for about two years, but who had never heard his character, disposition or reputation discussed or spoken of, and to prove by them that his disposition for peace and quietness was good;

Of course that was material for him there to show, because he was accused of an act of violence.

also that his character for the same was good, and also that his general reputation for the same was good; but the court held that neither of the above could be shown unless the witnesses would testify that they heard the defendant's character or disposition for peace and quietness discussed or spoken of."

By the strict and technical rule, as laid down by the text writers, the only evidence of his good character which an accused person is permitted to adduce upon his trial for a criminal offense is evidence of general repute. In practice, however, the rule is seldom strictly enforced, but is in fact much and often relaxed. 1 Taylor Ev., section 325 *a; Regina* v. *Rowton*, 2 Bennett & Heard Cr. Cas., 333, *et seq.*, and note; *Gandolfo* v. *State*, 11 Ohio St., 114; 1 Bishop Cr. Prac., sec. 489. A very sensible and commendable instance of the relaxation of the old and strict rule is the reception of negative evidence of good character—as, for example, the testimony of a witness who swears that he has been acquainted with the accused for a considerable time, under such circumstances that he would be more or less likely to hear what was said about him, and has never heard any remark about his character—the fact that a person's character is not talked about at all being, on grounds of common experience, excellent evidence that he gives no occasion for censure, or, in other words, that his character is good.

Citing some authorities.

In enforcing the strict rule, without regard to this relaxation of it, we think the court below erred. The witness Hopkins testified—and it must be assumed that the witnesses whom defendant proposed to call would have testified—to an acquaintance with defendant for a considerable time, under circumstances in which his bad reputation (if such he had) would have been more or less likely to have come to their knowledge. They should have been permitted to testify negatively to his good character by testifying, in effect, that they never heard his character discussed or spoken of.

You see, then, that it is a material ingredient before the existence of which is proven, the testimony can not be admitted, that the parties knew him under such circumstances, as to be likely to hear what was said about him, if anything was said.

Now then, this Mr. Lincoln don't claim to have known him under such circumstances, that he would have known whether they spoke good or bad of him; and of course, as I said and claimed in the argument upon the admissibility of the testimony, the neighborhood where a man lives don't extend to the limits of his county nor to the limits of his State. You must go right down to his immediate vicinity, and that may be ten miles in circumference, or it may be only a town, or only a village, or only a ward, but you must show that his character is good or bad, whatever you desire to do, in his immediate neighborhood. That is what it is and the very foundation of the theory explains why that should be so, because what people say, who don't know a man, and don't see him in his daily walks, does not amount to anything.

Now, then, all their other witnesses are in the same fix. They have called Mr. Simpkins, who works in a mill up at Olivia, and lives in the town of Winfield, sixteen miles away from Beaver Falls, and they have not shown by him that he ever was in Beaver Falls at all. As a matter of fact I don't suppose he was, for we all know, or ought to know, that Beaver Falls is a town that lies off from the railroad, in the south end of the county, while Olivia and Winfield, and those towns, lie right upon the Hastings and Dakota Railroad, in the northern part of the county, so that these men would virtually have nothing to do in Beaver Falls except they would go there to pay their taxes once a year, and that I understand they don't do, because the treasurer comes around to their farms and gets them. I don't suppose some of those men have ever seen Beaver Falls.

Then the third man is Mr. Henning; he lives in the town of Renville. He is twenty miles away from the town of Beaver Falls, and he says he don't know what his reputation is in Beaver Falls at all, but he says in Renville it is good; he never heard it questioned in Renville. He lives away in another village, in another town. But this man said that Coleman had some business up there in Renville. Well, I suppose he has been up to Renville station and tried a justice law suit, and if that can give a man a reputation one way or the other for truth and veracity, then they are very cheaply acquired indeed. This same man Henning says he has been in Beaver Falls, but he has only been there five or six times during the last three years. That is the extent of his going to Beaver Falls. He had an excellent opportunity indeed to find out whether Coleman's general reputation was good, bad, or indifferent or to know anything about it at all.

Then they have one man from Beaver Falls. Not to prove that his character was good but to prove that he hadn't made certain statements to some of the witnesses in regard to Coleman, and they get away from that witness with very poor grace indeed. Why, in the first instance that witness says when asked by the managers, whether he had ever told those witnesses so and so, that Coleman was a liar and could not be believed, and all that. They put it in a shape that those witnesses hadn't testified to anything like it at all, he said no, he hand't said any such thing to the witnesses; but when I tackled him on cross examination, we very soon found out that my good Mr. Zumwinkel had told those very men that he didn't believe Coleman when he was "spinning his yarns;" and he tells you finally, and told it in answer to a question from our esteemed friend, the Senator from Fillmore, that he believed Mr. Coleman when he knew what he told was true, but if he didn't know it was true he didn't believe it.

Well, now, that is just the kind of a reputation I supposed Coleman had. That when he told a thing, if the man who heard him tell it knew it was true from outside, then they believed it; but if it was something they didn't know anything about, then they wouldn't believe him at all. That is just about the reputation of one of the witnesses for the prosecution. So I say they didn't get much consolation from the man from his own town, and I suppose they would have got less yet if they had called the two Millers. I say it is remarkable that they didn't call them. It is remarkable when they were right down here, and the State had to pay their fare and their witness fees, that they should be sent home and not called upon the stand at all. Doesn't it show that these

men would have corroborated the testimony of the witnesses for the respondent, and that they could not do anything else if they desired to speak the truth? That the matter, in fact, was so nototrious that if they had tried to lie about it they knew they would have been caught in it, and therefore did not dare to.

Now then, I take it for granted, gentlemen of the Senate, that Mr. Colemen's name and testimony have disappeared from this case just as much as if they were, by resolution of this court, expunged from the record. And I am ashamed at the idea that the managers should ask you to convict this respondent, or even a dog, upon the testimony of a man like Coleman, who has been conclusively proved to have lied in this instance, and who has, more than that, been shown to be a liar anyhow, for whom to speak the truth is almost impossible.

Mr. Holtz is not in the case either. His testimony don't amount to anything. Coleman's testimony has been wiped out by what we have shown against him, and it leaves nobody but little Sammy Miller and his brother George; and George don't amount to much after all this. George and Sammy both swear that the Judge was intoxicated; that he was sober until Thursday night, but George says Friday and Saturday and Monday he *considered* that he was intoxicated. Well, Sammy says the same thing,—that after that time he *considered* him intoxicated; and upon cross-examination we asked George how much of that time he had been present in court, and we found out that he had only been there Friday forenoon; that Friday at noon he hitched up his horse and went out to subpœna some witnesses, and that he did not come back before court had adjourned Monday noon; so he don't know much about it, does he? All he can corroborate upon is Friday forenoon, so that virtually and actually Sammy Miller stands as the only witness upon that charge with the exception of his brother George who corroborates him only as to half a day. Now, is Sam Miller worthy of your belief? Would Sammy Miller, even if his testimony was not as solidly contradicted as it has been, be a man upon whose testimony you would convict this respondent? Why, it is just the same story over again; Sam has been slurred or hurt in his feelings by the respondent, and he is down here to swear his life and honor and reputation away. Sam Miller had been snubbed, and rightfully snubbed by the respondent in open court; the Judge had told him in open court that he wouldn't stand such "monkeying" as he carried on; he had told him in open court time after time to bring his witnesses and prosecute his cases and perform his duties as county attorney, which he was paid for doing by the people, and still he dilly-dallied, and kept back and didn't perform his duties, and took up the time of the court and the time of the jury and dragged business along there in the way he did, the Judge finally told him in open court that the officers of that county were acting in a way that was shameful and disgraceful to themselves,—snubbed the man, in the presence, you might say, of his whole constituency.

Now, is that man who shows himself an inefficient officer, and who has an animus against this respondent on account of the snubs he has received from him, is he to be allowed to swear away the honor, the civic existence of honest E. St. Julien Cox? As I said, it is just the same story over again. It is just the same kind of perjured witnesses, —witnesses that have a grudge to pay,—that are called down here by the State. You can give to them what weight you please. I don't appre-

hend it will be much. Even if they had stood uncontradicted you would certainly have thought, that when it is shown that the witness has a feeling in the matter, has a prejudice and a grudge to revenge, that then that alone should be enough to throw the reasonable doubt about his testimony, which should be sufficient to acquit this respondent. How much more so when the only witnesses you have got are these grudging, prejudiced and snubbed witnesses,—these witnesses who have a score to pay, are coutradicted and their story denied by honorable and respectable men who have no interest and can have none in this proceeding. When Sam Miller,—who feels his wounded dignity,—is contradicted by Megquier, one of the sharpest and ablest attorneys up in that part of the country,—a man who has a practice that supercedes that of any other attorney in Renville county, and a practice, you may say, that exceeds that of all the other attorneys of Renville county put together,—a man who has known the Judge intimately for thirteen years last past met him on the war-path as attorney, appeared before him at every term of court in that county and surrounding counties since he has been Judge, a man who, as he testifies before you, has attended every hour of that term of court,—of course he had to, for he was on the side of every case that was tried there—except the first forenoon when he didn't arrive in time.

Now, this same Mr. Megquier is not prejudiced in favor of the Judge. He did not show upon the stand any desire to shield him, he did not show any desire to tell anything but the truth. Why, when he was asked about the Judge's drinking he tells you frankly that the Judge did drink, that he saw the Judge drink, and that on Sunday evening he was considerably exhilarated; that the Judge had got enough so as to show it and that he was considerably hilarious. Now, he tells you this freely. What was the need of it? If this Mr. Megquier would tell you a story, if he would tell you a falsehood about the Judge, why won't he clear him right through? Why, if he was telling a lie in one instance, should he be so honest about it in another? I say his testimony has about it the ear-marks of honesty and truth. And I suppose the managers saw well enough the dead bearing of the effects of the evidence of the witness Megquier or they would not have made such a desperate effort as they made, and made in vain, to impeach him before you. We are prevented from showing what his reputation for truth and veracity was, the evidence against him has been stricken out, it has no bearing in the case; but I suppose I have a right to advert to it sufficiently to show you that when you struck out that evidence and prevented us from upholding Mr. Megquier's character—something that we owe to him as well as to ourselves—that when you struck that out you found that it didn't amount to anything as an impeachment, and that none of those witnesses had impeached Mr. Megquier.

Did you notice that testimony that there was not a man here from the town of Bird Island where Megquier resides—yes, there is one, and he was sworn and sent home without testifying—he was found not to be a cat of the right color—the banker of the town. He was found not to be what was wanted. It was thought, I apprehend, because he had a difficulty with Mr. Megquier, that he would come upon the stand and swear his reputation bad, but he was weighed by the managers and found to weigh too light—that he would not go where the managers thought he would go. Isn't it a remarkable incident, and does it not

show what kind of a man Megquier is, when the managers raked and scoured that country up there and cannot find a man in his home where he lives, but must go to men—men, some of them, as one had to confess upon the stand, being bitter personal enemies, others confessing it as they had to, political enemies who have been fighting him and had words of war at least between them—indeed a man is a man whose word is worth having if you have to go from twenty to twenty-five miles away from his home to find anybody that can impeach his truth and veracity. A man of the standing of Mr. Megquier of course must take sides upon anything that comes up in politics or anything else of a public character, and he is besides that a pronounced, positive man, who when he takes a stand for anything takes it wholly and fully. When you consider that and then in addition take into consideration that unholy war that has been raging in that county between Beaver Falls and Bird Island, between Renville and Bird Island, between Olivia and Bird Island, all these towns trying to get the county seat, the field against Bird Island you might almost say, it is really no wonder that some unscrupulous politician laid out by Col. Megquier in his schemes now takes revenge by swearing that his reputation is bad. You know if there ever was a bitter fight upon anything in a county, and ever a fight that estranges father and son, brother and brother, it is a county seat fight. It is the bitterest thing that ever was; it cuts scars in the human heart that never can be healed, and that fight they have had up there for the last three or four years, and Bird Island seems all the time to be the upper dog. They are all afraid of Bird Island, they are all fighting Bird Island because they are afraid that is going to get away with them.

And I don't blame them; a town that has such men in it as Mr. Bowler and George H. Megquier, they have good reason to be afraid of it, because they are men of standing, men of positiveness, men of nerve, men of force. I shouldn't wonder if you could find men in Beaver Falls and men in Olivia and in Renville Station, who would come down and try to impeach Bowler as well as they did Col. Megquier, and you all know Major Bowler. But, as I said, this matter has been stricken out and is out. We were not given the opportunity of summoning the whole town of Bird Island down here, as we could. Telegram upon telegram was received by me from that town while this was going on. We were excluded, and I suppose wisely so, because the impeachment had wholly failed, and there was nothing to meet, as a matter of fact.

I desire right here to call the attention of the Senate to the fact that a resolution was adopted expunging that testimony from the record and that it has not been expunged, that it stands upon the record, and I ask, in behalf of Col. Megquier, a man who deserves better from the hands of this Senate, that when our mouth was closed and we were not allowed to bring the testimony down to show what was the truth of the attempted impeachment, that the Senate make an order by which their order is carried into effect, so that that testimony *goes* out of the record. If it is going to stand there the order expunging it don't amount to anything, because it is blackening the name of an honorable soldier and an honorable man, with a record behind him and with a bright future before him.

Now, the second witness that we call is a man, it is true, who had not

known the Judge so long as the other witnesses, but he is a man who was on intimate relations with him at the time; a man who boarded with him, staid with him at the place where he staid, who ought to know all about the occurrences at that term of court. I refer to Mr. Whitney,—"Little Whitney," as they have called him here. Now, let me say there has not been a whisper against him here; there has not been a shadow cast over his reputation or over his standing as a lawyer or as a man.

Then we have the witness Jensen, the sheriff of that county. Continuously has he been honored with election by the people to that important office. Now, I apprehend that you know that there is no office in which a man is more liable to make enemies, no office in which a man is more liable to become unpopular than that of sheriff. A man who can manage from 1874 to 1876 and from 1878 to 1880 to be elected and re-elected by his constituency to that office, I take it he is a man in whom the people have confidence, he is a man in whom confidence is not shaken even, when he performs the disagreeable duties which a sheriff must perform. And that is evidence enough to this Senate that he is a trust-worthy man, that he is an honest and honorable man.

Now, this Jensen is another old acquaintance of the Judge; he has known him long enough to know when he is drunk and when he is sober; he has known him for ten or twelve years intimately, he says. He was present all the time except two sessions of that term of court, and as sheriff, of course, took a leading position in the court and would be likely to know just what the condition of the Judge was and all that was going on.

He is of the same stamp as Mr. Megquier; if he were lying he would lie all through, but he comes up and tells you, when asked upon cross-examination, honestly and fairly, that he did see Judge Cox drink at that term of court and that he saw him in one evening drink, I think, twice. The managers asked him on cross-examination,—I suppose I could have objected upon the ground of their having no right to degrade a witness,—they asked Mr. Jensen whether or not he himself was drunk at any time. He tells them frankly, "Yes, sir; I get on a toot once in a while." Well, now is not that an honest man? Is it not an honest man who will come upon the stand and make such a confession, and should it lower him any in your estimation, that he is so anxious of telling the truth, that even where his own reputation as a drinking man or otherwise may go down to posterity he is not going to lie about it, that he tells it fairly and squarely as it was, but at the same time he was very emphatic in telling them when they asked him if he was not drunk during the term, "No, sir; I didn't drink any at all during that term excepting a glass once in a while in the evening."

Now, here is Senator Ahrens, the next witness. He has known the Judge for ten years. He was in town the whole week but says that he can only testify as to two days, Saturday and Monday. Now, if Senator Aherns is going to tell you that the Judge was sober, when as a matter of fact he was drunk why could not he come in and cover the whole time? Why couldn't he testify to the other days as well? No sir; these men are all of them honest witnesses; they bear the impress of honesty upon their faces; they bear the evidence of honesty in their testimony and in the way in which they give their testimony.

Mr. Greeley, the next witness, is another man who has known th

Judge for eleven years, no new comers in that country any of them, old settlers, men that have been acquainted with the Judge since they came here.

He is a man who holds an honorable position there, the justice of the peace you may say of the whole county, the justice of the peace in Beaver,—does all the business there,—the court commissioner of that county. He is a man who has been trusted by the people. I think that is evidence that you can trust him, Besides, that man Greeley wears an open, frank, honest countenance. You can see that you have before you an honest Irishman when you get him before you. He was there he says every day, every session. He paid strict attention to the court and very naturally. He was justice of the peace and court commissioner, and was undoubtedly somewhat interested in the business, wanted to learn something in court; and he certainly needed it with the ignorant attorneys that he has to deal with in Beaver Falls,—Coleman and Sam. Miller,—why, I tell you, gentlemen, that a man needs to know a little law to get along there.

Will the Senate favor me with a short recess before going into the testimony farther?

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

AFTER RECESS.

Senator MEALEY. Mr. President, I move that when the Senate adjourn, it adjourn until Monday at 3 o'clock p. m. I have had some talk with Mr. Arctander and he feels that he will not be able to speak to-morrow and I think it would only be just and right to give him a little rest.

The PRESIDENT *pro tem.* Do I hear a second to the motion?

Senator CAMPBELL. I second the motion.

The PRESIDENT *pro tem.* It is moved and seconded that when the Senate adjourns this evening, that it adjourn until Monday at 3 o'clock. Are you ready for the question?

Senator CROOKS. I move to amend by making it Tuesday morning at ten.

Senator MEALEY. I will say to the Senator from Ramsey, (and I have consulted with several members of the Senate), that if it is put off until Tuesday we will not get through next week. There are quite a number of Senators that say positively they will be here. It will be necessary for me to get up at 4 or 5 o'clock in the morning in order to get here at that time on Monday, but I should prefer to do so.

Senator CROOKS. I will withdraw the amendment then.

The PRESIDENT *pro tem.* Is the Senate ready for the question?

Senator HINDS. I move to amend by inserting to-morrow morning at half past 9 o'clock.

Senator WHEAT. I second the motion.

Senator MEALEY. I would say, Mr. President, that I have consulted with Mr. Arctander and he says that he is badly used up and cannot well speak to-morrow. I think it is unjust to counsel for the respondent to crowd them in this matter. I hope that the Senate will be lenient and have some forbearance. It seems to me to be asking too much to ask a man to speak when he is physically unable.

Senator WHEAT. Mr. President, the adjournments here are getting to be an outrage on the State of Minnesota. For one, I desire to protest right here, and to protest in such a way that it will be remembered. I say it is an outrage. Here we have adjourned week after week over Saturdays and Mondays; the State all the time at a great expense. For one, I say I am opposed to it. Members at a distance can only go home and return again unless there is an adjournment of several days; while members living conveniently near can visit their homes and remain there during the adjournment. It is unjust, accommodates only a certain number of Senators, while we are all compelled to stay here until towards summer season on account of the adjournments.

Senator MEALEY. I would like to reply.

The PRESIDENT *pro tem.* I would like to propose a question that perhaps may solve this question satisfactorily.

Senator MEALEY. I just want to say one word first to the gentleman who has spoken. I don't ask this adjournment on account of any convenience to me or any Senator here, for I believe every Senator on this floor is perfectly willing to sit here to-morrow and every day, and have an evening session, but we are asking it in justice and deference to the physical condition of the counsel for the respondent.

The PRESIDENT *pro tem.* The question I was going to propose was whether or no Mr. Brisbin, who it is understood is going to speak on the law of the case, could not speak to-morrow, and Mr. Arctander finish his argument on the facts afterwards.

Senator CAMPBELL. Mr. President, I for one don't believe that the State has been outraged. When we come here and sit five days in the week and use another day in going home, I don't believe the State is outraged. I think it would be an outrage to ask anybody to sit here six days in the week, and as many hours as we have sat here each day, without an opportunity to visit our homes and families. I don't believe it is an outrage upon the people of the State; I don't believe the people of the State will think so unless we ourselves try to convince them that we have been loafing here. I insist that this has not been the fact; that we have sat here and worked as hard, and worked as many hours, as any other court would have done. I understand that the Supreme Court of this State only sits from ten to two, and other courts only five or six hours a day.

In relation to the gentleman speaking upon the law, I presume it is well known that Mr. Arctander opens this case for the defense, and that until he gets through with his opening the gentleman that closes it on the part of the respondent ought not to be called upon to say a word, and you will appreciate the situation when you remember that Mr. Arctander was forced into this argument before he was really ready. It is a case involving a great deal to him and his client, and it is important that he should properly present this case. We should not, I think, in fairness to him and the respondent, force him beyond the point where he feels physically incompetent to go. He has worked hard here yesterday and to-day; he has occupied the time almost continuously, as I say, for more hours than any attorney would be obliged to, in any ordinary court of justice, and I think it is nothing more than fair to him that he should have a rest, and that we should have an opportunity to visit our homes.

Senator WHEAT. Mr. President, I certainly think it is just as I said.

These frequent adjournments are getting to be an outrage. It is immaterial to me whether the members think as I do; still, I think they are getting to be an outrage.

Senator ADAMS. Mr. President, I do not propose to treat this proposition neither with feelings of antagonism to any Senator nor upon the basis of an excuse to the State of Minnesota. I assume this to be a correct proposition that if it should appear, after the conclusion of this trial, that we have been unfaithful to the trusts which the people of Minnesota have committed to us; have not manifested reasonable diligence in the prosecution of this trial, that the people themselves will call us to a very serious account.

It would not make any difference what kind of a record I should make by way of protest, the people would not be deceived. I propose to put this proposition to adjourn until Monday upon higher grounds than that. I want that distinctly understood. It is not a matter of convenience with this court. It may be a matter of health to the attorney. That we admit. We have been in almost continuous session for long weeks,—and for what? To decide what the people believe to be a question of right or wrong as between the people and the respondent, Judge Cox. Now, we have decided time and again to give the broadest possible latitude within law and reason that all the facts may be brought out. You must not premise that the attorney for the respondent is made of cast steel, that he is able to undergo the labors such as have been manifested to this Senate physically and mentally for the two days past and keep it up. It is a physical impossibility. I place it upon the high grounds that justice to the people of the State and justice to the respondent is involved in this prosecution. It is too late a day now to go to forcing things. It would look very bad. Your appropriation has all been exhausted, you are sitting here now without any pay, and, for God's sake, don't put yourselves in the position where the people will say, "As quick as the money was gone why then they were all anxious to rush business!" Don't do it. I shall vote in favor of the proposition for adjournment until Monday.

Senator POWERS. Mr. President, I have tried to be here at roll-call every day, and I think I have, and I have been in favor of being industrious and attending to business, and if we could sit here for two months and over, and listen to 250 witnesses, covering twenty articles of impeachment and eight specifications and suck it all in mechanically, like a sponge, and when it came to the last day squeeze it out intelligently into yes or no, I should be willing to hurry the thing forward and sit every day in the week and have night sessions besides; but if a man will listen here faithfully and attentively to the evidence and then try to arrange and adjust and classify that evidence, read it over and analyze it so that he can vote intelligently and independently of all external influences that may be brought to bear upon him, I do not feel that the State of Minnesota will be outraged if there is an actual necessity now in the winding up of this great fight, that the counsel shall have a little time to rest his voice, his lungs and his brain and refresh his memory in reference to this evidence. I appreciate the position that is taken by my colleague in the east half of Fillmore county. Last Saturday I believe he went home. It is inconvenient for him or for me to go home and get back as soon as some nearer by; he went; I noticed that he did not get back until Tuesday. Well, I did not go, and I worked all day

Saturday and all day on Sunday and until three o'clock Monday morning, and all day on Monday until six o'clock, and I don't feel that I owe the sovereign State of Minnesota one cent for that adjournment,—not a cent. If we choose to prepare ourselves to make our little speech of yes or no, and do it intelligently, we should put in all our time if we adjourn while the counsel for the respondent is resting his voice and recuperating his brain.

Now that the funds have given out and we are sitting here at our own expense and don't know whether we shall be paid or not, I feel that we can take the liberty, if it is necessary, and not without, to give this respondent's counsel a little time for recuperation. The item of expense is an important one. It costs the one-twenty-sixth of one cent for every man, woman and child in the State for every day we sit here. It costs the voters, the heads of families in this State, the one-fifth part of one cent each, for every day we spend, and it is an item that ought to be considered; but principles will live, and justice will live after dollars and cents are forgotten. Now, if the respondent's counsel, who has taken so much interest in this case, and is fighting so bravely and earnestly and for nothing for his client, tells this Senate that he feels it is due to him that he have a little chance for rest, I shall vote for it and shoulder my part of the responsibility; and I can see plenty of work for me to do all the time, while going home, while at home and returning, and I have got the evidence classified up to article eighteen now myself. I calculate that it will take me at least forty-eight hours of solid work to fix that and get it so that I can vote and feel satisfied that I vote right.

The PRESIDENT *pro tem.* The question will be upon the amendment offered by the Senator from Scott.

Senator POWERS. I would like to hear a word from the counsel for the respondent on this question before I vote.

Mr. ARCTANDER. I will state, Mr. President, that I apprehend that all of the Senators have observed long before this time that I am not quite in a condition to go on. In fact, I am tuckered out; and it is quite a humiliation to me to feel that way, for I thought that I could never get tuckered out. I am rather ashamed of myself. I will say this, that if this matter should proceed without an adjournment and I should be compelled to speak to-morrow, that I could do it and would do it, rather than have Mr. Brisbin be compelled to sandwich his argument in between my opening and closing. But if I have to do it, I cannot get any rest to-night: I shall have to sit up all night to classify the evidence, because I have not got any farther in its classification than I expect to reach to-night before adjournment. I suppose I can do it; I suppose a man can do almost anything, but I should feel that I was about killing myself if I should do it.

Senator JOHNSON, A. M. Mr. President, one word in regard to this question of adjournment. What guarantee have we, judging from the past, if we should vote to continue our session to-morrow, that we shall have a quorum?

Senator POWERS. None at all.

Senator JOHNSON, A. M. We have nothing to warrant it. Now, I am willing to accommodate myself to the wishes of the Senate; if they want to continue in session right along I say I am ready and willing, but I don't like this adjourning until the next day and then upon meeting find that there is no quorum present. The train on which I am obliged

to leave for home goes out a little before eight o'clock in the morning, and some of the members will come here in the morning and dicker around for a little while and find that the majority have gone home and that there is no quorum; the train accommodates the rest of the members so they can go home, but shuts me off and I have to stay here and chafe under the disappointment, and it is killing me. [Laughter.] I want it either one way or the other. If we want a session let's have it, and have the members pledge themselves to be here so that we will know that we are going to have a session; if not, let's adjourn.

Senator POWERS. I move that when we adjourn we adjourn to meet at ten o'clock on Tuesday morning.

The PRESIDENT *pro tem.* We have a motion and an amendment to it already.

Senator RICE. If we adjourn to next Tuesday are we going to get through next week? The counsel for the respondent informs us that he will occupy about two days. He has already occupied two days, and I presume, by the way it looks, he will require two days more at least, so that if we adjouan until next Tuesday we shall not be able to get through next week. We are taking up more time, I think, than we ought to; we have not pushed this matter as we should have done, we did not in the beginning, anyway; but I see more reasons why we should adjourn over to-morrow than there ever has been before. It does not stand to reason that any human being can stand the amount of labor the counsel for the respondent has performed day after day without some opportunity for rest. Bnt I should certainly oppose any further adjournment than until Monday afternoon at three o'clock.

Senator WHEAT. Mr. President, I wish to say that I appreciate the situation of the counsel, but it does appear to me that there are other counsel who might take the floor, and for this reason I shall still oppose the adjournment.

Senator POWERS. Mr. President, if my motion is out of order of course I will withdraw it. My idea was that if we were to try to meet Monday afternoon we should not have a quorum. It would simply prevent some of us going home. But I shall stay if the Senate vote for it, and stay with the conviction that a session on Monday will be a failure.

On Monday night the hall is engaged for an entertainment of some sort, and I thought if we could get here on Tuesday—the learned counsel for the respondent says he can get through in a day—that on Tuesday night we could have a night session. On Wednesday we can probably have another speech, and Wednesday night will be just about the time, if I understrnd right, that Mr. Brisbin will require for his speech; and we can crowd matters forward next week. Our evenings are not now so much occupied in working up the evidence of the witnesses and we shall have more time to devote to the hearing of arguments. If there is to be an adjournment until Monday afternoon, I would prefer it myself, (and I am a little selfish in the matter, too, because I would go home if I could do so and not neglect business) but I am satisfied that a session on Monday would be a failure, so that I think I will ask a vote to be taken upon my motion to adjourn until Tuesday morning if that motion is in order.

The PRESIDENT *pro tem.* We had a quorum last Monday evening.

Senator POWERS. Yes, if we could have the hall Monday evening, we could perhaps get a quorum. I will not press my motion.

The PRESIDENT *pro tem.* The question will be taken upon the amendment of Senator Hinds, that when the Senate adjourn it adjourn until half past nine o'clock to-morrow morning.

(The yeas and nays were called for.)

The secretary will call the roll.

Senator JOHNSON, A. M. I move as a substitute that we meet on Monday evening at eight o'clock.

Senator POWERS. The hall is engaged for Monday night.

Senator GILFILLAN, C. D. Mr. President, there will be no trouble Monday night in having a session if it is desired. The municipal court room can be procured for the accommodation of the Senate.

Senator POWERS. Then I will not second Senator Johnson's motion.

Senator JOHNSON, A. M. I move, as a substitute, that we meet on Monday evening at eight o'clock, in the municipal court room.

Senator MEALEY. Mr. President, I would say that I had consulted with quite a number of Senators on this floor before making the motion I did, and there was a disposition on their part to be here at three o'clock Monday. I have no doubt that there will be a quorum. I cannot see the propriety of the motion to meet at eight o'clock, because, if we are here at three, we shall be here at eight. I am satisfied that there is a desire on the part of the Senate to make an effort to be here on Monday so as to get through next week. I have never had to get up at five o'clock in the morning I believe, in order to get here, but I will do so on Monday morning, and others have given me assurance that they will make an effort to be here on Monday afternoon.

Senator HINDS. As to the time of the adjournment I would say that it is wholly immaterial to me. I could be here at one time as well as another. I made the motion I did to test the sense of the Senate. Assuming that the general feeling is against an adjournment until to-morrow morning at half past nine, I withdraw the motion.

Mr. ARCTANDER. I will agree, if Senators prefer it, to commence at eight o'clock in the evening, in the municipal court room, for I can speak there with less difficulty, and I will agree to speak there for four hours on Monday night if Senators will listen to me.

The PRESIDENT *pro tem.* Does Senator Mealey accept the proposed amendment, to meet at eight o'clock Monday evening?

Senator MEALEY. I don't care to. As I said in the first place, I am fearful we shall not get through next week. That is the only reason. I am satisfied that there will be a quorum on Monday afternoon,

The PRESIDENT *pro tem.* The question will be upon the amendment of the Senator from Freeborn,—to meet Monday evening at eight o'clock. The Secretary will call the roll.

The roll being called, there were yeas 11, and nays 16, as follows:

Those who voted in the affimative were:

Messrs. Bonniwell, Castle, Crooks, Gilfillan, C. D., Hinds Johnson, A. M., McLaughlin, Powers, Simmons, Wheat, Wilson.

Those who voted in the negative were:

Messrs. Aaker, Adams, Campbell, Case, Johnson, F. I., Johnson, R. B. McCrea, Mealey, Miller, Morrison, Perkins, Rice, Shaller, Shalleen, Tiffany White.

So the amendment was lost.

The PRESIDENT *pro tem:* The question will now be taken upon Senator Mealey's motion,—that when the Senate adjourn it adjourn until 3 o'clock on Monday. Do you desire the yeas and nays?

(The yeas and nays were called for.)

The secretary will call the roll.

The roll being called there were yeas 15, and nays 10, as follows:

Those who voted in the affirmative were:

Messrs. Adams, Bonniwell, Campbell, Castle, Johnson, A. M., McCrea, Mealey, Miller, Morrison, Perkins, Rice, Shaller, Simmons, White, Wilson.

Those who voted in the negative were:

Messrs. Aaker, Case, Gilfillan, C. D., Johnson, F. I., Johnson, R. B., McLaughlin, Powers, Shalleen, Tiffany, Wheat.

So the motion was adopted.

The PRESIDENT *pro tem:* The Senate is now ready to hear the argument of counsel for the respondent continued.

Mr. ARCTANDER: I now desire, Mr. President, to make up for lost time.

All the witnesses for the prosecution agree that the Judge at this term of court in Renville county was sober during the first three days of the court—Tuesday, Wednesday and Thursday—and all the witnesses for the defense agree with them in this. That is the only thing upon which I have found the witnesses on both sides in this case to have agreed during the whole of the trial. That is the time during which the witnesses for the State make the Judge sober. The witnesses for the prosecution have a different opinion as to the condition of the Judge during the last part of the term. Mr. Sam Miller, the county attorney, and, as I have shown before, really the only witness that the State has got, says positively, that he was sober the first three days; there was no trouble with him; "nobody could find any fault at all," as he expressed it. But he uses this language: "I considered him intoxicated Friday and Saturday; Monday, worse."

He said he considered him intoxicated or under the influence of liquor —he uses both of those expressions—but at both of those times he has a mental reservation that he "considered him" so. It so happens that when Mr. Miller first changes his opinion as to the sobriety of the Judge, the time when he first finds out that there are excceptions to be taken to the conduct of the Judge, the time when he thinks he changes from sobriety to drunkenness, is the exact time when the Judge commences to abuse that same county attorney. The exact time when the Judge first tells him that he does not perform the duties of his office as he ought to. In other words, it was on Friday morning, when parties were brought in and arrested who had been indicted by the grand jury, and they demanded an immediate trial; and the Judge turned to the county attorney and asked him if he was ready, and he responded: "No, sir;" and the Judge asks him why not, and he says, "Because my witnesses have gone home." The Judge then turns to him again and says, "Sir, don't you know that the constitution of Minnesota guarantees to every criminal accused of crime a speedy trial? Don't you know that the defendant has a right to demand that, and why in the name of heavens do you not send your witnesses home when you arrest your man and bring him in?" Now, here was a rebuke offered to the county attorney in open court; and it is from the time of that rebuke that the Judge's drunk

dates at that term of court; that is the time when the county attorney commences to take exceptions, and his brother, too. Now, I say that is a curious coincidence, that his drunk should date from the same time when this rebuke of the county attorney takes place; and it shows how our feelings are enlisted in this matter, how our feelings are enlisted and do enlist our senses in their favor when they are aroused.

Now, against Mr. Miller, who as I said, is corroborated by his brother George Miller as to the forenoon of that day, but not any farther, and corroborated by Coleman, if you call corroboration by such a man any corroboration at all, against him we have Mr. Megquier who tells you he was there all the time and who says that the Judge was sober all through that term; that all the matter with him was, that he was a little excited in the latter part of the term on account of the county attorney not prosecuting criminal cases with the necessary and requisite speed. That there was no difference in his behavior, actions, language or appearance, except that thing, during the whole of that term; that they were just the same the last day as during the first,—Thursday, Friday and Saturday the same as Tuesday and Wednesday.

Now, nobody claims but that the Judge was sober during the first days, during the first two or three days. I say, then, that if we have shown you, by all these witnesses, that there was no difference in his actions, no difference in his appearance, no difference in his deportment at all, then we have a criterion which is a proper one to lay before you, because he is admittedly sober the first three days.

Now, Mr. Whitney, the second witness for the defense, says that the Judge was perfectly sober, that there was no difference in his appearance, his actions and his conduct or his manners during that whole term, except that in the latter part of the term he was visibly annoyed by the delays of the county attorney. That was all. Well, he had a right to be annoyed. It showed a sober mind when he became annoyed at that county attorney; it showed that he understood his business, and understood that the county attorney did not understand his, and he did nothing but what a Judge ought to have done under those circumstances, when he not only became annoyed but rebuked that county attorney in open court.

Then we have the sheriff, who says that the Judge was not intoxicated any part of the term; that he may have drank a glass of liquor, but that he showed no effects of drinking; and this witness, Martin Jensen, is a frank and honest witness. I asked him whether the Judge was intoxicated at any time during the term. He says, "No, sir; he was not." Then I asked him, can you state whether or not the Judge was under the influence of liquor during any part of that term of court? He says, "I can't say, sir." Why? "Because the Judge might have drank a glass of liquor and I not know anything about it; but I can say this much, that if he had drank any liquor, at least it did not show itself in any way upon him. You could not find it out from his appearance or his actions." That is what he says. "Didn't show any influence upon him, but he might have drank for all I know."

Mr. Ahrens testifies concerning the major part of the time when the Judge is claimed to have been intoxicated. He is only claimed to have been intoxicated Friday, Saturday and Monday. (Yes, I do believe they claim he was intoxicated Sunday, but I don't pay any attention to that. I claim a man has a right to get drunk Sundays, if he desires to

get drunk at all, because it is a day on which he cannot do any work. I don't care, anyhow, about Sunday at all.) Now we find Senator Ahrens was present in the court room; was acting as a juror on Saturday and Monday; he who is an old friend and acquaintance of the Judge, who has known him well, says: "He was perfectly sober during that time." That is his language. That there was no difference from his usual manner, no difference in his usual appearance, his actions nor his conduct.

Senator ADAMS. Mr. President, I see there is not a quorum in the Senate at present. I desire that we have a call of the Senate, that the doors be closed and that the sergeant-at-arms be instructed to bring in the recalcitrant Senators and report them in their seats. We cannot proceed without a quorum.

The PRESIDENT *pro tem.* That will be the sense of the Senate unless objection is made. The Secretary will call the roll.

The roll was then called and the sergeant-at-arms was furnished with a list of the absentees. The absentees were brought in, making a quorum. Thereupon on motion further proceedings under the call were dispensed with.

Mr. ARCTANDER. [Continuing.] This same witness, Mr Ahrens, tells you that he had peculiar faculties for observing the Judge at the time; that he sat there and acted as a juror, and being his old friend and acquaintance of course he observed him particularly in the court room, more closely undoubtedly, than he would have observed a stranger.

Mr. Greeley, the next witness, says that there was no indication during any of the time of that term of court of Judge Cox being otherwise than sober; that there was no difference in his actions, his appearance, or his conduct at this time and at other times when he had seen him upon the bench before,—which I believe was three or four terms, three terms at least. Nor was there any difference, he says, between the latter part of the term and the first part of the term. So much for that statement.

Now we come to some matters that are given as evidence of his intoxication,—some by Mr. Miller, the county attorney, one by his brother, George Miller, and, although Coleman is virtually dead, I would not consider it fair to my client if I did not go through with the indications that he states too, and show how they have been utterly refuted.

The first indication that Mr. Miller gives—he gives two—is, when the Berndigen case was called. Peter Berndigen, the most prominent merchant of that town, it seems, was indicted at that term of court for selling liquor without a license. Whether it was for selling liquor without a license a year before, or for selling without a license that year does not appear; whether he was guilty or not guilty is not shown either. Presumably he was innocent. The law presumes that men accused of crime are innocent until they are proven guilty. Now, this man was indicted. He was brought into court. He appears by his attorney, Col. Megquier, and pleads to the indictment. He demands his trial, says he is ready for trial. The county attorney tells you that he was not ready; in other words, he "monkeys" around. Well, the Judge speaks up and asks him if he is ready. He says no. Why not? He has sent his witnesses home. Mr. Martin Jensen so testifies; that the witnesses so had stated, and that the county attorney did not deny it. Well, under those circumstances what was to be done? There were two courses to

take. If the Judge had desired to act arbitrarily and oppressively against parties accused of the crime he might have taken a third course. That course would have been to order the case to stand continued and the man to give recognizance with sureties in the usual manner and force him to go over the term. If that course had been taken in this case I venture to state as my opinion,—and I think I would be sustained by every criminal lawyer,—that if that had been done in that case,—simply upon the statement of the county attorney,—if Mr. Berndigen had been convicted thereafter and had appealed to the Supreme Court, he could have set that conviction aside, because he had been denied his constitutional rights. If he had gone to jail on such an order certainly a writ of *habeas corpus* would have opened the prison gates for him.

There were two courses to take, I say, for a Judge that wants to be fair-minded and square about this thing. One would be to say, "Well, Mr. County Attorney, if you are not ready, if you have not shown the proper diligence in this matter and cannot show yourself entitled to a continuance by proper diligence, I shall be obliged to dismiss this case and discharge the defendant." The other course,—and the one which is most usually taken when the county attorney, for some reason or an other, or for want of diligence is not ready to proceed with the trial and the defendant demands an immediate trial,—is for the Judge to tell the defendant that he will not discharge him absolutely but that he will allow him to go on his own recognizance for his appearance at the next term of court. That is a thing which is very frequently done under those circumstances. In this case it would not have been improper if the Judge had let the defendant, Mr. Berndigen, even if he had not requested to be tried, but had requested a continuance for once of the case, go on his own recognizance. His own recognizance was good enough. Nobody could have found any fault with it. It was within the power of the Judge to say whether he should furnish two sureties, one surety or no surety at all; and in the case of a man that is wealthy, a man of whom it is known that he will appear, it is simply a matter of form. All a bond or recognizance is for is simply to secure the attendance of the party. The reason why sureties are demanded is because persons accused of crime are usually of that class, who have nothing and do not care whether there is a judgment against them for five or six hundred dollars or not if they can keep out of jail or the state prison by it. They would rather have that judgment against them, for it would not be good for anything anyhow.

That is the reason why sureties are demanded upon bonds of recognizances in such cases. If the party himself is wealthy, a man of means, so that a judgment can be collected against him if he should not appear, that is all that is necessary and all that is required to satisfy the law. Now, suppose a man here in St. Paul, a man worth thirty or forty thousand dollars, a merchant right here, owning real estate and doing a good business, was arrested for selling liquor without a license or for any other crime, if the Judge knew he was wealthy, if he knew that he was liable to be there, and that it would be enough to bring him there and if he should say this man shall give his own recognizance, would the county attorney or anybody else find fault with it? Now this case was just such a case. The defendant was one of the wealthiest residents of Beaver Falls, a man who would certainly be there, a man who it appears in evidence was never arrested even as he should have been, but

simply invited to come up in court, and he came upon notice. It so appears in evidence, was never arrested even as he should have been, but simply invited to come up in court, and he came upon notice. It so appears in the testimony for the defense. Now, under such circumstances it would have been perfectly proper to let such a man go on his own recognizance. That cannot then be the reason that the complaint is made. The county attorney says the Judge did not require him to give his own recognizance but simply told him "You are discharged on your own recognizance; you can go now" and that there was never any recognizance entered, to show, I apprehend, that the Judge's mind was muddled and that he didn't know what he was doing, and did it in such a manner that it didn't amount to anything, and that it was not required by law. That is the point there is in it.

Now, what do the witnesses say as to that? Mr. Megquier testifies that the Judge turned to the clerk and said "Peter Berndigen will be held to appear at the next term of court on his own recognizance." Now, that was sufficient; that was all the Judge had to do there. The amount of recognizance for that kind of an offence, it seems, has been fixed once for all in that county. It was not necessary to say how much it should be. We all know that in that district it is one hundred dollars; that is the amount of the bond that every man gives that is indicted for that class of offense. The extreme punishment is one hundred dollars, and that is the reason why that amount is fixed. I suppose it is the same in all the other districts. We all know how the Judge makes his order. He turns to the clerk and says "Mr. Berndigen will enter into his own recognizance for his appearance at the next term of court." That is a direction to the clerk to enter an order in his minutes, and it struck me as peculiar at the time, that while the managers offered in evidence the docket entry in Mr. Anderson's case, they did not offer the record in this Berndgen case to show that no order had been entered. There was a very good reason for not offering that part of the record, for I looked at that record myself and found there an order just as the Judge had given it. That was the reason they did not bring in the minutes of the clerk upon that point. You would find there an order. Now, if it had been as Mr. Miller said, what would it then have been? Simply that nothing would have appeared there, because there was no order at all to enter in that record under those circumstances. Mr. Miller wants to have you believe that all there was of it was, that the Judge turned to this defendant and told him "You are discharged upon your own recognizance; you can leave the court room." That is what he said he did.

Now, between him and Megquier is there any doubt as to where the truth lies, knowing as you do and must, and as is in evidence here by Mr. Megquier, too, that that is the practice in that court; that that is all that is ever done; that whenever a party is required to give his recognizance, the Judge gives such an order, and that there was nothing different in this order at this time from what there generally is, when a man is ordered to give his recognizance in that court; nothing different or unusual in it at all; I say that, taken in connection with the fact that they have not seen fit to offer the record, although they had it down here and offered a part of it, goes to strengthen the testimony of Mr. Megquier.

Now, we can easily understand that there are other suspicious circumstances about this altered statement of Miller. If that had been

the fact, if the Judge had simply so said, and Mr. Miller at the time had not understood it as an order, why would he, as county attorney, allow that man to go free? Would he have allowed him to go out? Would he not have called the Judge's attention to that fact? Would he not have asked for an order? What are county attorneys for, if they are not to look after those things? But yet he tells you, upon cross-examination, that he never spoke of it to the Judge; that he never called the Judge's attention to the fact that no order had been made, nor that no recognizance had been filed; that he never asked the Judge to have an order for a recognizance made in any way; that there wasn't any made. And he has admitted, and other witnesses have testified, that it is not the practice in that court for the Judge to take recognizances in open court. That is done in some cases. The Judge, instead of making the order, and the clerk entering it, calls the man up and says, "Come here, you, so and so, and you, so and so, acknowledge yourself to owe and be indebted to the State of Minnesota, in the penal sum of so many dollars, etc., to be paid, levied and distrained out of your different goods," etc., and then it is entered in the record by the clerk that the recognizance, as we call it, is taken in open court.

But Mr. Miller admits, and it is also testified to on the part of the respondent, that that is not the practice up in that district. As a matter of fact, I believe it is the practice in only one district in the State. But enough that it is not the practice in that court, so that we should not have done it at that time. All that was necessary was simply to give the clerk this order and Mr. Berndgen knew what he had to do; because, if that man did not give his recognizance as the order required, he could have had him arrested and held, and put him in jail till he did give it.

Now, I think I have called attention heretofore to the fact and that it is apparent to this Senate, that when the Judge did rebuke that county attorney he did nothing but what was right; that that was no evidence of intoxication upon his part, but rather evidence that he was fully possessed of his mental faculties and knew what he was doing, and that he would insist upon the business of that court being carried out in the proper manner. It is in evidence before you by the county attorney's own admissions that he was not ready in a single indictment, which had been found at that term; that he had his witnesses before the grand jury, that he indicted his men, sent his witnesses home and then goes to work and arrests those men upon a bench warrant and is not ready to try them, for the reason that his witnesses have gone home. It shows dilatoriness and neglect that is almost without precedent I believe in the history of criminal prosecutions in this State. And as an excuse, he comes before you and says that it had never been the practice up in Renville county to try a man at the same term of court at which he was indicted.

Yet he admits that he knows that a man accused of a crime has a right to demand a speedy trial, and that he cannot be refused when he does demand it. Mr. Megquier tells you it had never been the practice not to try men when indicted at the same term of court at which the indictment was found against them; that when he was county attorney men were indicted and tried at the same term of court at which they were indicted; and not only that, but the evidence of Martin Jensen, the testimony of Mr. Megquier and the testimony of Mr. Whitney all goes

to show that this county attorney seemed to have taken the bits into his own mouth, you may say, to have made up his mind that he was not going to try any case, that he was not ready to try, that he should not try any of the cases there, but hold the indictment over those men as a sword whereby he could use their influence, whereby he could force their influence for him in a political campaign probably in the fall, or whereby he could hold them, so to speak, in his power. When the Judge told him, as Mr. Megquier says, "I am going to take the bit in my own mouth, and I am going to clean up this calendar, Mr. Miller, and I want you to send for your witnesses. What do you arrest these men for if you are not ready to try them? You should not arrest them if you are not ready to try them; I am not going to stand this; these indictments in Renville county are not going to monkey around here from year to year; no dilly-dallying around here; I want these criminal cases tried, and you send for your witnesses and try your men." Mr. Miller, it seems, disobeys the order of the court; he does not send for those witnesses, and it becomes the duty of the Judge, before he can get that balky county attorney to do his business, to himself take the bit in his own mouth and send the sheriff out and bring those witnesses into court by their coat-tails, and then even he can't bring the county attorney to go to work and do his duty as he should.

I say that I don't blame the Judge for saying that he was "tired of this monkeying," and that it did not show any indications of drunkenness upon his part but shows rather indications of drunkenness or something worse upon the part of the county attorney. I don't know what there was in that expression of "monkeying,"—I am not so familiar with the English language as the learned manager who spoke before me; he said that there was something so horrid in that word; it must be some occult meaning that I can't see. Why, he said it was something fearful that the Judge should use such language upon the bench, saying that he was tired of this "monkeying." Well, now, I have thought in my rural ignorance, that that was a very proper expression to use; I have always thought that that expressed about the same thing as dilly-dallying, that a man didn't go to work and do anything, but waited and dragged along; and I thought it was a very appropriate expression. It may be that some of the Senators who are better posted than I am, can explain to me the riddle that I see in the remarks of the learned manager; or, probably it was simply an exhibition of the truth of the Italian proverb. "To the pure everything is pure, and to those whose mind is not so pure everything gets a color,—a dirty color",—I think that is the best translation of the proverb. I think there must have been something of that kind.

Now, under those circumstances would anybody blame Judge Cox for feeling a little out of humor, would anybody blame him for rebuking that officer,—and other officers who, as it appeared afterward, I think on Saturday or Monday when those cases were brought up for trial, had also been guilty of negligence and carelessness.

It appears, that Col. Megquier who is noted for his technical points, examined the lists made out by the county commissioners of grand jurors and found that they were not selected in the proper way and raised the point that that grand jury had to be "busted" and everything that they had done; it was found when the point was raised by the party accused of crime and his attorney, that that was not a valid grand jury

at all, that it had to be "busted," of course it was better to "bust" it then and there than afterwards in the Supreme Court. That grand jury which had sat there for a week and ground out indictments, was no more a legal and valid grand jury, than a band of twelve robbers, and all on account of the ignorance or the negligence of the officers—the negligence of the county attorney again, I suppose, because I know when I used to be county attorney I deemed it a part of my business to always look over the grand jury list to see that the officers got it right and that the certificates were right,so that the jury should not be "busted." It was the business of the county attorney of that county to have done that at the meeting of the county commissioners. But it seems that something was wrong there, and that the grand jury list was not worth anything. That Mr. Megquier picked some flaw in it, and the matter was brought up and the Judge found he had nothing else to do than to quash the indictments. Of course that is what Mr. Jensen meant when he said the grand jury was "busted." And when it comes to the petit jury you find that is in the same shape, and that the petit jury has to be busted too. They had sat there a week and tried cases with that petit jury which really was not a proper jury, but no objection was made, and of course it had to pass. If no objection is made, it is all proper and right. This grand jury list is discovered to be defective and the petit jury business is discovered to be wrong also, not through any act of this respondent, it was nothing for which he was responsible, but through the acts of the officers of that county in making the list of jurors, they then go to work and issue a special venire for a petit jury and get them. Then the Judge again rebukes the officers.

Has he any reason for that? Here that grand jury has sat for three or four days, found a dozen indictments against saloon keepers and then it is suddenly discovered that on account of the negligence of the officers of the county the whole work is worth nothing and that it has to be gone all over again, that another grand jury has to be brought at that or the next term of the court. I say he had good reason to feel provoked all through that term on account of the negligence of the officers of the county.

Well, we go further. The next trouble upon the part of the Judge, according to the idea of the county attorney, is in regard to this Morgan case. Mr. Morgan, it seems, was indicted by a previous grand jury for selling liquor, and he employed this young man Whitney to defend him. Whitney was a young lawyer, a new man around there, and it was natural for this man to employ him. If new lawyers come around to a place it is natural for people to run to them. If there is none of the old stock that they have particular confidence in, if a new man comes in, they will try him. So this man went to this new man Whitney. And Mr. Whitney found that the man had paid his license money, that the county held his money, and that this county attorney was prosecuting him for selling liquor without a license nevetheless. Mr. Whitney goes to work and draws up his affidavits and submits them to the county attorney. But before coming to this I wish to call your attention to what the county attorney swears to. He says that the Judge requested him to enter a *nolle pros* at the time of the plea in the Morgan case, and spoke to him about it before. And that the county attorney then and there refused so to do and that "the Judge discharged him against my personal protest." That is what the county attorney

says. Now, what are the facts in the case? As I said, this young man Whitney is employed. He goes and speaks to the county attorney when he finds out the fact. He wants the county attorney to *nolle* the case, and the county attorney tells him I will, but I wish you would make up those affidavits and present the matter to the court, and if the court has no objection I have none. Now, this is what Mr. Whitney testifies to, and he certainly looks to me to be as truthful a man in every respect as Sam Miller; I would just as soon take his word as Sam Miller's, if all circumstances were equal. Here is Whitney with no interest, while Sam Miller has a grudge against the Judge and desires to see him off the bench and out of the way so that he can get even with him, so that he shall not be rebuked at the next term for his dilatoriness and negligence. Now what does Whitney tell you? That he draws up those affidavits at the request of the county attorney; that he was present at all the proceedings in court; that at no time in court or out of court did the Judge in his presence ask the county attorney to dismiss that man, at no time did the county attorney protest against it, and that at no time did he refuse to *nolle pros* the case; but that after he had a talk with him he went to work and drew up those affidavits according to agreement, that if he did, the county attorney would not object. He brings them into court and reads the affidavits and the Judge turns to the county attorney and asks him whether or not he has any opposition to the motion, anything to offer against it. The county attorney says that he has not, or rather the court asks him if there is any objection to it upon his part and the county attorney shakes his head. That is what Mr. Whitney says; "the county attorney shook his head." And then the man was discharged upon the motion of Mr. Whitney.

Now, I take it that the Judge did right there, although it was not a legal defense, yet if the county attorney and this man agreed that the defendant had been unjustly indicted, that he had paid his money intending to comply with the law, then that should be sufficient; and they should not try to punish him and put him to the trouble of a trial under such circumstances; we must suppose of course that the county attorney did not know of this fact when he did indict the man, which it is very likely he did not; he did not examine into it. He only knew from the records that there was no license issued, and I don't attach any blame to the county attorney when he did indict him. I think it was right, when he did find out, what the circumstances were, that he acted in the way Whitney says he did. It fails to the ground then entirely, all this claim of the county attorney, that the Judge acted in the way he says he did. Of course that in itself does not show that the Judge was intoxicated anyhow, but I can see very well why it is brought in. It is brought in to prejudice the respondent. They have not been able to find a single dishonest act of his during his whole four years as a Judge upon which they are able to lay their hands. His hands are free from bribery, they cannot show anything wrong done by him at all, and this is thrown in as a sort of insinuation from which you might draw the inference that because he was a drinking man, therefore he was in favor of letting these men out easy, or because Mr. Whitney, who was a friend of his, defended him, or something of that kind. He wanted to get the man off. I apprehend that that is what it was done for. There could not be any other object in it, for it don't show intoxication; it

don't show that he acted in such a way as to indicate that he was intoxicated. He might have been wrong in the law; he might have been wrong in his discretion, but it don't show intoxication in the least.

Now then, this Anderson matter is about the same way. We find this man Miller contradicted all around. We find that the man with malice in his heart against Judge Cox comes down here and absolutely swears to falsehoods, and that he swears to them not by mistake or accident, but that he must deliberately swear to what he knows is false; because these things are matters of record and things that he must know better about, and he is gainsayed by every witness that is called down here. The history of the Anderson matter appears to be as follows: that Mr. Anderson was indicted at the term before I think, for selling liquor without license; he employed Mr. Megquier to defend him. He is brought on for trial at this term; he went to trial and was convicted. It appears that on Friday his case was tried and that he was convicted. That as soon as the jury came in the Judge called him up for sentence and sentenced him to pay a fine of twenty-five dollars and costs and to stand committed until the fine was paid, for a certain length of time I don't remember now how long, in the jail of that county. Well, it appears that after the Judge had made this sentence, Mr. Megquier discovered that this man had paid his license, and that therefore he had been unjustly convicted, and although it would be no strict legal defense, that in justice and fairness the man ought not to be punished for anything he had not done with a criminal intent. Mr. Megquier goes to the county attorney; he tells the county attorney the circumstances of the man, that he is a poor ignorant man, a foreigner, that he thought he had done all that was required of him by sending this money along to Gronnerud the treasurer, that he went on and sold in good faith, that under these facts he thought it was wrong that the man should have to pay that fine; that he had no money now to pay with, and that all he could do would be to go to jail; that he thought it was unjust and cruel to force him to do that.

This is what Mr. Megquier testifies to; and that when he spoke to Mr. Miller about it, Mr. Miller says, "Yes, that's so." And that he told Mr. Miller he would bring the matter up before the court; that Mr. Miller asked him why he had not brought it up before, and that Mr. Megquier told him he didn't know anything about it until after the conviction; this man had not told him, had not shown him the receipt. Mr. Megquier was then asked if it was understood between them that the sentence should be remitted; and he says, there was no definite understanding, but that Miller tacitly agreed to it. Very well, after that tacit agreement Megquier stands right up in court and he says he stood shoulder to shoulder with Miller and presented the receipt to the Judge. It was not as the learned managers said, that the Judge took the word of the attorney and let the man go, but he presented the receipt to the county attorney and he looked it over and then handed it back to the Judge; the Judge called for the indictment and the receipt and compared the dates to see whether it was covered by the receipt. More than that, the Judge not being satisfied but that there might be some humbug about it sends for the county treasurer to find out whether that money was really paid in in good faith, he sends his clerk of court up to enquire of him, and the clerk comes back and tells him that it was; and not until after finding out these facts, does the Judge tell Mr. Megquier

that he will remit the sentence, and orders the clerk to enter the order remitting the sentence in the case.

I take it that that was an act or fairness and an act of justice, gentlemen, the action of the Judge all the way through, taking the precautions that he took shows a sober mind. If he had taken Mr. Megquier's word for it, as he had a right to do, you might have thought he acted carelessly in the matter. But no, he is anxious to do right. He calls for that indictment, Mr. Megquier says, to compare the dates and see that it is covered by the receipt, and he finds that it is and then he sends for the treasurer to be sure that there is no tomfoolery about the thing. What does Mr. Miller say about this thing? He says that, when that matter was brought up, his attention was called to it; that George Megquier stood up in court and he went over to see what it was and he saw him presenting his receipt, and he says, "I protested against the remission of the fine and claimed that that came under the pardoning power, and called the attention of the court to the fact that the receipt did not cover the period for which he had been indicted." Now Mr. Megquier was asked upon that point, whether it did or not. He said he compared it at the time himself and was satisfied that it did, and that his best recollection now is that it did cover the time. Now, gentlemen, it had been for the managers to show that it did not, if that could have been shown. They have not shown it; all they have shown is that Mr. Miller called the atttention of the Judge to that fact. As a matter of fact that receipt did cover the time. It is not in proof anywhere that it did, nor that it did not; but it did cover the time, and I don't believe that the manager will deny it after his conversation with Mr. Miller when he was down here last week. I believe he will admit that he has found from Mr. Miller that he was mistaken in his statement.

I trust to the honor of the manager to explain whether it is not so when he comes to sum this case up,—whether or not Mr. Miller does not admit that he has examined that receipt and found that it did cover the time set up in the indictment. I hope the manager will give us the information. He did not call Mr. Miller on the stand again, and he did not bring in the receipt, which is a part of the file records of that case, as I understand, he did not bring it to show that Mr. Megquier was a liar, that Mr. Megquier told an untruth when he said it did cover it, when he said he examined it and compared it at the time and was satisfied that it did. Mr. Miller was here, he could have been brought upon the stand; but he was not brought upon the stand. There was good reason for it. Now, if it did cover the time, did Mr. Miller tell the Judge that it did not or anything of the kind? If that receipt did cover the time alleged in the indictment, did Mr. Miller on the stand here tell what was the truth? We asked Mr. Megquier; Mr. Megquier says that he said nothing of the kind. Nor did he protest that he did not say a word when the matter was brought up, but that as a matter of fact it was tacitly agreed between them that all he had to do was to bring the matter up and that the man would be discharged. Now, if the Judge had been intoxicated is it likely that he would have taken that thing and examined it and compared it carefully? If he had been intoxicated is it likely that he would have thought of sending for that county treasurer to find out whether the receipt was proper and right in every way? Is that the careful manner in which intoxicated men

act? Is that the careful manner in which you would think this respondent would be liable to act when intoxicated? Not at all.

Mr. Megquier is corroborated in his statement as to Mr. Miller not protesting or saying a word, by Mr. Whitney, who states the same thing. He says that Mr. Miller did not protest nor say a word. Now I am through with the testimony of Mr. Miller, and I think it is disposed of thoroughly.

That while he stands uncorroborated himself, while he stands with the shade of his strong prejudices around him, surrounding him, clouding every word that he utters before you, with his grievances to revenge, he is contradicted by Mr. Megquier, by Mr. Whitney, by Mr. Ahrens, by Mr. Jensen and by Mr. Greely upon the general condition of the Judge,—he is contradicted by Mr. Megquier and Mr. Whitney in regard to the matter in the Berndgen case. He is absolutely refuted in his testimony in regard to the Anderson case by Mr. Megquier and Mr. Whitney, and his testimony as far as Mr. Morgan's case is concerned is denied absolutely and point blank by Mr. Whitney, who tells you a much more reasonable story. Now, I ask you in all candor what is there left of this Mr. Miller, the main and the only stay of the prosecution upon this article?

His brother is soon disposed of. He tells you that he thought the Judge was intoxicated there Friday forenoon,—the only time he was in court after this spree, as they claim did set in. And he judges from what? He judges from the fact that the Judge was somewhat haggard in his appearance there Tuesday, that Wednesday he looked a little less haggard, and Thursday he got to looking flushed in the face; but that Friday there was considerably more of a flush, and he was more lively. Now, I think it has appeared in evidence that the Judge's face assumes a haggard appearance when he is drunk. Now, all these men claim he was perfectly sober the first three days and it seems that he was haggard at that time, according to the testimony of this witness. Then the question comes up, are they not all mistaken, and was he not drunk when they claim he was sober, and sober when they claim he was drunk? It is at least certainly in evidence that his face does not get a flushed or florid appearance when he is intoxicated; that has certainly been shown here by the Judge's acquaintances.

Now, I take it to be the fact that Judge Cox was sick when he came there. I think it has been shown by Mr. Billy McGowan that when he met him down to Redwood he was sick, when he met him the day before the commencement of this term of court (mind you, that is the Pierce trip, when Billy McGowan swears, and all these other men swear against Pierce), at Redwood Falls. The respondent tells him in the evening that he did not feel well, and he evidently did not. Billy McGowan goes and gets him something to comfort him with, a glass of lemonade, and he sits and talks with him all night, up to about 1 o'clock in the morning, I think he says. Well, if the Judge was not well, and sat up all night, or a good deal of the night, it probably gave him a haggard appearance, and he undoubtedly did not feel well there the first days at Beaver. But as time passed on he got over that sickness. He got over feeling bad and immediately they think that he must be drunk. Now, that is one explanation, if it is true as this man Miller says. But as he is the only one of them all that testifies either to haggardness the first days, or the flushing or difference

in his appearance the other day, I will take it for granted that the man is mistaken, to put it charitably, because it is remarkable that no other witnesses upon the part either of the State or the defense should have noticed this thing. But there are other things on which he bases his hypothesis that the Judge was drunk. One is that he made side remarks to the attorneys, and that innocent George Miller never saw the Judge make side whispers to the attorneys before that time. Now, every witness who has come on the stand for the prosecution, or the defense, has told you that the Judge would make those whether he was sober or drunk; that did not make any difference; that that is a matter of habit with him.

Now that is partly what Mr. Miller builds his hypothesis on. Now, if his premises are false, his conclusion is liable to be false. It is no proof that the Judge is intoxicated that he makes side whispers; but this man is so innocent that he has never seen it before; and then the recesses were frequent, he says. That is another reason. Mr. Megquier tells you that the recesses were no oftener than usual, and when he says usual, he says he means during the last twelve years. He says there has been a growing disposition with Judge Cox since he was elected judge to make longer hours and shorter intervals for recess; to work harder and to get business dispatched quicker and in shorter time with less expense to the county; that has been a growing disposition upon him; that at this term there were fewer recesses and longer sessions than there had been the year before. But there is another thing which this Mr. Miller tells us, and Coleman, who did not seem to have discovered that feature when he was before the judiciary committee sits here and heard the testimony of Mr. Miller about the Judge's flea-catching business, and he immediately, with that remarkable mind of his that is so apt to grasp anything that contains a lie—(it reminds me in every respect of our friend Bolus, that we read of in the book entitled "Flush Times in Alabama," brother Bolus, the eminent liar of his period. I haven't got the book here, or I would like to read to you the description of that man Bolus; I think you would see how appropriately it fits Robert W. Coleman. I shall ask my associate, when he comes before you, to read that little piece, and you will see it is a perfect portrait, almost a photograph of Coleman.) He hears this man Miller tell about the flea-catching, and he is not satisfied with stealing a lie, even, from somebody, but he must make it his own lie, and he raises it from fleas to lice, and then he adds the cracking of the insect, and then he adds certain remarks, such as "I've got you, you little cuss." He makes a nice thing of it.

Now he has appropriated that lie as his own, and he will claim it is his own. I think he has a right to because there is hardly enough of the original. You will understand that Mr. Coleman was called last. I have no doubt the managers knew that he could absorb and grasp anything that he had heard during the progress of the prosecution; I suppose that is the reason he was left as the last grand finale of the prosecution. This man Miller told you about this flea business; that the Judge would sit and do this. [Indicating the catching of some insect quickly and crushing it between the palms of his hands.] I asked him if it was not mosquitoes; he couldn't tell, he thought it was fleas, it might have been mosquitoes. I heard a Senator remark that it was pretty early in the season for mosquitoes, but I think I have convinced that doubting Thomas of a Senator

and all the rest of the Senators, that it was veritable mosquitoes, and large ones at that, that it was veritable, native, Beaver Falls mosquitoes, such as only that place can produce; for we have the testimony of Mr. Megquier, who answers to Mr. Dunn's question, "There is no doubt about it, it was mosquitoes; there were very many mosquitoes there, and they were ravenous too." Mr. Megquier describes to us the same motion; he says he noticed the Judge make this motion, that he did not make that remark nor go through this cracking movement, but he says he made a motion that was entirely natural to him,—a genuine Coxonian motion, that nobody but Cox would make, and that nobody would make in that way but Mr. Cox, but nothing that was strange or would indicate any disturbance of mind or any want of possession of mental or bodily faculties. Well, you have probably seen some of them yourselves while he has been sitting here; you have probably seen some of these motions that you might say are entirely natural and Coxonian.

At least it is established that there was nothing in that motion that indicated drunkenness in the least, because, as I said, it has been shown that he was not on a flea-catching expedition, that he did not see any menagerie there, and that there was nothing improper or out of the way in that motion; that there was big room for both striking and smashing some of those small insects there, because Mr. Megquier tells us they were plenty. Mr. Whitney tells you that the evening before, at the concert, there were a good many of them, that they bothered them fearfully, and that the next day in court there was considerably many left, and that they all kept striking at them; that he did not notice any motion on the part of the Judge except that he slapped himself with his hand and his handkerchief. Mr. Jensen, the sheriff, tells you that he does not remember them in the court room it is true, but, said he, they were around there during court, that is certain, for I remember I was out on the bottoms subpœnaing witnesses, and I was bitten most unmercifully, or words to that effect, and tells you that there was plenty of them on the bottoms when he was out after witnesses during that term. Mr. Ahrens also says that there was plenty of mosquitoes there at the time, and Mr. Greely says that there was a good many. He says that he saw the Judge slap mosquitoes there, but that there was nothing uncommon or improper in it. So I think that that indication of drunkenness has been pretty well knocked in the head, and that there is nothing left of it, neither as the idea was first advanced by George Milller nor as it was afterwards assimilated only to come out in an enlarged edition from the lips of the great liar, Robert W. Coleman.

I will call your attention now briefly to the testimony of Coleman, doubting whether it is proper so to do for the reason that it ought not to cut any figure at all, but I think it is my duty to call your attention to it anyhow to show you how, besides being shown not to have been in court during those days, and besides being thoroughly impeached he is contradicted upon every point he has given before you by all the witnesses that we have called, to show what a grand liar he is. The first thing I asked Mr. Coleman upon cross-examination was whether it was not a fact that he was pretty drunk himself there on Thursday night, the night of the concert and he says "No, sir." Mr. Jensen, the sheriff was called in here and he tells you that Mr. Coleman at that time was so drunk that he vomited all over the saloon.

In order to show the degree of fairness that the managers have ex-

hibited in this matter, in connection with this testimony, I desire to call your attention to the cross-examination of Mr. Jensen. Mr. Jensen had stated, I believe, that on that evening he had seen Judge Cox drink two glasses of beer; he was asked whether he had seen Judge Cox intoxicated during that term, and he said no. On cross-examination, after he had testified that Mr. Coleman was so drunk that he vomited all over that saloon, Mr. Dunn asked him in a sneering way, "Who was the drunkest, Coleman or the Judge?" I will ask you if that question shows an extraordinary amount of fairness upon the part of the manager after the witness had testified as he did,—evidently to catch the witness in a trap. Of course all the answer the witness could give would be that Coleman was, because the judge was not drunk at all and of course Coleman had to be the drunkest. Now the question was framed in that way to bring out testimony to be used afterwards if we should not be sharp enough to discover and prevent it. On re-direct examination we asked the witness if the Judge was drunk at all and he said he was not.

Now I cite this as an instance of the unfairness of the managers in prosecuting this case. I have another incident here. It was in testimony by Mr. Jensen that the Judge got mad; rebuke l the county attorney, and that the county attorney was mad; and Manager Dunn again asked the witness, "Well, the Judge was mad and the county attorney was mad,—they were both mad?" "Yes." Leaving the impression which the witness had not intended to leave that the county attorney was mad contemporaneously with the Judge, not that he was mad because the Judge rebuked him but was mad because the Judge was drunk. And when we tried in re-direct to show that the county attorney's madness did not exhibit itself at all before the Judge rebuked him, then the manager objected. Well, their objection was not sustained so we were allowed to show it. It don't amount to anything except that it shows with what spirit this case has been tried upon the part of the public prosecutors of this great State.

The next thing that Coleman testifies to, is what he desires to impress upon your minds as external exhibitions of the Judge's intoxication. Thursday, he says, the Judge commenced to put his pantaloons in his boots, to have his vest loose, his hat on one side, and to exhibit general carelessness in his dress. We asked our witnesses upon that point. It happens that Coleman was present and saw the Judge walk up to the court house one day with his pants in his boots, and he tries to make out that that is the way he went the balance of the term. We have shown by the witnesses that Thursday morning there was a regular rain storm; that Beaver Falls is a regular hole as far as mud is concerned. If any of the Senators have ever been there they know what it is and they will not want to go back there again. After a hard rain storm the mud stands about knee high.

Now, Judge Cox did the same thing that Mr. Megquier did, as he testifies they all did. That morning when they went up to court they pulled their pants up to the top of their boots and walked up to the court house but Mr. Megquier says the Judge never carried them that way in court, that. he took themdown just as quick as he came into court, and it was only that day while it was raining he pulled them up at all. Mr. Whitney says the same thing; Mr. Greely says the same thing; they had noticed the same incident and they tell you it was only that day and under those circumstances.

Now, does that show that the Judge was drunk? If a man as æsthetic as he is in his tastes and in his appearance had commenced on Thursday to do that and had gone into court in that way during the rest of the term I should say that that was some indication of his being intoxicated; but it only happened that rainy day and he took his pants down before going into court. So, I say, the mountain has got down to a mole-hill and it is no proof of intoxication in the least. It is absolutely denied by these witnesses, by Mr. Megquier, Mr. Whitney, Mr. Jensen and Mr. Greely; that there was any difference in the Judge's carefulness as to dress during that term; that he didn't have as good clothes when he came there as he had had sometimes, but that they were not ragged or dirty or anything of the kind, but simply not so fine a suit as he had had at another term when he had been there and that there was no carelessness in his dress at any time while there; that he was tidy and neat and always had been.

Now, Coleman says that his face was red, that his eyes were red and blood-shot. I don't think I need to try to refute that at all or even to refer to it. All these witnesses deny it, but if they did not, Mr. Blanchard, Mr. Davis and Mr. Lamberton have already established the fact that that is no indication of intoxication on the part of the Judge,—that they have never seen it, and if they have not, very likely this man Coleman did not either.

The trouble is, he had not seen the Judge intoxicated enough to know what the indications were when he was intoxicated. He is lying, and is inexperienced as to the subject matter upon which he is lying, so he naturally makes mistakes. He says the first two days while the Judge was on the bench he carried himself with dignity amd reticence, but that later in the term it was different; that he took a careless position upon the bench, interrupted proceedings, etc., and did a great many things that were ridiculous and foolish. Now all that has been explicitly and seriatim denied by Mr. Whitney, Mr. Greely, Mr. Jensen and Mr. Megquier. All four of them absolutely deny the whole of it. They say that there was no difference in his demeanor on the bench during any part of them, that he did not interrupt the proceedings in any way at all, and that he did no foolish or ridiculous things.

He testifies, too, that Friday night, in the trial of a liquor case, the Judge insisted that the county attorney ask certain questions and none others, and that when there were no objections by counsel he objected himself. Well, now, of course that looks bad enough if it is true, but what does Mr. Megquier tell you, the man who was the attorney in that case, and in all the liquor cases there that were tried? Why, he tells you that this is not true; that the Judge never objected, but that Mr. Megquier objected, and two or three times in succession, and that when he objected, and the court sustained his objection, that fool of a county attorney didn't know how to ask the questions; that the third time the question was put in a different shape and objected to as incompetent, and that finally the Judge told him you may put it so and so, but that the county attorney didn't seem to, or did not want to understand the Judge, and insisted, in his foolish manner, of asking questions that were improper, incompetent and irrelevant.

That finally the Judge told him, after having ruled the third time upon his question. "This is the way you can put the question; if you

put it in that way it is not objectionable;" and that finally he asked the question himself of the witness, when he found that he could not get the county attorney to ask it. Now was that improper? Was there anything in that to show intoxication? No, it goes to show that the county attorney was a fool; it goes to show that the Judge helped to stake out the prosecution, but it does not show any partiality or favor upon his side, nor it does not show that he objected to the questions asked by the county attorney himself, because Mr. Megquier absolutely and expressly denies it and explains the whole circumstance. There is nobody but this lying Coleman to testify to it anyhow. Even Mr. Miller don't claim any such thing, and he ought to know. He was prosecuting, and he is anxious enough to have Judge Cox convicted; he is anxious enough to prove Judge Cox drunk at this term. Why, he would certainly have stated it, if it was true. And Coleman says the Judge asked questions that were not pertinent to the cause. Mr. Megquier says it is not so; that as a matter of fact he helped the prosecution a good deal more than seemed to be to his comfort; but of course he considered it necessary to do so. Coleman says that sometimes he would laugh loud and boisterously at his own jokes. That is denied by Mr. Megquier, Mr. Whitney, Mr. Greely and Mr. Jensen. And that is all of Mr. Coleman's testimony. Every inch of it is denied by four or five witnesses. He is shown not to have been present at all, he is impeached; and I say take his testimony and let the managers have all the comfort out of it they can get, they are welcome to it; he is out of the case with all honorable and sensible men.

He is out of that article, and he being out, there is nothing left but Sam and George Miller. And Sam Miller is contradicted by all the witnesses upon everything that he brings forth. Upon the Anderson case, the Morgan case and the Berndgen case alike he is contradicted by all the witnesses. It has been shown that the Judge was not intoxicated at this term of court; that there was no difference in his appearance the last three days from his appearance the first three days, and it is shown by honorable witnesses, by witnesses who have evinced no desire to help the Judge out of a scrape or to tell what is not strictly the truth, for they have admitted failings and frailties upon the part of the Judge, which it was not necessary for them to do if it was not the case, that they wanted to tell the truth, the *whole* truth and nothing but the truth.

I say then this article is amongst those in which we have not only raised a reasonable doubt as to the truth of the accusation, but that it towers amongst and makes one of those, where we have entirely demolished the case of the prosecution; where there is nothing left of it; where it stands there a smoking remnant and ruin of a once glorious edifice, nothing but a smoking ruin. By a preponderance of testimony, nay, beyond a reasonable doubt we have shown you that the witnesses for the State have lied, that the Judge was not intoxicated at this term, that it did not interfere with his business, that he transacted his business right along and did it well.

I ask in all fairness and candor if the testimony, standing as it does, Coleman wiped out, Holtz out of the case anyhow, his evidence not amounting to anything, he not being in court at all, nor fixing his drunk at any time prior to the court; Sam Miller, an interested witness, a

prejudiced man, a man who has a grudge against the Judge; his brother George only there a half a day, and he a fool and a stand-by to his brother as it seems,—that half of a man and fragment of another half of a man standing there alone against the five witnesses that the defense has brought before you,—honorable men, men that some of you know, men that would rather have their right hand wither than tell a word false or untrue. If the testimony I say is not overwhelmingly in the respondent's favor, if you find the respondent guilty upon this article, you have to declare under your solemn oath that Hon. Henry Ahrens came before you and willfully perjured himself; you have to say that Mr. Jensen wilfully perjured himself; you have to say that Mr. Megquier and that Mr. Whitney each of them perjured themselves; you have to say that Mr. Greeley wilfully perjured himself. Are you going to say it? Are you going to undertake to say that five of the best men the valley ever produced, five of the best men that the valley can show up, have come down here and perjured themselves? For what? For money? Not at all. For interest? Not at all; it can be nothing to them, not one hair one way or the other to any of them whether Judge Cox is deposed or whether he stays there. Are you going to say that those men are perjurers? Or are you going to believe and to say that when Sam Miller was offended and rebuked by the Judge there, he caught a prejudice in his heart and that he probably honestly believed that there was something wrong with the Judge and through the eye glass of his prejudices he looked upon him as intoxicated and got his brother to look upon him in the same way? That is the question.

I apprehend that there can be no doubt in the minds of Senators what is their duty to do upon this article under their oath, and I leave it here.

The PRESIDENT *pro tem.* Is there anything farther to bring before the Senate before it adjourns? If not, it stands adjourned until Monday afternoon at three o'clock.

FORTY-SIXTH DAY.

ST. PAUL, MINN., Monday March 13th, 1882.

The Senate met at 3 o'clock P. M., and was called to order by the President *pro tem.*

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

Messrs. Adams, Campbell, Castle, Clement, Crooks, Gilfillan, C. D., Gilfillan, J. B., Hinds, Johnson, F. I., Johnson, R. B., McCormick, Mealey, Morrison, Perkins, Pillsbury, Rice, Shaller, Shalleen, Tiffany, Wheat, 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. 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.

Senator ADAMS. Mr. President, I have a resolution that I desire to offer at this time:

Ordered, That when the final arguments are all in, the sessions of this court shall be open and that the speeches and remarks made during such session shall be published as a part of the proceedings of this court and be a part of the record.

Senator CAMPBELL. Mr. President, I will give notice of debate in order that we may have an opportunity to know better what we want to-morrow.

The President *pro tem.* The resolution goes over, under notice of debate.

Senator CAMPBELL. Mr. President, I think I shall rise to a question of privilege, not that I suppose it is actually necessary, and it may not make much difference, at the same time I desire to be correctly reported, or as nearly so as possible, where I am reported at all. I find in the Globe of Saturday morning an article—and I do not now speak of the writer of the article, although I think it very indelicate, to say the least, to write such an article and publish it in the papers on either side of the question—but the article purports to give the facts as to the times Senators have been absent on the days upon which testimony was taken, and I will say right here that the article states that upon the twenty-five days during which testimony was taken Senator Campbell, among others, has been present only eighteen days, in other words that he has been absent seven days. Now, this is what I desire to say, and I desire to call attention to the journals which show that we have not taken testimony on but twenty-four days; and I might say, while passing, that the writer is incorrect in the time which he allows for each side for the in-

troduction of testimony; it is stated that twelve days have been occupied by the prosecution and thirteen by the defense. I find that fifteen days have been occupied by the State and nine days by the defense. The writer of the article evidently counted in the three days which the State used in rebuttal as a part of the time occupied by the defense.

The roll-call shows that I have been absent on those days six in all, to-wit: On the 11th, 12th, 23rd, 31st, 36th and 41st days. But of those six days the proceedings of the journal show that I have been present on three of them, as follows: On the 11th, as will be seen by reference to page 79 of the journal of that day's proceedings; on the 31st day I was present, as will be seen by reference to the journal at page 451, and on the 41st day, as will be seen by reference to the journal at page 1150. This leaves but three days upon which I was absent when testimony was taken. Of those days one was the 22nd of February, Washington's birth-day, a legal holiday; one was on the 27th day of January, the day upon which the honorable managers closed their case and put in documentary proof and took testimony upon article twenty, which was afterwards dismissed; and another, and the only other day that I was absent, was on the 14th day of January, and that was a morning session only, at which only two witnesses were examined, viz: B. F. Webber and Sheriff Long. I was present in court all of the day previous, upon which day Mr. Webber was on the witness stand. The direct examination of Sheriff Long only was proceeded with on that day, and I was present the next day when he was cross-examined.

It is sufficient to say that whoever writes upon this subject, or attempts to write, does not always have the information necessary to enable him to do it correctly. Now, I apprehend that the article is just as incorrect in relation to other Senators as myself. For instance, I know that Senator Castle has been here, for I have never missed him a day when I have been here. Senator Crooks I know has been present the most of the time, and I think we all know that Senator Gilfillan has been here more than one day.

Senator ADAMS. Mr. President, so far as the question of privilege is concerned the Senator has a perfect right to occupy as much of the time of the Senate as he pleases, and, I believe, under the rules, any other Senator. As to whether the Globe is correct in the tabulated record which it has made of the attendance of members during the proceedings of this court I am not prepared to say; the presumption, however, would be that the record was taken from the journal. If, then, the Globe is wrong the presumption would be that the record of the court is wrong. That has been published, and shows for itself, to the satisfaction of every member of the court, and while a member of the court may feel himself aggrieved, having been here after roll-call, as I have been three days, yet I have not felt myself aggrieved at all.

What this question has to do with this trial, outside of the mere fact that certain Senators have not been in attendance during the sessions of the court, I am not prepared to say. I do concur with the Globe most emphatically and most assuredly that a Senator who has absented himself for a large portion of the time during the progress of this trial is not, nor could not be as well prepared—

Senator CAMPBELL. I ask the Senator if he regards this as a question of privilege

Senator ADAMS. Yes, sir.

Senator CAMPBELL. You are not, surely, speaking to *my* question of privilege.

Senator ADAMS. It is a question of privilege on your side and mine also.

Senator CAMPBELL. I think not.

Senator ADAMS. If the gentleman desires to monopolize the question of privilege I will yield the floor, or if the presiding officer says so.

Senator CAMPBELL. The point I made was in relation to the misstatements contained in the article which appeared in the Globe. I don't think it is right for a member of this Senate to reflect upon the conduct of another member.

Senator ADAMS. I do not. I rise to the question of privilege as to the integrity of the secretary's record; if that is not a question of privilege then I am out of order.

The PRESIDENT *pro tem.* I think you are in order, sir.

Senator ADAMS. Thank you. What I desire to say in this connection, at this time, is just this: that the records of the court have gone before the people of the State presumably correct. So far as I am personally concerned I have had no fault to find with them at all. What other members may see fit to say in the premises I do not know. But, if the Globe has taken from the records of this court whatever statement they have, it would be an indirect arraignment of the records of this court. That is my point of order. I think it highly improper to do that, because there are times when even reporters of newspapers may not be present, when the secretary of the court might recognize a Senator who would not be recognized at all by the reporter; hence this discrepancy would be very liable to occur. And I simply rose for the purpose of maintaining the integrity of the records of the court as they appear; that is all there is in my point of order.

Senator MEALEY. Mr. President, I am glad that this matter has been brought up. I see they have me down there as only having been here eighteen times. I have not examined the Journal, but I think the probability is that if the Journal were perused it would show I have been here a larger portion of the time. I think I was only home three or four days. It is probably no fault of the secretary. I presume that the Journals are correct. I unfortunately have not been here at roll-call I think those four days during this entire session, and this thing going out to the people and my constituents don't look very well. I merely make this statement,—from recollection I think I have been absent four days, and I think if I were to examine the Journals, which I have not done, they would show that I have been here more than eighteen days.

Senator GILFILLAN, J. B. Perhaps I ought to rise to a personal explanation also, because I see, according to the evidence, I have been here *once* before! [Laughter.] But it seems to me that this is making altogether too much consequence of a matter that does not and cannot amount to anything. The court is called here and at the convening of the court the roll is called; those that happen to be here respond. If a quorum responds the business goes on; if not, as soon as the twenty-first member comes in,—as occurred at the present convening,—*then* the business proceeds. Those 21, 22, 23, 24 or 30, as the fact may be, that so respond, are recorded in the journal as present; and perhaps within the next five minutes half a dozen or a dozen more Senators come in, take their seats, and perhaps at the close of the session know fully as

much about the testimony that has been given here as certain other members who may have been present during the first five minutes. Still, the record does not show that they were here at all, except, perhaps, they have made some motion or taken part in some debate or proceeding that required their act to be made a matter of record. I presume that is the way the discrepancy occurred with reference to the Senator from Meeker.

Senator CAMPBELL. That's it, exactly.

Senator GILFILLAN, J. B. He may not have happened to get in, or he may have been in the coat room disposing of his coat during the roll call, but was present all the rest of the day. Now, it is impossible that any report could be made or can now be claimed, even from our own records, correct though they be, so far as they go, as to the daily attendance of Senators here. I don't know whose business it is to be nosing around here as a smelling committee to investigate these matters, anyway. There have been some criticisms from counsel upon this point recently which it seems to me come with ill grace from them. They had better conduct themselves at least with proper respect for the court before which they appear. If they want to take any objection here that the proceeding is illegal or void or irregular, they have a perfect right to do so, and it is their duty to do it, in justice to their client or the parties whom they represent; but when counsel go so far as to criticise the personal conduct of his honor on the bench, or of the court before whom they appear, why I am free to say that they are transcending their proper provinces as attorneys of the court. Now, I should not have said this had not this thing gone to this extent, but when it comes to this, that counsel make criticisms, and right on the heels of it the editors of the public press of the city take it up and follow it up, we don't know who it is that is prompting or instigating or setting afloat such things as these.

Now, so far as I am concerned, Mr. President. I was necessarily absent during the first two weeks, and a portion of the third week of this session,—out of the State. Since then I have been in attendance here as closely as I possibly could be. I don't know of any requirement that Senators should be here listening from the opening to the close of every session. Our testimony is reported *verbatim*; it is read at length, I presume, by every member of this court, so that he is fully advised as to what the testimony is. It is, perhaps, true that if every witness could be seen and observed closely by each member of the court, he might be better qualified to judge of the truthfulness of certain testimony, or of its weight, than otherwise; still, we all know how common it is in our courts of justice for cases to be tried by the court, not upon the oral evidence of witnesses, but upon examinations taken by referees, who report the testimony in the court. We know that in chancery cases the testimony is invariably taken in the form of depositions; the witnesses do not come before the court at all; and yet, in chancery proceedings, requiring the most careful investigation,—and which are usually of the most solemn character,—affecting peculiar and valuable rights,—it is not required nor expected that the witnesses shall be brought before the court. It is not necessary, and no one ever pretends that it is necessary.

Now, I venture the assertion that any one who will take this volume of testimony and peruse it carefully through, from end to end, is just

about as competent to judge of this case as though he had been here and listened attentively all through. I don't know whether he is not better qualified, perhaps, than those who have been here who have occupied their minds in some other way.

I do not say this now censuringly at all or by way of criticism of any member's conduct, I do not intend that; but it is true that we all have our attention diverted more or less, by newspapers, or the writing of letters or the examination of other books, and very properly so, and we rely upon the record to read up the next day as to what the testimony was at length. So I think that every one is just as capable of voting as though he had pinned his attention constantly upon the witness stand.

Now, it seems to me that we are giving too much significance to these newspaper reports which cannot amount to anything. It is impossible that they should unless the reporters are here all the time and report the proceedings of the continuous sessions. There has been no attack upon the record of the court in anything that has been said so far as I understand, and I do not see any occasion here for any attack upon the court.

Senator ADAMS. I would inquire of the Senator if he presumes to say to this court that any of the newspapers of St. Paul have published the entire evidence given before this court day by day.

Senator GILFILLAN, J. B. I don't know anything about it for I have not read it as published in the newspapers. So far as the court proceedings are corncerned I have relied upon the journal of this court.

Senator ADAMS. I understood you to say that a member might read the newspaper reports of the evidence and be as well advised as though he had been present and heard it.

Senator GILFILLAN, J. B. No, sir; our official reports.

The PRESIDENT *pro tem.* The gentlemen will come to order; there is nothing before the Senate.

Senator PILLSBURY. Mr. President—

Senator ADAMS. I call the gentleman to order,—there is nothing before the Senate.

Senator PILLSBURY. I wish to say, Mr. President, that I have been present very few days during the session of the court. If another trial of this kind should come before this Senate I should be present a less number than I have. It is a scandal to the State the way this trial has hung along, the dilatory proceedings, the numerous adjournments and the time that has been given to the attorneys to make remarks; I don't think there is another State in the Union nor another country in the world where attorneys would be allowed one-half the time to make remarks that they have been allowed here.

Now, as to any one getting an idea of the testimony by sitting here and listening to it, I would state, that what time I have been here I have got hardly any idea from any witness that has been on the stand, it has been impossible to hear it over here. All the ideas I have got from this case,—and I think I have got them in very good shape,—I have obtained from carefully reading the testimony as contained in the official record, when I had a chance to read it, in a quiet way. I don't think there is a Senator on this floor that would not say he could get a better idea of the testimony by reading it than from sitting here and hearing it, as we all know that in this portion of the house, it is impossible to hear anything that is said. And I think that this impeachment trial will be the

last that will ever be carried on this way; that our Legislature will provide in the future, some shorter way. I don't believe the State will ever stand any more impeachment trials that take up as much time as this has done.

Senator ADAMS. Mr. President, there being no question before the Senate and the gentleman having made an allusion I desire to make a statement. While it may be true that certain gentlemen may be as well qualified to judge of the testimony by being absent, I have seen proper in the discharge of my obligations under my oath, to be present. It is a mere question for each individual member of the court to decide for himself. One member may think he is better qualified to judge by being absent than I or other gentlemen are by being present; that is his individual matter. I do not desire that he shall impugn my motives for being present during the entire session of this court, because, without my presence and the presence of other gentlemen who have attended regularly we should have had no quorum, no court and we would have had no trial; and I think it would have been better for the respondent and the State if we hadn't.

The PRESIDENT *pro tem*. Mr. Arctander will resume his argument.

Mr ARCTANDER. Mr. President, so much time having been consumed in discussing questions of privilege, it probably would not be out of the way, if I, as counsel for the respondent, should indulge in a question of privilege before I commence my argument proper. The insinuation was, it seems to me, thrown out by an honorable Senator, that this matter was brought about by counsel for the respondent. I for my part disclaim any such idea, and maintain that an injustice has been done counsel by such an insinuation.

Senator GILFILLAN, J. B. Excuse me. I did not say counsel for the respondent—I said counsel. I reflected just as much on one or two on the other side, as on yours.

Mr ARCTANDER. I desire to state that as far as I am concerned I do not try my cases in the newspapers; I have not done so heretofore, and I don't think I shall do so now. I don't think any of the counsel for the respondent has had anything to do with this matter at all.

Senator GILFILLAN, J. B. I made no personal allusion.

Mr. ARCTANDER Mr. President, I feel that I owe the Senate thanks for the kind manner in which they have allowed me to recuperate before proceeding farther with the argument. I had intended to promise in return that I should try to be as short as possible; I do not dare to promise it though for fear that I would not be able to keep it. But I think that Senators will feel, if I am lengthy and long-winded upon this matter, that it is a subject of such immense dimensions to handle that it is not easy for a person to go through with it thoroughly and properly in a much shorter time than I have.

I will now proceed, Mr. President, to the

FOURTEENTH ARTICLE,

which treats of the Lincoln county term, held in June, 1881. As I said in my opening argument, that article naturally divides itself into two subheads, the term held at Marshfield and the term held at Tyler, after court had been adjourned from Marshfield on the first day. It does not seem that any business was transacted at Marshfield the first day of that

term; that the Judge simply inquired into the business of the court and the accommodations for jurors, and the distances to the nearest towns, etc., and that he thereupon adjourned the court.

It was stated, I believe, by the manager, who preceded me, that the Judge was wrong in moving that court, and that Mr. Chapman, the quasi-attorney who testified for the prosecution in this case, was right when he told the clerk that he should disobey the order of the Judge and not remove the records. Now, I apprehend, in the first place, that the respondent is not called upon here to respond for any want of judgment, or any wrongful or malicious act in removing that county seat, or place of holding court, rather.

I do not understand that that is the charge against him, and therefore that can have no bearing whatsoever. It certainly seems to me to be out of place that any attorney of any court has the right and that it is right and proper for him to advise any officer of the court to disobey the orders and mandates of the Judge; it would indeed be a sorry time we would have, if that should be the case, if such actions should be upheld by any honorable and honest man, much more by a lawyer. As to whether that statute authorizes the Judge to remove the court or not I am not going to discuss; I think that it does. I think that no manager can advance the idea successfully upon this floor and before this Senate that there is no statutory provision to cover the case; that there is no accommodation for jurors, for the court, for suitors, the Judge shall be obliged to hold court upon the stump of a tree, simply because there the county seat happens to be, hold a term of court without any accommodations, under the open heavens. I think that the statute is ample upon the subject, and that it gives discretion to the court to say that, when there are not suitable buildings he may remove the court to the nearest place where there are suitable buildings, and that the Judge at this particular occasion was guilty of no abuse of discretion. There certainly was nothing in the act to show that he was intoxicated in the least. He might have erred, as a matter of judgment, upon the proper construction of that statute, such a thing might be possible; but Judges are not called to account, either by impeachment or otherwise, for an error of judgment, and certainly he cannot be called to account for it in a proceeding, which don't charge him with any wrong-doing or any wrongful act except that he was intoxicated; because, as I said before, it is no proof or evidence of any degree whatsoever, if it was wrong, that the Judge was intoxicated, *because* he adjourned court.

We find, upon this term at Marshfield, the testimony of A. G. Chapman, Mr. Matthews the deputy clerk of court, Mr. Stites, Mr. Chapman's partner, and the everlasting Coleman. I believe the learned manager who opened this case for the State stated that he found, upon examination up in that country, that there was a fight and a feeling between the two towns of Lake Benton and Tyler; that in Tyler he could not find a man who would say that the Judge was intoxicated; in other words that the people of Tyler were friendly towards the Judge,—which I have no doubt they are,—while in Lake Benton he found the feeling somewhat divided; or in other words, being a strong feeling against the Judge. They had been able to muster up four men to come down here and swear that he was drunk. Now, suppose that it cannot be denied that the action of Judge Cox in removing the county records or the records of the clerk of the court to Tyler instead of Lake Benton created quite a

feeling against him in Lake Benton. It is in evidence here by the testimony of the old honest Col. McPhail that when that order was made, there was considerable swearing around there—everybody was swearing The Marshfield people were swearing because they lost the court, the Lake Benton folks, who expected to get the court over at their place, were swearing because it did not come there and swearing double because it went to Tyler, which was the rival for the county seat; and the Tyler folks were swearing back again at the other folks. Now, there is no doubt, I say, from the testimony, but that there was a strong feeling created against Juge Cox at Lake Benton for the reason that he did not remove the court there as they had undoubtedly expected him to do.

It seems that he acted without any prejudice, that he acted without any intention to favor one or the other, but that he inquired at the time which was the nearest place, and of course acted as he ought to do under the circumstances and under the statute, removed the court to the place that was nearest. I desire to call your attention to the fact, which is apparent from the record, that all the testimony the managers have been able to produce upon this article, outside of the everlasting Coleman is furnished by Lake Benton men, men who were present there, men who made and formed part and parcel of the swearing party at the time the county seat was removed. It is evidence again of the proposition that I have heretofore advanced that it is amongst Judge Cox's personal enemies, amongst those who have a grudge against him, that the testimony for the prosecution is sought. The Senate will have to decide whether or not that is reliable testimony. I desire to call attention to the fact also that while the State has sought its evidence exclusively in Lake Benton, where presumably every man would be down on Judge Cox for his action in this matter and would be willing, in case he was an unconscionable and unconscientious man, to get his revenge upon the Judge for his actions. The defense has shown I think impartiality in this respect and shown that it is not even all men in Lake Benton who are unconscientious, dishonest and unscrupulous men but that there are honest men amongst them, men that although their feelings have been riled and awakened, although their feelings have been called in question against the Judge and have been asked to stand up against him and destroy him, that yet their regard for truth is strong enough to make them come down here upon the subpœna of the Senate and testify to the facts just as they were.

I call the attention of the Senate to the fact that out of twelve witnesses introduced for the defense in this case four are brought down here from the hot-bed of dissatisfaction with Judge Cox, namely, Lake Benton; one from Minneota and seven from Tyler. I call attention further to the fact that of the four witnesses from Lake Benton, there are two lawyers, residents there, the county auditor of that county, residing at Lake Benton, and the chairman of the board of county commissioners of that county, all presumably men who stand high in the estimation of the people; who have been honored by election to prominent offices of trust,—the distribution of which is laid in the hand of the people of the county.

The main witness for the State, upon the condition of the Judge at Marshfield the first day, is A. G. Chapman. He testifies that the Judge at this time was as drunk as a Lord. He further tries to illustrate the absolute drunkenness of the Judge by drawing the picture before this

Senate of his being in such a condition that he could not even get out of the buggy in which he arrived at Marshfield without assistance. He tells us that the Judge was "steered out" of that buggy, that he was "gently lifted out," and uses several other expressions of a similar import. Mr. Coleman says that the Judge was very drunk at that time. Mr. Mathews, the deputy clerk, says that he was very much under the influence of liquor, and Mr. Stites, Mr. Chapman's partner, says that he was drunk.

To rebut this testimony, we have shown you by two witnesses that the Judge, when he arrived at Tyler with the railroad, was entirely and perfectly sober; that he did not stop in Tyler, that he did not drink anything there; that he had telegraphed ahead for a rig to meet him at the depot, that this rig, Mr. Hodgman driving it, and Mr. McPhail being along with it, met him at the depot; that he went over with the Judge, that he was perfectly sober when he arrived. Both of those witnesses also swear that there was no liquor in the wagon and none drank on the way; that they conversed with him the whole of the time going over, and they both of them tell you that he was perfectly sober when he arrived at Marshfield.

They both deny the statement of Mr. Chapman, and he is the only one who makes the statement, that the Judge was gently lifted out or steered out of that buggy, in other words, that he was not able to take care of himself properly and get out; both Col. McPhail and Mr. Hodgman tell you absolutely that Judge Cox jumped out of the buggy himself without any assistance, took his grip-sack and walked up-stairs. Besides those two witnesses we have Mr. Andrews, the lawyer who was present, and he tells you that the Judge at that time was perfectly sober. We have the testimony of Mr. Butts, the lawyer from Lake Benton, one of the natural enemies of the Judge after the action he took at that time towards Lake Benton, and he tells you that the Judge was perfectly sober. Both of these men tell you that they had conversations with the Judge immediately after he arrived. We have, finally, Mr. Griffiths, chairman of the board of county commissioners of that county, who tells you that he came down there to see the Judge; that his attention had been called to the fact that he possibly might be intoxicated when he should come there; that he had heard it talked amongst the people that the cause of the delay of the Judge in getting there was that he was drunk somewhere. He did come at the proper time, mind you, to hold the court, but he did not come before the train had come in in the afternoon, having been detained in Redwood County, where the jury were out and having to wait until they came in, before he could start. But Mr. Griffiths had heard that the Judge was intoxicated; that was the rumor that was around there, and he therefore paid particular attention to the Judge.

He tells you that he came down there to Marshfield to have a talk with the Judge in regard to the county records, there was some trouble about them. The county it seems had during the year been detached by the Legislature from Lyon county and had just been organized, and consequently I suppose there was some trouble, as there always is in such cases about the county records—about getting them from one county to the other. This man went down and had a long conversation with the Judge right then and there in regard to that county matter, and he tells you that the Judge was perfectly sober, and I take it that

he was in a position in which he could judge. That Mr. Hodgman and Mr. McPhail, who came over with him the long ride of four or five miles, would be apt to know just what the condition of the Judge was. That those who could talk with him privately, intimately, and kept his company for some time would be apt to know, and unless they come here and willfully tell a falsehood, that there can be no mistake about their being correct in their statements.

This Mr. Chapman further tells us, that the Judge staggered badly at the time when he came into the court-room. That alone in itself ought to be enough to damn Mr. Chapman's testimony. I think it is in evidence from all hands, on the part of the prosecution as well as upon the part of the defense, that the Judge is not a man who ever gets drunk in his legs; that those who have known him longest and best have never seen him in that condition that he staggers. And here comes this witness up, and to impress upon this Senate that there can be no doubt, and to make it as strong as possible,—making it, in fact, a little too strong, he tells you that the Judge staggered badly; that his voice was thick, he adds afterwards.

Now, upon both of these points Mr. Chapman is flatly contradicted by Mr. Griffiths, the chairman of the Board of County Commissioners, by Mr. Hodgman, by Mr. McPhail, by Mr. Andrews and by Mr. Butts. Mr. Griffiths tells you that as far as his voice was concerned it was very clear; Mr. Hodgman, Mr. McPhail, Mr. Andrews and Mr. Butts tell you the same thing. And he is further contradicted, mind you, by a witness for the prosecution; he is contradicted by the witness Stites, who says that the Judge talked sensibly. He tells you what questions the Judge asked, which would be what a reasonable, sensible and sober man would do. That he first asked "What's the business, Mr. Clerk?" Finding that there was considerable business there he asked "Have you accommodations for the jury?" The answer is that the grand jury is accommodated down stairs and that the petit jury may stay in the bar-room of the hotel. He turns around and tells them that he hardly thinks that is a proper place for a petit jury and then makes the inquiry as to which is the nearest place, Tyler or Benton. He then orders the clerk to enter an order removing the court to Tyler and for the removal of the records of the court there the next morning, and that is all there is about it. Now I say that a man who acts in that way and talks in that way,—and that is the testimony of the witnesses for the prosecution,—is not and cannot be drunk. It is not the talk of a maudlin drunk man, it is the judgment of a man of sense and reason, whose mind is not clouded by wine or liquor. I say therefore that the testimony of Mr. Chapman is contradicted by the witnesses for the prosecution itself; that he is farther contradicted by five honorable, reliable and trustworthy men who deny utterly everything that he brings forward, everything that Mr. Matthews brings forward in regard to the Judge's drunk, what Mr. Stites brings forward in regard to the Judge being drunk. As far as Mr. Coleman I will not do the honor to speak of him. He is not worth it. I consider that he is entirely out of the case and wherever his testimony occurs, every honest Senator will strike it out as unworthy of belief.

I take it, therefore, that the Marshfield part of that term of court is disposed of; that under the testimony as it stands there can be no claim that there is even a reasonable doubt as to the sobriety of the Judge

when you take into consideration the animus of the witnesses, the locality from which they come, the feelings of the witnesses as evidenced upon the stand, the animus exhibited by them on the stand and the unreasonableness of their testimony. And when you farther compare it with the testimony given for the respondent in this case, I take it that it cannot for a minute stand.

We come now to the testimony in regard to the latter part of the term, held at Tyler, where the term commenced Wednesday, and where it held until the next Monday afternoon or evening, I believe. As to Tyler we have got the testimony of Mr. Chapman, Mr. Matthews and Mr. Coleman. They are the only three except George Chapman, who is brought in to show a certain incident; but those three are the only witnesses, Mr. Stites not being present there, or at least not wanting to testify anything in regard to that part of the term; he was present a short time, I understand, but did not testify in regard to it. Now, then, you have only got three witnesses on the part of the prosecution as to the Tyler part of the term. First Mr. Chapman, I say. He tells you that the Judge was under the influence of liquor the whole term there at Tyler. That is the wholesale testimony that he gives upon the direct examination. When you come into the cross-examination of that good and pious man, Mr. Chapman, what do you find as to his knowledge, as to his means of knowledge as to what the Judge's condition was during the whole of that term.

You find that he admits upon cross-examination that he was not there Thursday, after having been there a few minutes in the morning. He was just there in the morning a few minutes, made a motion to have the court go back to Marshfield, but then left the court; that he was there only a part of Friday, that he don't remember particularly the condition of the Judge on Saturday, and that the Judge was sober on Monday. Now, then, all the testimony you have got as to the Judge's condition by him, as it stands after the caoss-examination has left him, is part of Friday, half an hour in the morning of Thursday, and Saturday he don't remember anything about; Monday he says that the Judge was sober. That is what he tells you in cross-examination. Now what weight is to be put upon the testimony of a witness, who will swear in as reckless a manner as he did upon direct-examination must be for the honorable Senators to say. It is not necessary for me to comment on it. This same Mr. Chapman,—and I simply bring it forward to characterize his testimony, to show what it is worth,—tells us upon direct-examination that the Judge was under the influence of liquor the whole term. "Yes, he was under the influence of liquor when he took the cars and left there too."

When we come to the cross-examination we find what? We find that court adjourned there Monday night, that the Judge left there Tuesday morning on the cars, and we find by Chapman's own testimony, upon cross-examination, that he left Tyler and the court upon Monday forenoon about ten o'clock, before the court had adjourned. The same man who ten minutes before that time had sworn solemnly, with his uplifted hand to tell the whole truth, and five minutes before that time has told that the Judge was intoxicated and under the influence of liquor when he left the cars.

Mr. Matthews, who corroborates him to a certain extent, tells you that every morning the Judge was bright, but towards evening he got

full, that he got pretty reasonably full towards evening and at supper time every night he was plumb full. That is his testimony. Mr. Coleman tells you that he was perceptibly under the influence of liquor when court opened the first day and that he was intoxicated all through the term every day. Now, this is the testimony for the prosecution.

As against that general testimony, the testimony as to the general condition of the Judge, we bring before you the old honest Col. McPhail, who tells you that Wednesday, Thursday, Friday and Saturday he was in court almost the whole time; that he was in court from the beginning of the session in the morning until the evening with the exception of the time when he happened to be before the grand jury, and that there was no session that he was not there; and he tells you that during the whole term up till Saturday night the Judge was perfectly sober, and that he had no doubt about his sobriety. He tells you further that he was with the Judge in the evening. That he spent most of his time when out of court with the Judge.

Mr. Andrews, the attorney who was engaged in several cases at that term tells you the same thing; that the Judge was sober during the whole term. He takes in Monday too, and tells you that during the whole of that term the Judge was sober.

Mr. Butts, who boarded at the same hotel, stayed in the next room to the Judge, with Col. McPhail, and was present during the whole of the term, from the beginning to the end, tells you that the Judge was perfectly sober during the whole of the term in court, that he had no doubt of it at all.

Mr. Dean, the attorney who resides at Tyler, tells you that he was in court every session during that term, and that he had no idea that the Judge was intoxicated. His attention was further called, it seems, to the question as to whether the Judge was intoxicated or not at this time, about a week afterward, by receiving a paper from Marshall, in which it was charged that the Judge had been intoxicated; so that he had particular reason for remembering it, thinking of it so soon after.

We have further, the witness Dr. Scripture, who tells you that he was in court, he thinks, every hour during the sessions of the court at Tyler, from Wednesday until Monday night. That he would go out occasionally if anybody came for him, to have anything done in the store, attend to that, and be right back again. That he is a physician; he is a man who is apt to know and apt to judge about the condition of people as to drunkenness,—he is of a class of men who have peculiar facilities for doing it, their science and what they have learned and studied makes them particularly apt to discover signs that we common people would not notice,—actions of the muscles, actions of the features, the secret of which is known to them, but which we can, as a general thing, not detect. He tells you that he paid particular attention to the Judge, that he looked at him several times there with a view to see whether or not he was straight; that he had heard of the Judge before he came there: that he had heard he had the reputation of being a drinking man, and that that called his attention particularly to the fact as to whether or not the Judge was straight or drunk. And he tells you that he saw nothing that led him to believe that the Judge during any part of that term was under the influence of liquor.

We have, further, the testimony of Mr. Graham, the extensive lumber dealer in that place. He tells you that he has known the Judge; that

he had seen him at one occasion intoxicated, or under the influence of liquor, at least; that he was in court every day, did not miss a session during the term of court at Tyler, and he says: "There was no doubt about his perfect sobriety in my mind."

We have the testimony of Mr. Larson, alone enough to offset that of these three men, or rather two (for I apprehend that Coleman is out of the case.) We have the testimony of Mr. Larson, the intelligent county auditor of that county, a Lake Benton man, a man whose mind would naturally be prejudiced against Judge Cox. He tells you that he was down there and was present at every session of the court except one morning, I think Friday morning, when he did not come at the time court opened. There was a part of a day that he was not there, but the balance of the term, from Wednesday morning until Monday night, he was there, and he tells you he was in court and watched the proceedings particularly. He tells you also that he had several private conversations with the Judge during that term of court; that he came down there mainly to have a talk with the Judge and with the county attorney in regard to the county records, and that he had several long and protracted conversations with the Judge, and he tells you that there were no indications of anything else but the Judge being perfectly sober during the whole of that term.

We have the witness Mr. Cass, another attorney from Lake Benton, from the place that hates Judge Cox, as it is claimed even by the managers. Mr. Cass, it seems, was one of the swearing parties up at Marshfield. He tells you that he was mad the second day of the term down at Tyler, or the first day of the term I believe it was, Wednesday. He got through with his cases and wanted to go off mad. He was asked why he was mad, and he stated he was mad at the Judge in the first instance, because he had moved the court down from Tyler to Marshfield. Being a Lake Benton man of course that was natural to him. And he was further mad because the Judge had beaten him in all his cases there that day. He had several of them, he tells you, and the Judge beat him in all of them. Now here is a man who would not be presumed to be a personal friend of the Judge. He is a man who would not be presumed to favor him any; and yet this man comes down and tells you that he was there; that he sat there during the term; that when the Judge heard he was going off, and going off mad, he said to him: "Stay; I hate to see you go off mad in this way; stay and see how the thing is run." And that he did stay there until Monday forenoon, I think; and he says that "the Judge was as sober at that term of court, and the whole of it, as I am now."

Now that is a strong comparison, for the young man told us he did not drink at all, I believe.

Then you have all of these witnesses against the testimony of Mr. Chapman and the testimony of Mr. Matthews, and, if you want to count it in, the testimony of Mr. Coleman. You have against the testimony of those three, as I said, Col. McPhail, Mr. Andrews, Mr. Butts, Mr. Dean, Dr. Scripture, Mr. Graham, Mr. Larson and Mr. Cass. Now, can it be said by any fair-minded man that the testimony of those men,—the testimony of men who it is shown have been rebuked by the Judge, the testimony of men with their hearts full of malicious and hateful feelings against the Judge, the testimony of a man like Coleman, who has been shown to be what he has been,—I don't need to animadvert

upon it any more,—is it possible, I say, that honorable and fair-minded men can say that the testimony of those three men has not been fully outweighed by the testimony of the honorable and respectable men, men of all professions and callings, of both Lake Benton and Tyler, which we have brought before you, that that testimony is not outweighed, outweighed so entirely that it ought to disappear from your mind and have your mind disabused entirely with the idea that Judge Cox was at this time intoxicated?

I will now go into the details of the facts or of the pretended or alleged facts which the witnesses give before you, upon the part of the prosecution. Mr. Chapman says on Friday the Judge was full; he didn't come over before Friday in the afternoon, for I suppose that is what he is talking about. That on Friday the Judge was full; that the performance wound up in a grand drunk at night. This was the time that the hat performance was had in the parlor, at which he claims that the Judge drank out of the bottle in a hat.

Now, I apprehend, as far as the hat is concerned, that that is fully disposed of; that if there was drinking done there in the parlor (which there undoubtedly was, a man going after two bottles of liquor, and it being sent around in fun in the hat) that it has been shown conclusively to this Senate that the Judge didn't get any of it except the empty bottle. You will all remember the graphic description given by the celebrated colonel of the Minnesota Mounted Rangers of that scene in the parlor,—of the bottle getting to the colonel and he feeling very much disappointed at finding that it was empty and sending the empty bottle around to Judge Cox to drink out of. There was also another witness who testified to the same effect; that he saw the Judge did not drink. I believe it was Mr. Cass; it was either he or Mr. Butts, but I believe it was Mr. Cass. Now, then, there is nothing shown of a debauch upon the part of Judge Cox in the parlor.

We find him next under the inspection of this Mr. Chapman up in his room where the card-playing was going on in the evening, and where he says in one breath that the Judge sat and played cards until "he got too full to hold a hand," and that then he was rolled onto the bed, and laid on the bed with his boots on. While in the next breath, but a few seconds afterwards at least, this same Mr. Chapman takes back what he had sworn about the Judge playing cards and getting too full to hold a hand, etc., and tells us that it was not so, that he lied when he told that, that he hadn't told it in fact,—that is what he said,—and that the Judge did not play. Now, I say that is farther evidence, if more evidence is needed, of what the testimony of Mr. Chapman is worth. I desire to call your attention to the fact that he said that the day ended up in a grand drunk at night; and left the inference that the Judge was full.

Now, as to that, we have got the testimony of Col. McPhail and the testimony of Mr. Butts, who both were there, who slept in the next room to Judge Cox, and who both were present there at the card-party, who both said that they saw no signs of intoxication upon the Judge that night; and I think Mr. Butts testifies positively that he did not retire until after the Judge retired to bed; that is to say, that the Judge laid himself down on the bed and propped some pillows under his head and dropped to sleep. Mr. Butts testifies to that, and he tells you that he saw no signs of intoxication upon the Judge that evening, that he did not consider him intoxicated. Mr. McPhail testifies to the same thing.

Mr. Andrews tells you that on that evening he was in the Judge's room, he thinks until twelve o'clock, and that he saw no signs of intoxication upon the part of the Judge. Mr. Dean tells you that he was there until eleven o'clock, and up to that time he didn't see the Judge intoxicated or showing any signs of intoxication. Now, then, I say that there is no question but what the testimony of Mr. Chapman is false. And he is the only one upon this particular point, I think,—no, Mr. Coleman helps him out, and he says he is one of those who helped to roll the Judge upon the bed,—after he had heard Mr. Chapman's testimony,—but against those two there is the testimony of Col. McPhail, Mr. Butts, Mr. Andrews and Mr. Dean.

Now, as to this rolling of the Judge upon the bed, you will remember that Mr. Chapman who testified to that, claimed that he saw that performance. It was after he had left and gone into his room and laid down in his bed to sleep, that he saw this performance through the window. The curtains were not down. He claims that he had a room in the ell, so that he could see from his room and from his bed, in fact, into Judge Cox's room or the room in which the Judge was.

Now, I apprehend that Mr. Chapman has been shown by the testimony here so far, by his own testimony as well as that of others to be a most unmitigated liar. His own story, taking it with all its hundreds of contradictions, its apparent lies, is almost alone enough to crush the man who gave it. But he has been so thoroughly contradicted, that there certainly can be nothing of his testimony that you can hang to,—not one particle, even if it had not been contradicted. I call your attention to Mr. Hodgman's testimony, the hotel keeper, and particularly to page 578 of his testimony, giving the diagram of the house. Now, he tells you that there was no ell at all upon that house; that the house was a square building, or at least that there was no ell; that it was longer than it was wide, but no ell. He describes to you the room of Judge Cox, he describes to you the room that Col. McPhail occupied, he tells you what room this man Chapman occupied; and by looking at the diagram you will see the utter impossibility of Chapman lying in his bed and through any window seeing into Judge Cox's room. As a matter of fact, if he was in his room he would have to peer through three walls, one room and one hall, in order to see into Judge Cox's room. I apprehend that Mr. Chapman is not provided with that kind of an eyesight. The learned manager understood that Chapman was caught in a pretty bad trap at that time and he tells you that he didn't testify that he saw the Judge in his own room; that he testified that he saw the Judge in Mr. Butt's room, and that he possibly might have seen into Mr. Butt's room.

Now I take it, gentlemen, that that is rather thin. I take it that the testimony of Mr. Chapman was to this effect: that Judge Cox and Mr. Butts occupied those two rooms together, rooms A and B; that Judge Cox and Mr. Butts had those, and that Mr. Chapman thought that room A, in which the card-playing was going on, was Mr. Butts' room, while, as a matter of fact, Mr. Butts' room was the next room, B, which he occupied together with Col. McPhail. We have got the testimony of Col. McPhail to that also. He tells you that Mr. Butts roomed with him and that one or two nights Coleman came in there and laid in bed before they got into bed, and in that way got free lodgings. Now then, it don't make any difference in which one of those rooms he claims it was that

he saw Judge Cox being rolled onto the bed, because whether it was in room A or in room B there was no opportunity to see through the window at all. For fear that it should be claimed by the managers that when Mr. Chapman spoke of the window he meant the transom in the door, I asked Mr. Hodgman whether there was any transom in any of these doors and he said no, there was not: that the only transom there was in the house was over the street door. Now, then, I apprehend that as far as the testimony, showing Judge Cox being rolled on the bed is concerned, it is shown to be the purest and sheerest fabrication, and that it is impossible that it could be true; that there was a natural impossibility which shows that it must and is eternally false.

But we have besides that the testimony of those who were present; the testimony of Mr. Butts is found upon page 568, and I will read you a portion of that testimony. He testified that he was there and played cards that night, and it has been testified by Chapman and Coleman also, that he was there.

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.
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.

But the landlord of that place has shown you that room had no window or transom in the door, and that Chapman did not occupy it neither.

Now I say that I think the testimony of Mr. Butts and Mr. Hodgman taken together with the light which nature itself and the construction of that building up there has thrown over Mr. Chapman, practically throws to the ground and destroys his theory and story about Judge Cox being rolled up on the bed with his boots on and being drunk

there that night; that there is no sensible man that will listen to or consider it for a moment any more.

The inference was thrown out by both Mr. Coleman and Mr. Chapman that the Judge went to bed so drunk, that he went there with his boots on. Now we have shown already that the Judge did go and lie on top of the bed probably with his boots on at this particular time, and that there was a very good reason for it, there being company in this room, so presumably he would not undress in their presence, that he laid down there and went to sleep.

Now we have the testimony of Col. McPhail, who was in the room, who had to come out every morning through Judge Cox's room, who tells you that every morning when he came through Judge Cox was not up,—the old Colonel was up almost before daylight, I suppose,—that he had to go through Judge Cox's room, and that there was only one morning when Judge Cox was not undressed, when he laid with his clothes partly on on top of the bed; that that was Sunday morning and not the morning this carousal had been the night before; that on that morning he found him undressed and in bed partially covered. Now, I take it for granted that that testimony corroborates that of Mr. Butts and shows that the Judge was not intoxicated; that he did not go to bed there for good with his boots on, because he laid down while the company was there, that he went to sleep and had a snore before he undressed and went to bed for good. Now, as to that Sunday morning Col. McPhil tells you that at that time his boots were off and his coat was off and he laid there on top of the bed in his vest and his pants. Now, I apprehend that it would be very natural for him, or you, or me, or any of us, if we were up there to do that thing. If it was a warm night, as we have heard this was, being in the warm season, it would be quite a natural thing for him to do, especially if he had been up late with company, so he did not feel like undressing. This testimony of Col. McPhail I say most thoroughly contradicts the testimony of Mr. Matthews, the deputy clerk, who tells you in one instance that the Judge was full every evening; "by 12 o'clock he tumbled over," he says, and he don't think he ever went to bed. Now, I will ask you to state how this man, who tells you, that he was not in the Judge's room more than one night,—this man who claims that he was working on his docket and things—his mutilated records—that he was working at those at night; how he knows anything about whether the Judge tumbled over at twelve o'clock or not. Or how he knows the fact that he alleges here before you on his oath that the Judge never went to bed, Now, I say, that it shows that man's animus; it shows what credit there is to be placed upon his testimony and what credence to be given to it.

This Chapman, and before I get through with him I desire to call the attention of the court to the fact that he tells you that on Friday—he was there only a part of Friday—in court the Judge's eyes were squinty and red—and he has got the same bloodshotness in which has been so effectually disposed of before—and that his hair stood the wrong way. Now, those facts are absolutely contradicted by Col. McPhail, by Mr. Andrews and by Mr. Butts, men who have known the Judge for years and years—one for twenty years, the other for thirty years, and one of them for several years. I desire also to call your attention to the fact that Col. McPhail also testifies that at no time during that term of court the Judge acted as "when I thought he was drunk."

The ideas of Mr. Matthews as to the condition of the Judge changes. He tells you himself that the Judge was bright and sober every morning, but that towards evening he got full and at every recess he seemed to get fuller. That is claimed only by him and by none of the other witnesses, and as to that point he is completely contradicted by Col. McPhail, by Mr. Andrews, by Mr. Butts, who were right there in the court room and had their cases before the Judge and would be apt to know more than the clerk does, who sits there occupied with his work and who evidently, from the shape his records are in, had enough to do with taking care of them without noticing the Judge particularly. They tell you that there was no difference in either the actions or the looks of the Judge afternoons from what it was in the forenoan during that term.

We now come to a circumstance upon which the managers, I suppose lay stress in this case,—that is, the action that was taken in the criminal case of the State against Chapman, on Monday. All the testimony agrees, I believe, upon the fact that the case was tried upon Monday. All the testimony agrees also I believe upon the fact that the man was brought in Saturday to plead, and that he was arraigned and took his time to plead until Monday morning. That on Monday his trial was proceeded with in the forenoon. I believe all parties agree upon that.

Now Mr. Matthews, the deputy clerk of court, comes down and tells you that this man entered no plea Monday morning; the defendant himself comes down and tells you so. The defense don't dispute it, they don't claim he made any plea; the respondent dont claim so; but when the manager tried to make capital of that, and by that to show that the Judge must have been intoxicated, I say that they have missed their mark considerably. In the first instance it must be plain to every Senator, that as to whether a criminal pleads or not is not the business of the Judge; it is not for him to look after and see that the proceedings go on in the proper manner, and that the county attorney sees after the interest of the county and the State in the proper manner; it is not for the Judge, if the county attorney commits an error, to tell him so; it is not his strict duty, at least it may be that some Judges do it; other Judges don't do it. I think that Judge Cox does it more than any other Judge. I think he feels nervous in several of his counties where he has got poor county attorneys, that persons may be improperly convicted, and that he therefore uses proper means to see that the thing is done in proper shape where the county attorney is not competent to do it.

But in this case it is shown in the first place that Judge Cox was not to blame for the failure of pleading. Mr. Andrews' testimony shows that fully. He was the attorney for this man Chapman, and his testimony shows that at the time this man was called up to plead and when they commenced to try the case, when the county attorney went ahead with it, that Judge Cox was busy with the clerk, instructing him in regard to the records. Now, then, the Judge was preoccupied with something else, and if the county attorney committed a blunder there, it was not for him to ask him, whether or not he committed the blunder. He took it for granted, I suppose, being busy with something else, that everything had gone on all right, and that they went on and tried the case. But there is one very material circumstance here that rebuts the idea that because this mistake was made, it in the least proved intoxication in the Judge. And why? Because even the witnesses for the

prosecution tell you that the Judge that morning was perfectly sober. Mr. Matthews tells you that Monday morning,—and it is established by the evidence both for the prosecution and the defense that it was on Monday morning that this trial proceeded and when this plea should have been interposed,—the Judge was sober; Mr. Chapman tells you he left that day at eleven o'clock, that on Monday the Judge was sober. That is the testimony of the witnesses for the prosecution. They agree then. Even Mr. Coleman, I think, says, that it was only one morning there that he thought the Judge was boozy, that all other mornings he was all right; but in the afternoons, once in awhile, he noticed that he was drunk. But all the mornings but one he claimed he was all right.

Now, he didn't know what morning that was, but he don't claim that it was this Monday morning, and I don't apprehend he would after the other witnesses said he was sober that morning. All the witnesses for the defense say that he was sober that morning. Every one of them. They claim he was sober all the way through, and the witnesses for the defense agree with them that this morning he was sober. Now, then, if it is definitely in testimony that the Judge was sober at that time on both sides, how is then the fact, that the blunder was made there, going to prove any different state or condition? I say that the theory falls to the ground of its own weight. Whether or not he made a blunder there we have got nothing to do with. It is not anything you could blame the Judge for, and if it was, he has not been charged with it. Unless it proves intoxication it has nothing to do with this case, but it does not prove intoxication, because all the witnesses on both sides agree upon the fact that the Judge was sober on that morning, when this alleged blunder was committed.

As to the trial of this case we have the testimony of Mr. Andrews that the Judge was perfectly sober, clear in his rulings, "as clear as could be, perfectly sober during the trial of the case."

The next scene in the case is that the jury goes out before noon and comes back before noon too,—a short case to try evidently, probably started at an early hour, at seven or eight o'clock, that the jury comes back finding a verdict of guilty of a simple assault, the man being arrested for committing an assault with intent to commit a rape. Then the attorneys discover to the court for the first time that there has been no plea. The Judge turns to the county attorney and asked him if that is so, and the county attorney who was undoubtedly a little boozy that morning tells him that he did't know.

Now, upon this point the records are going to help the prosecution out, they claim. And what records? I desire hereafter to refer to the original records, to show you the records and ask your attention to the fact that upon the page where this particular entry is made in regard to this case the record is evidently mutilated, and mutilated for a purpose, for the reason that that record is made just as crazy as it is possible to make it. The whole of that record is bad, God knows. I remember one instance (my associate called my attention to it to show how that clerk keeps his records,) in one place it was stated that motion was made that C. W. Stites be admitted as an attorney at law, and nobody opposing the motion, the same was granted, etc. That is about a fair sample as to how that clerk keeps his minutes and what idea he has of what goes on in the court room.

But I desire to call your attention to the fact that these records con-

tradict and are contradicted by the testimony of that clerk himself as to what took place there that morning and that forenoon. They are absolutely contradicted by Mr. Andrews, the attorney in the case, who says that the minutes are not correct; I desire to call your attention to the original records to show the way they have been mutilated, and that a piece has been pasted over where the record of this case comes in,—you can see the writing underneath,—another piece of paper pasted over it and the writing done upon that; that that is the only place in those records where you find a similar mutilation or any mutilation at all. Is not that a singular and remarkable coincidence? I think when the Senators examine those records, they will come to the conclusion that there has been no sufficient explanation why this was done, that they will come to the conclusion, that they have been mutilated by that scoundrel of a deputy clerk for a purpose, and that that purpose was the purpose of this trial.

I don't know that it is necessary for me to spend any time to go on and show the utter ridiculousness of those records, the contradictory manner in which they are kept even as to this particular case, that part of it that is introduced in evidence here.

Now, it is claimed in these records that as soon as the verdict was received, judgment was entered by the court and the man was fined ten dollars, and that *then* a motion was made in arrest of judgment,—after the judgment had been made and entered,—an idea that is utterly refuted, not only by common sense, but by the evidence of Mr. Andrews, an attorney in the case, who tells you that there was no time for any sentence, because he immediately interposed an objection, as any lawyer who knew his business would, make a motion in arrest of judgment at the time, when the verdict came in, and not wait until after judgment and then move in arrest of a judgment that could not be arrested any longer.

Now that record is contradictory again, in saying that the motion was set to be heard at the coming in of court in the afternoon, and then a minute afterwards saying that the motion was made then and there. But all of those matters have been contradicted by Mr. Andrews. He tells you that there was no judgment, that the man was fined nothing at all, that he gave his notice of motion in arrest of judgment and that the court told him he would hear it right then and there, that the Judge heard it, and that he set the verdict aside and ordered the party to be brought in to plead in the afternoon and to stand a new trial.

I will also call the attention of the court to the fact that when that clerk of the court has in his records that the judgment was that the party should be fined ten dollars, or stand committed six months to the Hennepin county jail, he has again a false record.

Mr. Andrews says that there was no such a judgment or sentence either before or after plea that what the Judge said was sixty days, and that that fool of a clerk as he was, has got it in six months and he now swears to it. Mr. Andrews explains to you the testimony in regard to the costs, and it goes to contradict the testimony of Mr. Chapman who says that the Judge told him, when he claims he came to him outside at noon recess, that if he did not come in and plead guilty he would fine him fifty dollars and put the costs on him anyhow, that there was nothing said by the Judge as to the costs; that at no time, when sentence was passed did the Judge say anything about costs, until Mr.

Matthews, one of the attorneys for the defendant, asked how it was with reference to the costs, and that the Judge told him that the costs would always follow the fine in his court as a matter of course. This same Deputy Clerk Mathews,—and before I go on to the other matters I desire to get entirely through with him,—also says that during recesses, or after recesses, the Judge always got worse. Now, I claim it is shown here by testimony of Mr. Andrews, as well as other attorneys, but mainly by Mr. Andrews, that at none of these recesses, of which there were several there, on account of the attorneys not being ready, did the Judge go over and drink; that at one or two he asked the Judge if he would not go over, but that the Judge told him no, he didn't want to go into the saloon and didn't want to drink any; and all of the attorneys who were asked testified, and all the parties in court have stated, that it was not true; that the statement of Mr. Matthews was false, as the balance of his statement was. Mr. Matthews also claims that in the afternoon when the Judge came back and when he did sentence this man finally, that he then was evidently under the influence of liquor, not claiming that he was so during the forenoon. As to that point he is contradicted by Mr. Andrews flatly who says that he remembers the occasion and remembers that the Judge's mind was clear and that he showed no indications of liquor whatsoever.

I will now proceed to the testimony of this George Chapman, who was the defendant in that case. He tells you a story that is very credible indeed. He says that the Judge at this noon recess, after this matter had been disposed of virtually, you may say, and when there was nothing to do for this man but to come in and plead at the afternoon session, that the Judge met him at this noon recess near the end of the saloon, that he was there talking with Mr. Strong, and that the Judge when he saw him stepped up to him and told him that he should come in and plead guilty of a simple assault; that if he did not he would fine him, I think, fifty dollars, and that he would anyhow put the costs on to him, and that he was not going to stand any Connecticut blue laws played on him.

Now, I ask you in the first place if that is a probable story? Is it a reasonable story? Is it reasonable that the Judge would have gone to this man, who would not understand, and who would not naturally be the one to decide that matter? Is it reasonable that the Judge would have gone to the client and have told him this? If he would go to anybody at all, is it reasonable that he would go to this stranger, who did not understand anything about the law nor the effect of the law, when the man had an attorney, especially when those attorneys were Mr. Matthews and Mr. Andrews, old acquaintances, one of them an old law student of the Judge, the other an old partner of the Judge; is it likely, I say, that he would have gone to them if he wanted to have a conversation about that case, or is it likely that the story of that man Chapman is true that he went to him and told him what he says he did?

Is it reasonable that he would have done so under the circumstances? And I apprehend upon all of these matters that have been brought forward, where there is contradiction, and even where there is not, it is proper for Senators in order to come to a proper conclusion to ask themselves as to whether or not the story told is reasonable, whether or not it is probable or whether it is the contrary; because that is the only way in which to arrive at the truth of these stories. Now, I say, I feel confi-

dent that every Senator on this floor feels convinced that if the Judge wanted to approach any body about that case, if he felt that a mistake had been made, the men he would go to would be his old friends, the attorneys in the case, and that he would lay the matter before them and ask them what they would do about it, if they had not better do this or that, or tell their client to do so and so.

But, besides, this matter is denied. It is true that Judge Cox is not called upon the stand, for I did not desire, nor did my associates desire to have him give any evidence in this case. We did put him on simply for the purpose of identifying this book, which the Senate refused to receive, and for nothing else. We did not desire it should be said here, when Judge Cox goes acquitted out of this court room that he had sworn himself free. And when the charge was, as it is here, drunkenness, we did not consider that it would be proper for us to put the Judge upon the stand. And although there were many small incidents that were peculiarly within his own knowledge and locked in his own breast, which we could bring forward by no other witness.

Yet we felt that we would rather stand the inconvenience of not being able to contradict those small incidents than to run the risk of having the community or any part of the community dissatisfied with the result of this court; say that Judge Cox was called upon the stand to clear himself; we desired that what evidence should be brought forward here should be brought by men against whom you could not say that they did not know what they were testifying to, that they were not in condition or were claimed not to be in a condition at the time to know what they testified to.

Senator MEALEY. Mr. President, I think there are only about thirteen or fourteen Senators present.

The PRESIDENT *pro tem.* I did not hear what the Senator said.

Mr. ARCTANDER. That there is not a quorum,—only thirteen or fourteen Senators present. It is very disagreeable, of course, to make an argument to less than a quorum.

Senator JOHNSON, F. I. Mr. President, I move a call of the Senate.

The motion was seconded.

The PRESIDENT *pro tem.* A call of the Senate being moved and seconded, the clerk will call the roll.

The clerk not being present the presiding officer requested Senator Campbell to call the roll, which was accordingly done, and eighteen Senators were reported present. The sergeant-at-arms was then furnished with a list of the absentees and directed to see that none of the Senators pass out.

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

Senator JOHNSON, F. I. I think there must be a quorum here now.

The President *pro tem.* Senator Campbell will please call the roll and ascertain.

Senator BUCK, C. F. Mr. President, it is almost time to adjourn, and I move that further proceedings under the call be dispensed with.

Senator HINDS. Mr. President, I hope that motion will not prevail. I think we had better have a quorum here and then take a recess until 8 o'clock this evening and hold an evening session. It is going to be absolutely necessary to have evening sessions if we get through this week, and we must not only have evening sessions, but meet earlier in

the morning. I think every Senator desires to close this matter up this week, and I therefore hope the motion will not prevail.

Senator BUCK, C. F. Mr. President, this room is to be occupied to-night. I don't know whether there is any provision made for meeting elsewhere, but I am satisfied of one thing, from the expression of Senators, that you won't be able to get a quorum here to-night.

Senator CAMPBELL. There is a quorum present.

Senator HINDS. Mr. President, I move that when the Senate takes a recess at 6 o'clock, it take a recess until 8 o'clock this evening.

Senator RICE. I second the motion.

Senator AAKER. I move 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.

Senator ADAMS. I object. I object for this reason. I understand this part of the building is to be used for another purpose.

The PRESIDENT *pro tem.* Provision has been made for meeting in the municipal court room.

Senator ADAMS. Then let the gentlemen make his motion in proper form,—that when a recess be taken, it be from this court room into the municipal court room.

Senator HINDS. I accept the amendment.

The PRESIDENT *pro tem.* As many as are in favor of the motion will say aye. It is carried.

Mr. Arctander, you will proceed with your argument.

Mr. ARCTANDER. Mr. President, I believe when I was interrupted by the motion of the Senator, that I was about animadverting on the testimony of George Chapman, the defendant in the criminal case, at the Lincoln county term. I think I stated that his testimony was unreasonable and improbable, that the story was not a reliable one, and I was about to state that we had controverted the fact of his having a conversation with the Judge or having any meeting or conversation with him at all outside of court, by the person whom he says was present at the time when the Judge stepped up and talked with him, namely, Mr. Strong. If you will go back you will remember that a Captain Strong was called upon the stand here and testified that he was the only Strong in that county; that he was present there during that term, that he was present with the Judge on the street at one time when this Chapman came up and when he had a conversation with the Judge, but that that was Saturday when Chapman was brought in, and before he was arraigned at all, and that the Judge had no conversation with this Chapman in his presence, and that at no time Chapman came up and talked with the Judge, or the Judge with Chapman, while either of them was in Mr. Strong's presence on Monday.

Now the manager says well, the witness did not swear it was on Monday. No, it is true enough he didn't say it was on Monday, but the witness did say it was after he had been found guilty by the jury, and when he was sentenced, and it is testified that the jury found a verdict of guilty Monday forenoon, and his sentence is testified to have been on Monday afternoon, consequently that locates the time; the only time he could have had a conversation of that kind would be on Monday, and Mr. Strong tells you that he was not there, but that the conversation

and the only conversation that was had in his presence was had on the previous Saturday before he was arraigned.

Now there is another thing that I desire to call attention to in connection with that, and that goes also to show the unreasonableness of this story. This clerk, Mr. Matthews, tells you that when the party came into court during that Monday afternoon to plead, to make his final plea, that then the Judge called him up before he plead and asked him if he was well heeled and told him if he was not well heeled (didn't have much money), that he would have to go light on him. Now this is denied by Mr. Andrews. It stands there as a part of the testimony of the prosecution, and I ask you to say whether or not the evidence of the two men is compatible upon any theory whatsoever,—that the Judge should first see that man on the street, make his arrangements with him as to what he should do, and afterwards, when he came into court call him up to plead and ask him this question. Now the two theories are entirely contradictory and they cannot both stand. But further than that, we have the testimony of his attorney, Mr. Andrews, and he tells you how he came to make that plea. He tells you that it is not true that the defendant came to make that plea under any understanding with the Judge, or any conversation he had with the Judge but that he came to make it according to an arrangement that the attorneys for the defendant had with the county attorney. Now that is a reasonable theory, that is a probable theory.

Now, you have two theories, or two versions, the version of the prisoner's attorney and the prisoner himself, and it is for you to say which, under the circumstances, is correct; whether the prisoner's theory is not broken down by the testimony of Mr. Matthews, if it is not disposed of by Mr. Strong,—who certainly corroborates our theory,—and if it is not thoroughly bursted by the testimony of Mr. Andrews, his attorney. Now, take all the facts and circumstances that surround his story, and take in connection therewith the further testimony of that witness Chapman, and you will see how likely that the whole story is a falsehood, that the whole is a made-up story. Why? Because this man Chapman, the way he testifies shows either such an utter ignorance or disregard of facts that he is not worthy of being believed upon anything that he says, or else he shows such an ignorance of what went on there and what was done there, and such a poor apprehension of what was going on or what was said or done that no credence can be placed upon him.

Why, he tells you farther, that when the evidence on the part of the State was closed no evidence was put in on the side of the prisoner, and why? Because the Judge said that they need not cross-examine the witness. Now, that is contradicted by Mr. Andrews, and of course the Judge did not make any such remark; but the best of it comes hereafter. He says that he thinks the Judge addressed himself to the county attorney and made that remark. Well, that shows what that man knows about matters in court; it shows what he is apt to know about any of the proceedings, or anything that he heard, or anything that occurred between him and the Judge.

I submit the reasonableness of that part of his story—that the Judge would speak up to the county attorney and tell him that it was not necessary to cross-examine the witness. The county attorney would not be likely to have much to do with the cross-examination of a witness, nor would he be the one to whom the Judge would be likely to

address himself on that subject. And he further says that the county attorney objected to the fining of the prisoner for the reason that he hadn't plead. Now it shows how he misconstrues and misconceives everything. Of course the county attorney was not the one to object, it was his own attorneys that objected, but he put it in the shape that the county attorney objected to his being fined, because he had not plead. When the man shows so much ignorance I don't wonder somebody had furnished him, before he went on the stand, with a manuscript to read from when he should get stuck; I don't blame them. I don't suppose it was the managers, I suppose it was some interested witness from Lake Benton. You remember that when we came to his cross-examination he pulled out a piece of paper once or twice and unrolled it and looked at it; and I asked him what it was and he said it was a statement of the proceedings up there. Now, I say that a witness that comes provided, armed and equipped in that way is not a witness in whose testimony you will place very much confidence.

The only witness I have got left upon the part of the State is Mr. Coleman. He tells you, to start with, that the Judge was perceptibly under the influence of liquor the first morning that he opened court at Tyler, which was Wednesday morning. Now upon that he is not only contradicted by every witness upon the part of the respondent who were present there during that term of court, which is all these seven or eight witnesses I have mentioned, but he is also contradicted by the witness for the State, Mr. Matthews, the deputy clerk, who contradicts both Chapman and Coleman, and who says that when he came with the books Wednesday morning he was late, and the Judge rebuked him because he had not come there in time. Court was already opened and the books were not there, and he says that on that morning the Judge was bright and sober when court opened.

That is what Mr. Matthews, a witness for the State, tells you. Now Mr. Coleman, this credible witness, this man who has done nothing but lying in this case, who has told you what the Judge's condition was when he was not within thirty or forty miles of where the Judge was, who has been shown to be an eternal liar,—this same witness tells you that the Judge was perceptibly under the influence of liquor the first morning, when he is contradicted even by the witnesses for the State, besides by those for the defense.

He says that he did not see the Judge undressed during the week. Now, it is in testimony here,—and it is uncontradicted—by Col. McPhail, that Mr. Coleman only slept two nights up in the room, where he had any opportunity at all to see, whether the Judge undressed or not. And if I know Mr. Coleman aright he would be up in the morning considerably later than the Judge would be, so he would not be able to tell whether he had undressed or not during the night.

And, now, as to his testimony as to the intoxication of the Judge during the whole of the term. I don't suppose it is necessary for me to spend time on him, but I desire to call attention to the fact that he testified at Beaver Falls as to the intoxication of the Judge when he was shown by four or five witnesses to have been absent from the town even; so he does here when two or three witnesses, at least, both Mr. Andrews and Mr. Butts tell you that at the time, when he testifies Judge Cox was intoxicated all through the term every day, he was in his bed at the hotel, sick, almost the whole of that term; that he was hardly ever in

the court room during the whole of that session. "He was in bed sick, at least, so he told me."

So you see the same man again. He was not in court, don't know anything about what was going on, but he comes here and tells you that the Judge was intoxicated, and it seems that we wrung out of that same witness upon his cross-examination that there was nothing in the rulings or in the charges of the Judge out of the way so far as his mental capacity was concerned, the Judge was always willing to go to work, and that there was no delay on his account. Now, that is what he tells on cross-examination. How he knows it I don't know if he was not in court. How he knows anything about it I don't know. But he has testified to it, and I suppose it is just as good one way as it is the other.

Mr. Collins, the learned manager who spoke before me, opening the case for the prosecution, made some remarks in regard to what the respondent had not dared to do in this case; that we had not dared to ask Mr. Strong, who was a member of that grand jury, about the intoxication of the Judge, nor Mr. Pompelly, the foreman of that grand jury; that we had not called a juror here to prove anything. Now, I admit that Mr. Strong was not asked anything about the condition of the Judge, and it was for two reasons. We had called Mr. Nash, whom I have not so far adverted to in this connection. Mr. Nash was a grand juror who was called upon the stand in regard to the intoxication of the Judge, and he tells you that he was busy in the grand jury room most of the time; that he was only in court once or twice during each day, but at those times the Judge was sober. Now, for that reason I didn't consider it was necessary to call any more of the grand jury; simply taking up the time of the court, when we couldn't show that they had been there daily, or at least steadily during the court.

I had already called Mr. Nash. Mr. Collins' statement that we had not called one of the jurors was false, because we did call one of the jurors, and he showed that he was sober at all the times when he was present in court. When Capt. Strong was called here, the Senate will remember that I was only allowed to call him upon a particular point; that when I made my application to the court I said that I had certain points that I wanted to call him upon, but preferred to call some one who had been present all the time, with reference to the Judge's condition, and I therefore asked leave to call him upon this particular point of the testimony of Chapman. Mr. Pompelly came here just as we were closing the article, and was called simply for the purpose of identifying the grand jury resolutions. I have no doubt that these men would have come before you and honestly would have told you just what the other witnesses did. It was no fear upon our part that we did not call them, but we felt we had probably to a certain extent abused the patience and the discretion of the Senate by calling all of these men, and that if we should call them upon points where we had a superfluity of witnesses already, it would be to abuse the kindness of the Senate to take up the time where we had disproved the charge so utterly by nine or ten men who had been there all day in court, and had utterly disproved the statement of their witnesses, one or two of whom had been impeached and the other two of whom impeached themselves, we felt that there was no need of taking up the time of the Senate any more.

The Manager further stated that what we brought down here was attorneys and the sheriff who was drunk himself there. That was a

unkind remark. In the first instance we didn't have the Sheriff down here, in the second instance it is not shown that any sheriff there was drunk. The sheriff of that county—too respectable a man to throw any such aspersions upon.

The manager further says that Mr. Hodgman dodged the answer as to the sobriety of the Judge. Now, I submit before you, Mr. President and Senators whether Mr. Hodgman did any such thing. I have not mentioned Mr. Hodgman amongst the witnesses at Tyler, because he was not in court and I do not desire to crowd upon this Senate anybody that was not in court, because I don't consider anything outside of any materiality; but Mr. Hodgman told you and he told you emphatically that Judge Cox, as long as he saw him, and every time he saw him, during that term of court, was perfectly sober. But to disprove that, the learned manager with a shrewdness that is peculiar to him, tried to get that witness, whom he presumed was not sufficiently a scholar to see the trap that they put before him, to testify that Judge Cox was perfectly sober during all of that term to enable them to argue to you that the man had not seen him, that he hadn't been in court at all, but yet more he was sober. The witness refused to answer that question; but he stated time after time, "Well, I didn't notice any signs of intoxication at any time," and finally said he could not say anything else than at the times he had seen him; and the manager in vain dug the trap for that witness. He didn't fall into it. He stated frankly and fairly all the time that he noticed no signs of intoxication upon Judge Cox during that whole term, when he was there, while he stopped at his hotel.

Now, gentlemen, I take it that that spree at Lincoln county, which they try to make such a hurrah about upon the part of the prosecution, has been utterly disproved, that there can be no question about it; that there is nothing left of it, nor of the testimony of the prosecution; that their magnificent edifice has been totally demolished. And I shall now only detain you upon this article a few minutes to compare the nature and character, the standing and apparent honesty upon the stand of the witnesses for the prosecution and those of the defense. Take upon the part of the prosecution first, the boss liar, Mr. Coleman, the man who has been shown up before you in his true color, and who has been showing himself up in his true color. I don't need to spend any words upon him—a man who has been shown not to be around court, and yet swears that the Judge was drunk. Take Mr. Chapman, who all through his testimony shows that he lies so fast that he don't remember his own lies even, who when he is cornered takes back half of what he has said and puts it in another shape; a man who has been proven by every witness who has been upon the stand, and by physical impossibilities to have been a most consummate liar; a man who has shown a bitter feeling against Judge Cox, and of whom it has been shown, although he denies it himself, and shown by credible witnesses, that when the Judge ordered that court to be moved, he told the clerk not to obey him. It shows his feeling against the Judge. The fact that he was of the swearing party, the fact that he lives where he does, everything goes to show that this man—I wouldn't say lawyer, because he is hardly worth to be called a pettifogger—is not to be believed. Anybody that knows him knows what confidence to place in that man; everybody who knows him, everybody who has known him in Waseca county when he lived there, every-

body who knows him out where he lives now, knows what measure to put upon him and his standing and qualification.

The PRESIDENT *pro tem.* Do the members of the Senate consent that the counsel shall finish up on this article?

Senator CAMPBELL. I move that he proceed.

Other voices. No objection.

The PRESIDENT *pro tem.* Go on.

Mr. ARCTANDER, [continuing.] I don't need to advert upon the testimony of that George Chapman, the criminal, the man who was accused, arrested, tried, convicted and punished, because it don't amount to anything. It is thoroughly controverted, and I say the man, as he sits upon the stand, shows what he knows about the case, and what he testifies to is not entitled to credit at all.

This man Matthews, another one of the swearing party against Judge Cox, another man who was rebuked by the Judge, when he came into court the next morning, for not attending to his business, a man whom I claim the records show is a mutilator of the court minutes, a man who is hanging around offices up there, who can't get enough confidence amongst the people to get elected to an office himself, and who is not honest enough to work hard, but lays around offices and tries to get deputyships and make a few dollars so as to keep body and soul together. You saw him upon the stand, you saw his bearing, you saw the innate mean face that he had, you saw that there was no truth nor honesty in that face; he must have given the impression to everyone, as he gave to me, of being a snake in the grass; it was an impression I could not help but get from that man, and I think every Senator got the same impression.

Now against that testimony what is there upon the part of the defense? What is their standing and means of knowledge?

I call your attention to the fact that this man Chapman from Lake Benton, the lawyer, so-called, has not been known to the Judge at all for any length of time, only for a year or so. This man Matthews is in the same shape. This criminal Chapman has not been shown ever to have met Judge Cox before this time. All men who had no opportunity of judgment, no means of knowing whether Judge Cox was intoxicated or not.

On the other hand we have for the defense the old honest Col. McPhail, and when I call him honest I do it not only because he bears that name and reputation wherever he goes, not only because he has deserved it in whatever he has done or said, not only his personal actions give him a right to that title, but I do it because his testimony is pregnant with honesty from beginning to end. You heard the honesty of the man cropping out while sitting here upon the stand before you. When he was asked by the counsel why he could not give any account of the Judge's condition on Monday of that term, what did he say? It would have been easy for him to have jumped over the whole term, and to have told you that the Judge was during that whole term perfectly sober. It was very easy to have done that if he would have stretched his conscience a little, but the old man is too honest for that, he refuses to testify upon Monday, because he might be mistaken. He has no doubt that Judge Cox was sober at that time but he don't desire to state anything about it, lest he might be mistaken, lest he himself was in such a condition at that time that he couldn't tell; and see with what

sincerity and honesty he comes before you and tells what the reason of his inability to judge was. He himself might have been a little boozy and he might not do himself or the Senate justice by testifying.

See also when that same Col. McPhail is asked what the Judge drank, and first what he drank himself on Wednesday, with what honesty he told you that he had had his drink in the morning and his drink after dinner. He don't hide it, he don't seek to hide it at all; when he is asked what the Judge drank during that term, how he speaks without waiting to let it be drawn out of him by the manager, tells you openly and frankly that that Wednesday night when they came back he sent for a bottle of beer, and he never sends for small bottles as he tells you. And he tells you about that little flask, that he sent and got it filled with "bug juice" Wednesday or Thursday morning. How honestly he tells you about the Judge drinking out of the bottle with him, a third of a pint, and with what a sad smile he told you that "They made it do." The same with the bottle the third day, and just think of it, four of them to drink out of that small bottle. And then one evening, when he felt sure about the two bottles of beer he did not seek to hide the playing for that beer. Mark you the sincerity of his heart, when he was asked whether the Judge drank some of that beer. "I think he did." Don't you know he did? "No, I don't know he did, but I think he did." And so all the way through. The last evening he tells you about the bottle of liquor coming up there and they drinking sitting around the table as he testifies to. Now, those things are small circumstances but they go to make up and show the honesty of the man; they show that he don't try to cover up anything, and they give additional weight wherever his word falls that the Judge was sober, and that he didn't drink anything more than what he says he did.

I say it goes to give additional weight to his testimony, and when a man comes upon the stand and is open in his statements and evidently don't try to conceal anything but tries to give you the facts as he understands them, I say that man is entitled to credit, and I suppose any day you will take that man and be willing to offset him against a man who tells you one thing one minute and the next takes it back again and tells you another thing about the same occurrence. I forgot to allude to another occasion,—at the time when they went over to Lake Benton. With what honesty the old man tells about how they were "sweating the cat" on the way home; how they were drinking there; about the fun they had; how anxious the Judge was that they should send the bottle over to his seat; and how he tells you that he got boozy; and that they made a pretty good hole in the bottle; how he admits himself that he got boozy. There is no desire to conceal or hold back anything.

Now, this man who had known the Judge for thirty years, who had served with him in the army, who had undoubtedly seen exhibitions of Judge Cox's peculiar frailty and who says himself that he has seen him intoxicated, who is apt to know whether he is intoxicated or not,—he the honest man, who hides nothing, who conceals nothing,—comes before you and tells you that Judge Cox was perfectly sober during that term, showed no indication of intoxication. Will you believe him? I think you will have no difficulty in taking Col. McPhail's word for whatever he testifies to, nor in taking it against five Chapmans and five Matthews if it be necessary.

Then we have the next witness, Mr. Andrews, an intelligent lawyer as he is, a lawyer of considerable practice up there, a man who has known the respondent for twenty years, a man who has been a clerk in his office, knows his frailties, his habits, has seen him under circumstances, so that he is competent as a judge to tell whether or not the Judge was intoxicated at this time, and he swears that he was in court every hour during that term. He knows what he is talking about. He does not go off all of Thursday and a part of Friday and Monday forenoon, like Chapman, nor does he lie sick in his bed at his hotel while court is sitting, like Coleman. He is actively engaged, tries one side of every case there, and ought to know if the Judge was drunk.

Then Mr. Butts, the next witness, an attorney from Lake Benton, right from the home of the Philistines, you may say, in this case; a man, besides, who, it has appeared in testimony, has studied in the office of Wilson & Gale, of Winona, the attorneys of this Winona and St. Peter Railroad Company, a man who comes here, he knows, against the interests of his old preceptor, against his feelings, and the feelings of the town he hails from. Yet he tells you that he was there all the time in court, and that he was in the same room with the Judge or in the next room, with the door open all night. He tells you that he is not a drinking man himself. He tells you what are his ideas about the influence of liquor, about intoxication. That a man is under the influence of liquor if he drinks any at all; that he is drunk if he is partially incapable of attending to business, He is honest about what he has seen the Judge do. He tells you that one morning he was present and saw them take this drink out of the bottle; this spree where they divided that one-third of a pint between three of them. He tells you also that he has not seen the Judge drink anything except at that time, outside of evenings, and that at night, after business was over. He did during that term see the Judge take in all from eight to ten drinks. Well, now, that is probably the extent of what Judge Cox did drink during that term of court. Distributing it over four or five, or five or six days, as that term lasted, it would give him not quite a drink and a half a day. This Mr. Butts was right with him, living next room to him, and I say it is presumable that he knows just what he speaks about.

I forgot to call your attention while I was at the article, to part of the testimony of Coleman and Chapman. Coleman says that he saw the Judge drink frequently in saloons; Chapman says he did also several times. Now, against that we have the testimony of Apfeld, the saloon keeper, who tells you that Judge Cox was not in his saloon at all only Friday or Saturday, when he went in there to bring a man out who was making a disturbance, and that after that time he was not in there before Monday. That off-sets that testimony.

Mr. Dean is another of our witnesses, another sober and industrious young attorney, who has known the Judge for six years.

We have called Dr. Scripture, a respectable and honest man, as every body could see when he was on the stand, a man who stands high up there; a young man, it is true, but a young man with a large practice, and a man doing a good business there; a man whose attention had been called to Judge Cox and his peculiarity, and who watched him thoroughly, and who had good occasion for seeing him, for he was in court every hour during that term, as he tells you. There was no incentive on his

part to testify falsely; he is here only for the purpose of telling the truth.

Then we have Mr. Graham, a lumber merchant at that place, a man of extensive business and a man of means; a man who has a reputation and a standing in that community. As a matter of fact, I want to call your attention to the fact, gentlemen, that as far as the Lincoln county term is concerned, while the witnesses brought down for the prosecution are part of the scum of society, of those that have nothing to do, barnacles upon the real members of society, the witnesses for the respondent are men of the best standing in that community,—four attorneys, one doctor, two merchants, one elevator owner, one farmer and county commissioner, and one county auditor. They are all men of standing in that community, and, as was remarked by one of the lawyers of that county, "The very best men of our county are down here on the part of the respondent." Can it be that those men are coming down to tell lies? Are they unintelligent men that they cannot tell the difference between when the Judge is drunk or sober? I think the question will be answered in the negative. Now, this Mr. Graham, one of the best business men of that place, tells you that he has seen him under the influence of liquor before; he is able to judge. That he was in court three or four times every day. And as I say, he is intelligent. I think he is honest. Some of the Senators on this floor know him, and he certainly needs not my vouching for him.

Then we have the county auditor, Mr. Larson. You have noticed him, a modest man, a cautious man. He is a Benton man too. He says he watched him closely because he had heard before he left Lake Benton that he had been on a spree at Marshfield. When the Judge adjourned that court and went to Tyler, some of those Lake Benton fellows, like Chapman, went back to Benton and told them that Judge Cox was drunk, of course.

Mr. Larson tells you that when he came down there he watched him particularly; that he had private business with him; that he was in court a good deal of the time, and that he had seen him under the influence of liquor, so that he knew Judge Cox sober and Judge Cox under the influence of liquor. Then there is Mr. Cass, another Benton man. And as I called attention to him before I don't need to do it now, except just to mention the fact that you remember he testified that he was very mad at the Judge because he adjourned court from that place, and because he was beaten in all his cases in that term of court.

Then Mr. Griffiths, another Benton man, the chairman of the board of county commissioners, who had heard, as I stated before, that the Judge did not come to Marshfield in time to open court because he was drunk. That he watched him and became satisfied and had no doubt but what the Judge was perfectly sober;—an intelligent man as you saw upon the stand.

Then there is Captain Strong, the man who testified in regard to this conversation with the criminal, Chapman. I don't need to refer to him,—a man who owns all the elevators, or most of them, on that line. He knows the Judge, has been acquainted with him a considerable time and saw him there. Of course it don't make any difference as to his acquaintance because he don't testify as to whether the Judge was intoxicated or not, but he is a man whom every one who knows him, knows him to be an honest man. Whatever he testifies here in regard to the

conversation of Chapman with the Judge everybody will take for the truth as against Chapman.

Then Mr. Nash, the grand juror, who is a merchant at Tyler, who says he was in court every day once or twice. Then Mr. Apfeld, the man who kept the saloon there. I suppose the counsel wants to make you say, that he is not to be believed when he says Judge Cox was not in his saloon except on one occasion, to which he testifies. That, in the first instance, he can not know. Now, I say if Judge Cox was not in his saloon, except upon this special occasion, he would be very apt to remember it. It was during court. Judge Cox was of course a prominent actor in the drama that was enacted up there just then, and knowing him to be a drinking man, and his not being in the saloon, it would naturally surprise him, and he would naturally remember it. This man was exceedingly offended at me when he went off the stand. He said he didn't think I had done him justice when I had only shown that he was a saloon keeper. He wanted this Senate to know that he was, besides that a livery stable keeper, deputy sheriff, and a deacon in the church up there; and I was very sorry that I had not brought it out at the time; I didn't know about it then, and I now want to repair the injustice he claims I did him. But, if he was only a saloon keeper and nothing more I should dare to risk him against a Chapman, a Coleman, or a Matthews every day in the year. He is certainly as honorable, he is certainly as honest a looking man, as honest a speaking man, as honest a swearing man as all three of them together.

And now I will ask you, gentlemen, is there any reason why you, after hearing this testimony, after hearing the slender testimony upon the part of the State, the exorbitant stories of these slender men, these men with slender reputation, these men with slender morals and slender faces,—from whom dishonesty drops with every word,—after hearing that, and hearing it gainsayed by eleven of the best men that the county can produce,—by men from all callings, by lawyers, by merchants, by doctors, by every one up there, can you, as conscientious and fair minded men, say that the defense has not crushed the testimony produced by the prosecution under the 14th article; that it is not crushed,—not only a reasonable doubt raised in your mind as to its truth—but that it is not crushed to the ground, never, never to be resurrected again.

And I ask if any fair-minded man can take that evidence, can take the evidence of those witnesses, men as they are, of their standing in the community—and men don't get standing in a community for nothing; rascals and thieves and dishonest men don't get standing either as lawyers or as business men—and can say that it is reasonable, that the best men of Lincoln county should so love Judge Cox, not only those of Tyler but those of Benton who have been cursing him in regard to that county seat and that court, that those same men should come down here and perjure their souls for his benefit or anybody else's benefit. Is there any incentive for them to lie? Is there any incentive to draw them down here to give anything but the truth? I say there cannot be, and if there cannot be, then certainly their testimony towers so that under its weight is crushed the castle built by the prosecution under article fourteen.

The PRESIDENT *pro tem.* The Senate will now take a recess until eight o'clock this evening, to meet in the municipal court room.

MONDAY EVENING, March 13th.

EVENING SESSION.

The Senate met at 8 o'clock P. M., in the Municipal Court room and was called to order by the President *pro tem.*

THE PRESIDENT, *pro tem.* Mr. Arctander will resume his argument.

Mr. ARCTANDER. I forgot to call the attention of Senators, before I closed my argument as to the fourteenth article, to the fact that Manager Collins in his argument called upon Mr. Sanborn and Mr. Allen to corroborate the testimony of Mr. Chapman, that Judge Cox was intoxicated at Marshfield. I thought at the time it was rather a distant corroboration, from the fact that Mr. Sanborn and Mr. Allen testified that they saw the Judge going from Tracy to Marshall a week afterwards, and that it would be rather too distant a corroboration to do the manager or Mr. Chapman any good. I thought again that he was mistaken as to the time, and had got Mr. Sanborn and Mr. Allen mixed up with the trip to Marshfield instead of to Marshall, and I considered it excusable certainly in the manager, as he had not attended to any great extent during the time the testimony was taken. But when I found he claimed their corroboration not only upon their trip to Marshfield, but afterwards also on the trip to Marshall, I thought it was a little too much of a good thing, for Senators will undoubtedly remember the time when Mr. Sanborn and Mr. Allen testified they saw the Judge when he came into the car etc., which was on the trip to Marshall, a week after the Judge went to Marshfield; consequently there is no corroboration there of Mr. Chapman, nor of the other chaps who swore to the intoxication of the Judge at Marshfield.

I desire now to proceed to the

FIFTEENTH ARTICLE.

I would call the attention of the Senate to the fact that on this article, and before we really come to the merits of it, you may say, (that is to say the Judge's condition at Marshall during the term of court there), we should examine into his condition in the early part of the day, because that may probably lead us to satisfactory results as to what his condition really was on the afternoon of the same day when he opened court at Marshall. Several witnesses have testified to the condition of the Judge in the morning, who were not regularly called under article fifteen, but who were witnesses virtually under article fourteen, (the Lincoln County term), and who had seen the Judge on the morning he left Tyler to go to Marshfield. Senators will remember when he left there Tuesday morning about nine or ten o'clock I believe, and that he arrived at Marshall about half past one; opened court there before two o'clock and proceeded with business the same day. Now, these witnesses, as I said, were not called under article fifteen, but while giving their evidence under article fourteen they testified to the Judge's condition on the morning of the first of June, when he went to Marshall. The State also saw fit to rebut that testimony, to bring the testimony of Mr. Allen and of Mr. Sanborn in whose car, it is claimed the Judge was during part of the trip from Tracy to Marshall, and that is all the wit-

nesses that they bring forward as to his condition prior to his arrival at Marshall.

Senator BUCK, C. F. I think Mr. Sanborn said nothing about his condition.

Mr. ARCTANDER. I do not remember whether he did or not. I did not pay much attention to him. He told about the whisky bottle, I think.

Senator BUCK, C. F. Not Sanborn.

Senator CAMPBELL. I think the Senator is right; he did not say anything about the Judge's condition.

Senator BUCK, C. F. He didn't know anything about the whisky bottle; he spoke about the overcoat, however.

Mr. ARCTANDER. I shall not contradict the honorable Senators. I did not pay particular attention; as I did not think his testimony was of sufficient importance. My memory may therefore fail me as to that particular testimony.

Senator CAMPBELL. He did not say anything about the whisky bottle.

Mr. ARCTANDER. We called upon Mr. Hodgman, the hotel-keeper, who saw him in the morning and saw him run to the train; also Col. McPhail who was with him on the train and went up with him to Marshall; also Mr. Butts, the attorney of Lake Benton, who saw him leave that morning on the train. We called Mr. Graham, the lumber merchant at Tyler, who also saw him go to the train. All these witnesses testify that when Judge Cox left Tyler in the morning to go to Marshall he was sober. Some of them testify that they saw him run to the train. Dr. Scripture a farther witness testified to the same thing, making in all five witnesses who testify as to his condition that morning. They testify that they saw him running to the train; that he had to run to catch the train; that they saw him on that morning and talked with him and that he was sober.

Now we have him safe on board the train. We then meet him next at the final stopping place at Tracy, where he has to change cars. We there called a man, Mr. Hartigan, a saloon-keeper, who tells us that Judge Cox came to his house from the train, and that there was just time enough for him to have reached his place between the time the train arrived and the time the Judge came there, from which fact Mr. Hartigan claims that he could not have gone into any other place; at least, he *thinks* he could not. He testifies that the Judge came right to his place, that he took a glass of beer there, that he went up stairs with Mr. Whitney and Col. McPhail and some others,—I don't think he stated the name of the third man, whoever it was,—and that Mr. Whitney sat down and played on the piano; that when they heard the train whistle they went down again; that before leaving he took another glass of beer; that Judge Cox after leaving him had barely time to reach the train and without missing it, could not have gone into any other place.

Now, then, we have traced him from Tyler perfectly sober to Tracy, where he drinks two glasses of beer, and we now again find him on board the cars. Mr. Andrews testifies as to his condition there. He says the Judge was sober on the cars; that he saw him there for a little while in the smoking car, and that the Judge was sober.

The learned manager, in his argument, adverts to the fact, or what he claims to be the fact, that Mr. Andrews had admitted, on his cross-exami-

nation, that the Judge when he was on the train had been drinking some. Well, in the first instance I suppose that is not denied, because our own testimony goes to show that he had been drinking some; but I desire to call the attention of the Senate to what Mr Andrews' testimony was upon cross-examination. I claim that all that Mr. Andrews said was that he knew the Judge had been drinking some. He expresses it probably in a little out of the way manner. He said: "I noticed that he had been drinking;" but when he was asked how he noticed it, he said it was because he had seen him drink a glass of whisky at Tyler before they left in the morning, and that if he had not seen him drink that, there was nothing in his personal appearance or in his actions or language to indicate that he was intoxicated or under the influence of liquor, or that he had been drinking any, but having seen that, he uses the expression, "I *noticed* it." So that is far from any admission on the part of Mr. Andrews that the Judge was under the influence of liquor, at least visibly under the influence of liquor on the train. I will read from his testimony:

Q. Now, he was a little intoxicated, was he?
A. Well, I couldn't say that he was intoxicated, but I think that he had been drinking a little.
Q. You think he had been drinking a little so that you noticed it?
A. I think he had been drinking a little that day, because I know it.
Q. How did you know it; did you see him drink?
A. I saw him drink one drink of whisky.
Q. Where was that?
A. At Tyler.
Q. That was before you started?
A. Yes.
Q. Did you see him drink any after you left Tyler?
A. I did not.
Q. Did you notice that he had been drinking before he took that glass of whisky?
A. I noticed that he had drank one glass of whisky, or something, in my presence, the evening before.
Q. Well, that wouldn't last until the next day, would it?
A. I think not.
Q. Then did you notice in the morning that he had been drinking before you saw him take that glass of whisky in Tyler?
A. No, I didn't notice that; it was quite early, too, when he took that

And again on the next page:

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 was not my question; I asked you if you noticed it?
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.
Q. Because you saw him? Well, you have testified that on that train you noticed that he had been drinking?
A. Well, I noticed him I say, from the fact that I had seen him drink.
Q. Nothing else?
A. That was the only indication.
Q. That was the only indication; that you had seen him drink some, saw him before sunrise, etc.

Now that shows that Mr. Andrews did not admit that Judge Cox was in any way under the influence of liquor, except as he supposed so from the fact that he had seen him drink a glass that morning. Now, so far as it is in evidence here, that is all that had been drank by Judge Cox that day; one glass of whisky at day-break and two glasses of beer at Tracy; we then trace him, I say, until we find him on the train speeding away to Marshall; and against all of this testimony there is nothing, as a matter of fact, but the testimony of Mr. Allen. [After an examination of the journal.] Yes, I was correct. Mr. Sanborn did express an opinion.

Senator CAMPBELL. [After an examination of the journal.] I beg your pardon; I see that he did not.

Senator CASTLE. I think he did.

Senator CAMPBELL. I thought so, but, from an examination of the journal I learn that he simply says he *thinks* he was under the influence of liquor.

Mr. ARCTANDER. Now, there is nothing whatever different from that, or stronger than that in the testimony of Mr. Allen. We then meet him on his arrival at Marshall. Judge Weymouth meets him at the depot, or at the bridge, and goes up with him to the hotel. Mr. Seward sees him at the hotel before he goes into court. Both these men testify that the Judge at that time was sober; that there was no doubt in their minds but that he was. We meet him next going up to court after he had been to the hotel. We find him, meeting Mr. Gley, the book-keeper, who had known him at New Ulm for a number of years, and who says he was perfectly sober at the time, when he met him and talked with him. We find Mr. Main, a lawyer from Tracy, meeting him immediately after he goes into the court room, and he says the Judge was sober at the time, that he had no doubt about it. We find when he goes out of court at the recess for dinner that Capt. Webster, a former sheriff of that county, meets him on the street; has a conversation with him, and he says he found the Judge perfectly sober. We find Mr. Eastman in the court room, when the grand jury is charged, forty minutes after that again, and he says he has no doubt the Judge was perfectly sober. I think we have landed Judge Cox in the court room at Marshall as sober as he ever was in his life.

Now, then as to the testimony of Mr. Allen and Mr. Sanborn, I maintain that it amounts to nothing. It is simply an idea thrown out,—nothing certain or definite by any of them,—that the Judge was under the influence of liquor; nothing that they saw; no recital of any indications of it. It is very natural to suppose that the reason why they thought he might have been under the influence of liquor was because they found, as it is claimed, this bottle in the coat pocket—if they did find it—because that bottle was crushed in some way in the kitchen, and because they noticed the smell of liquor. From that they judged that there was liquor in the party, and that probably the Judge had been taking his share. Well, if the liquor was in the bottle, it was not in the Judge, and, consequently, that in itself, would be no indication of the Judge being under the influence of liquor. Besides, I believe it was testified to by Mr. Allen that that bottle was about a pint bottle and that there were four in the party, and I beg leave to remind you, Senators, that one of them was Col. Samuel McPhail. Now, I submit that with four in the party, one of them Col. McPhail, who complained

very much of the size of the drinks that morning, when they had to divide the liquor between two or three—that a pint bottle was not an unreasonably large quantity, and that if there was whisky left in the bottle it was certainly an indication that the men had been very sparing with it, and that if there was plenty of whisky in the bottle there was very little in them. I take, however, with a great deal of allowance the testimony of Mr. Allen, particularly as to that bottle. I take it with a great deal of allowance because, I say, he was very anxious to place that bottle in the pocket of a coat, which the respondent carried. Mr. Sanborn testified, and I think Mr. Allen did too, on cross-examination, that that coat was not a summer coat or a duster or anything of that kind, but that it was a regular overcoat.

Now, I submit, Senators, whether it is reasonable to suppose that Judge Cox would travel with an overcoat on the 21st of June! It seems to me that it is almost as good as the idea advanced by Judge Wilson, that in the month of August they did not go up to the court room to settle the case which is mentioned in the fourth article here, but staid at the hotel parlor, *because there was a fire there.* It seems to me that Judge Wilson and his clerk both, have in some way transposed summer and winter. It is unreasonable to suppose that Judge Cox would travel with an overcoat at that time. I would not say it would be unreasonable to suppose that he traveled with a bottle of whisky, because I think that in traveling through that country he ought to have one. I know I would not think of going across the prarries without having a bottle of whisky with me, and I am no drunkard. No man knows what may happen to him in that part of the country, and I would not blame him if, when he was at some place, where there was no decent liquor to be had, he took a bottle with him, for fear the rot gut of some places up in that country would kill him. But the idea of having that overcoat with him struck me as utterly preposterous. He certainly did not, upon any of these trips, have to travel across the country; attendance upon none of his terms requires that, except the term when he had to go to Marshfield, some four miles away, and I apprehend that he would not in the middle of summer provide himself with an overcoat to go over there in the middle of the day. It does not seem to me at all natural or reasonable, and it occurred to me at the time the evidence was given that there was a good deal of imagination about it, and a good deal that was manufactured about it.

Another remarkable circumstance is, that none of these other men, neither Judge Weymouth, Mr. Andrews, Mr. Seward or any of the witnesses for the prosecution, except the two witnesses in the car, saw Judge Cox with any overcoat at all. On the contrary, even the witnesses for the prosecution testify that he was lugging a heavy satchel—full of books, evidently—a very large and heavy satchel and not an overcoat.

Now, it strikes me that it is remarkable that none of these witnesses should have observed that overcoat if he had one. If there was anything of that kind in the party it is more reasonable to suppose that it belonged to some one else,—very likely to Col. McPhail and that they have mistaken the man and mistaken the overcoat. If the story of the overcoat was a fabrication where are you going to place that whisky bottle? I am afraid you can find no place for it except in Mr. Allen's imagination. But this is not of sufficient importance to warrant me in dwelling upon it. I do not think the testimony of Mr. Allen and Mr.

Sanborn is certain or definite enough to have any weight against th certain and positive testimony of nine or ten witnesses.

The evidence in regard to the intoxication of Judge Cox at the Ly county term, upon which the prosecution bases its case, is that of Joh Lind, of Mr. Sullivan, of Mr. Paterson, of Mr. Drew, of the everlastin Mr. Coleman and of one Hunt, who keeps a seventh-rate hotel ther Mr. Hunter, the sheriff, and Mr. Forbes testify, under article 18, to kind of general drunkenness, or rather, general expressions of drunke ness during the first three days of that term. They were not cro examined, and did not give any account of it, except that they we asked if they saw him intoxicated during such and such a time, an they said they thought they did. Now, there is some difference in t way the main stays of this article give their testimony; some are mo certain than others. Mr. Lind says he was intoxicated the first thr days he was there. Mr. Sullivan dares to say that he *thought* the Jud was intoxicated. Mr. Paterson says, "*in my judgment* he was intoxicate to *the best of my opinion* he was intoxicated the first three days." No you see that is not very strong either. Mr. Drew says,—and here com another of the definite kind,—"the Judge was intoxicated during t first three days, no doubt about it." Mr. Coleman says the same thin he has no doubt either. Mr. Hunt says he was drunk when he cam that he remained drunk for five days; "as a matter of fact, he was fu all through the term." He is contradicted in that respect by every wi ness who has testified for the prosecution, because no witness for the pro ecution, except this same Mr. Hunt, has claimed that the Judge w intoxicated for more than the first three days, or has had any idea, said that in his judgment the Judge was intoxicated, nor has any o claimed that they thought he was intoxicated for any longer time th the first three days, except this same man Hunt, the man who at t same time tells you that he was not in court at all, to whose credibili I shall return hereafter.

Now, as against this indefinite testimony of Mr. Sullivan, Mr. Patters and the too definite testimony of Mr. Lind, Mr. Drew, Mr. Coleman a Mr. Hunt, we have the testimony of old Judge Weymouth, who said t Judge showed no signs of inebriety during that term of court. He te you so, and he would be apt to know if it were not so. He has kno the Judge for a number of years, (thirty I think he testifies) and h met him very often ; was a warm friend and intimate associate of h He tells you he met him when he first came ; that he walked up wi him to the hotel and that he had a talk with him there as to wheth or not he was going to open court before dinner ; that the Judge t him at that time—this is not contradicted in any way, and as a mat of fact the subsequent events bear him out in it—that he would go up the court room before he went to dinner ; call the jury, and s if there was any need of issuing a special venire for grand j rors—in case there had been a deficiency of grand jurors it wo have been necessary to issue a special venire — so that if th was, the sheriff could serve the special venire while the Judge w eating dinner, so as to save as much time as possible. Now, it stri me, gentlemen, that talk of that kind does not indicate an intoxica or wild brain. It indicates a man of cool, sound judgment ; it show man in full possession of his mental faculties and of his powers of ju ment. Judge Weymouth and Judge Cox had this talk while going

to the hotel when he first arrived. Judge Weymouth further tells you that there was at no time during the term of court any difference in his appearance, his actions, his conduct or his language; that he was the same except the first day, when he thought he looked a little tired, worn and wearied; that the second and third day he improved and was all right thereafter. He also explains to you how it was that the Judge looked tired on the first day he came there; he said the Judge told him he had not slept much; that the boys had made a good deal of a racket where he had been holding a term of court, and that he had not had much rest at the tavern, and it was a reasonable explanation.

Judge Weymouth says that is all there is about it; that he had a wearied and tired look when he came, but that on the second day he improved, and afterwards became all right.

Besides this, gentlemen, we have Mr. Seward, who saw him at the hotel before he came into court; saw him when he came into court; saw him during all that term, as well as Judge Weymouth. Judge Weymouth testifies that he was on one side and assisted in the trial of almost every case there. Mr. Seward tells you that he was there during the whole of the term—a three weeks' term—that he staid right there, whether he had any business or not, and that it was a very immaterial part of the time—almost no part at all—that he was not there, and he testifies positively that the Judge was not intoxicated during any part of that term; that he saw nothing at all in his behavior, conduct or appearance at that term during any of those days different from what it had been before and was since. We have, further, the testimony of Mr. Main, another attorney, not from Marshall, but from Tracy, in the same county, who says that he came there that same day, he thinks on a freight train in the morning. That he was present and saw the Judge when the latter first came into the court-room, and was in the court-room all that day; had a case in which he was plaintiff the next day; remained in Marshall and in court from Tuesday until Saturday of that week, covering three days and a little more. He tells you, "I have no doubt of the sobriety of Judge Cox all that week. There was no difference in his appearance, actions, deportment or conduct; his rulings were clear." On cross-examination he stated: "In my opinion he was perfectly sober all through that week."

Then we have as a fourth witness Mr. Matthews, another old acquaintance of the Judge; a man who has known him a number of years. I think over twenty; who had been a partner of his for three or four years when the Judge was practicing law, and he tells you that he attended at least nine-tenths—I think he said it was nineteen twentieths—of the whole term of court there; that he was in court nine-tenths—or nineteen twentieths, I won't say for certain which—of that whole term; that he was in there when the Judge came into court and charged the grand jury; that he tried the first case that was tried that afternoon; that he tried two cases the next day, one in the forenoon and one in the evening, and was present the third day listening to a trial that interested him very much. Now, Mr. Matthews tells you that the Judge was not drunk at all, that there was nothing at that time or during the first three days, in his actions, appearance or conduct, different from what it was during the latter part of the term; nor was it different from what he had seen of Judge Cox in court at any previous term.

Mr. Andrews, the fifth witness, also an old acquaintance of the Judge,

one who has known him for twenty or twenty-five years, and who studied law in the Judge's office, tells you that he was present in court during the whole of that term; that he never missed a session, and he says, "It never occurred to me that he was anything else but sober, and I heard nothing to the contrary before the grand jury muddle." I think that was his expression. It is not very plain here, but I think that was his expression.

When the grand jury came in with their resolution, and talk was started thereby around town, he heard of it for the first time. That it had never occurred to him that the Judge was otherwise than sober, and he said further, on cross-examination, that there was no doubt in his mind—that he was entirely satisfied—that the Judge was sober through that entire term of court.

The sixth witness is Charles Butts of Lake Benton. He was not there the first day; he came the second day at noon. He tells you that during the second day he was in the court room the whole afternoon and during the evening; that the Judge was perfectly sober at that time; that on the third day he was in the same condition; that there was no difference between his conduct, behavior or deportment during any of those days, and his conduct, behavior and deportment during the latter part of the term, or at other times. He tells you that he spoke with the Judge at his hotel; stayed right with him in the next room to him.

Mr. Grass is our seventh witness. Mr. Grass is a young attorney who does not reside in Judge Cox's district at all,—he resides, I believe, in Murray county; a bright young man—as all of you who saw him upon the stand, will remember. He says, that he was in court from Wednesday, the second day, at noon, until Saturday; that he was in court every day for four or five days and that the Judge's condition was not in the least different from what it had been at other times when he had seen him; that in his opinion the Judge was sober just as he used to be; just as he usually was in court.

Our eighth witness upon this point is Mr. Gley. Mr. Gley is an old acquaintance of the Judge; a man who has lived in New Ulm and known the Judge intimately—I think he said for ten or twelve years; who saw the Judge when he came there the first day, in the afternoon, soon after the train had come in; he meets the Judge on the street as the latter was walking up to the court room to open court—evidently the first time he went up there, when he called the grand jury, and before he charged it. He meets the Judge on the street; he knows him well; has been intimately acquainted with him; speaks to him; has a conversation with him there, and he tells you that the Judge was sober at that time; that there is no doubt about it in his mind, and that there was none then. He saw him again, not in court, it is true, but evidently during a session of the court. He sees him again about nine o'clock the next morning; the Judge then comes down from the court room—evidently at a recess—comes into his store, buys a cigar, stands and talks with him for ten or fifteen minutes. He evidently had as good an opportunity to observe him then as on the afternoon before when he talked with him on the sidewalk, and he tells you the Judge was sober then; that there is no question about it.

Our ninth witness upon this point is Captain Webster, a farmer there, who has been in that county and has known the Judge about twelve years. He tells you that in the afternoon of the first day of court he

came in from the country, hitched his horses, and as he was standing there the Judge came down from the court room, passed by him; he talked with him, passed the time of day with him, and he says the Judge was sober at that time; that there is no doubt about it in his mind; that if he was not sober, why nobody else there on the street was sober. He tells you that immediately thereafter, he heard it remarked that the Judge was drunk, a remark that would naturally call to his mind immediately how the Judge appeared at the time, what his condition was; and he tells you that he said to the person who made the remark at the time, "If the Judge is drunk, he appears, at least, as though he was perfectly sober, I met him a few minutes ago." He tells you there was no doubt in his mind, neither before nor after he heard that remark, that the Judge was sober.

Our tenth witness is Mr. Eastman, who was in the court room and heard the charge to the grand jury and observed the Judge. He says the charge was very impressive; that he had no doubt at the time, nor has he any now, that the Judge was perfectly sober on that particular occasion.

He tells you that he was in court every day during that term of court, more or less, and that he had occasion to come back and see the Judge under different circumstances, and that there was no difference between his appearance, when he saw him the first day, and his appearance during the latter part of the term, except on the second day of July when the message of sorrow came from Washington that President Garfield was shot. He says that was the only time that the Judge looked different. It was the only time during that term when there was any difference in the appearance or actions of the Judge.

Our eleventh witness is Mr. Morgan, a farmer of that country, a man who has known the Judge for twenty years, who used to live down near New Ulm, and he tells you that he came up on the train with the Judge; that he was in court the first afternoon watching the proceedings and that the Judge was all right and sober during that time; that he was in court the next forenoon, the forenoon of the second day of the term of court; that the Judge then was sober; that there was no change in his condition. He says he went away on the train that day and does not know any more about it.

Now I take it that these eleven witnesses have fully contradicted, so far as opinions are concerned, the testimony of the prosecution as to the condition of the Judge. They have, I think, been able to disabuse your minds of any impression created by the *ipse dixit* of the witnesses for the prosecution, two of whom, at least, are very doubtful in their expressions, who testify you may say with a mental reservation, and without stating positively what the condition of the Judge was.

Some of these witnesses, if not all of them, have given you some *criteria* of the Judge's condition at the time, facts that would go to show it, and I will now proceed to show how we have contradicted and overwhelmingly contradicted these so called *criteria* in these instances, as well as in any other, where the witnesses for the prosecution have been kind enough, upon cross-examination, to give us, what they claimed was the *criteria* of the Judge's condition—*criteria* which exhibited themselves either in his appearance, in his language or any thing else. Every one of these witnesses we have been able to contradict overwhelmingly by

honorable and responsible men, whom you must believe. I will now proceed to demonstrate that fact.

Before I go into an examination of the particulars I desire to call your attention to facts which cropped out on the cross-examination of Mr. Lind. Mr. Lind stated, as I said before, on his direct examination that Judge Cox was intoxicated the first three days he was there. In the first instance, asked upon cross-examination as to the charge of the Judge to the grand jury he says the charge was clear, seemed about as usual. Then he further admits on cross-examination that as to the first day he had only an impression;—he swears definitely to start with;—but he is forced to admit that he cannot give anything which he remembers took place, upon which he bases his judgment, so he tells us, to get out of it, that as to the first day he has only an impression, that he cannot state how the Judge's condition exhibited itself.

He tells us that the Judge on that day looked fatigued. And right here I desire to call your attention to the evident malice, the evident maliciousness that cropped out all through John Lind's testimony,—under every article upon which he has testified and you will remember he is the main stay of the greater portion of these articles and specifications. After admitting that the Judge looked fatigued—being afraid that might be construed in the Judge's favor—he takes that back and says "Well, he did not look fatigued from work, though, but from drink," and when he was pressed to tell how he could tell, in the absence of personal knowledge, whether the appearance of fatigue on a man's face was the result of over-work or of drink, he admitted that he could not tell whether it was produced by one or the other cause. Then, again, he is asked to give an account of what was done at the term there.

He tells you that on the second day of the term the replevin case of Bradford against Bedbury was tried and he gives you some idea of what he thought the Judge's actions were during that case. Hereafter I shall come to them.

Now it is shown to you by the records, as well as by the testimony of three or four witnesses, that the Bradbury case was tried the first afternoon of that term of court, and that it was the only case tried that afternoon.

Mr. Lind tells you he has no recollections as to the third day, and he cannot testify of course as to the Judge's condition on that day.

On the fourth day he tells you that the case in which he was interested, the Main case, in which he was an attorney and in which the Winona & St. Peter R. R. Co. were defendants, was tried. Now the record which has been introduced under the testimony of Mr. Patterson shows that that case was tried not on the fourth day but on the second, if I am not mistaken—at least the third—but I think it was the second. I say this is not material but it goes to show on what feeble superstructure, upon what insufficient knowledge John Lind bases his judgment under oath—how little he knows, how little he has examined into the matter upon which he swears. He has to admit that during the trial of the Main case which came up not as he puts it here but really within the period of the alleged intoxication of the Judge, there were no rulings that indicated intoxication

He said there was only one ruling that he thought was wrong, but he said there was no reason to believe that he was intoxicated because he gave it, because Judge Cox would have been just as liable to make that

ruling whether sober or intoxicated, and he tells us afterwards that although in his superior wisdom he thought that was wrong,—he was beaten,—yet he never appealed the case, he never thought that it was sufficiently wrong to ask the Supreme Court to rectify it, and it was a case, as we all know here, where an administrator sued a railroad company for five thousand dollars damages, as is usually the case where a man has been killed by a railroad. It seems to me that his failure to appeal from that decision shows that John Lind is insincere; for if he really thought that that order for non-suit, which disposed of his whole case, was erroneous and worked an injustice to his client, it was certainly a case of sufficient importance to warrant him in taking it to the Supreme Court; but he accepts the ruling, says yes, and amen.

That does not look as if he thought the decision was wrong, but as he admits himself that there was nothing in the ruling to show that the Judge was in the least intoxicated, I do not see that it has any bearing anyhow.

Now we come to the ruling in the replevin case of Bradford against Bedbury, which was up in the afternoon of the 1st day, in which Matthews and Andrews were for the defendant and Forbes and Seward for the plaintiff. Mr. Lind testified that he considered the ruling in that case as an evidence of intoxication, but he could not tell us what the ruling was. That is one of the evidences upon which he based his conclusion as to Judge Cox being intoxicated on that day. He cannot tell what the ruling was, nor the particulars in which it was wrong—if it was wrong—yet upon the basis of it he pronounces the Judge drunk. Well, we will call upon the stand the attorneys upon both sides; the attorney for the plantiff, who was beaten, Mr. Seward. We call upon the stand the attorney for the defendant, Mr. Matthews, and his partner Mr. Andrews, who were both there.

We ask them as to that ruling, whether there was anything in it which was evidence of intoxication on the part of the Judge. What does the young man who was attorney for the plaintiff, the man who was beaten by the Judge at that time, say? He tells you that "if Judge Cox had ruled other than as he did I certainly should have considered him drunk." Now, that is for John Lind.

What does Mr. Matthews tell you? He tells you that Judge Cox's mind was exceedingly clear that afternoon; that there was nothing upon his part showing a clouded mental condition. That is what Mr. Matthews tells you.

Mr. Andrews corroborates him. He says the ruling was perfectly proper; that everybody accepted it as such, and that there was nothing in his ruling, his actions or appearance at that time to indicate that Judge Cox was in the least intoxicated or indisposed.

Now, there are three witnesses to John Lind, witnesses, too, taken from the attorneys on both sides of the case. We do not call before you, gentlemen, men who have been rebuked by the court, nor men who are particular pets of this respondent, men who have won suits or anything of that kind. We have made it a point all the way through, and I think we have succeeded, to bring before you, if we could, the parties on both sides—both the attorneys, if we could not do better. I think we have shown a disposition to have the truth, the whole truth come out in this matter, so that you could not accuse us of seeking those who were favored, or thought they were favored, at the particular time. Wher-

ever we could do so we have brought both sides down here and allowed them to tell their story in their own way.

I now come to a further indication in the mind of John Lind, of the intoxication of Judge Cox at that time. That was in the Main case, and he explains what he said before as to the ruling and makes here several false statements, which I desired at the time, and now desire to call to your attention to, because it shows what John Lind is made up of. He says that the language of the Judge in ruling upon the motion for nonsuit in that Main case, which was the second or third day, I don't remember which, was extremely out of the way; that it was a stump speech on the liability of railroad companies to passengers, and that it is not a fact that the Judge, in speaking of the liability of a railroad company to its passengers, simply did so in comparing that liability with their liability as trespassers or strangers. You will remember I asked those particular questions. He claimed that the Judge laid particular stress upon the liability of the company to passengers, and for what reason did John Lind say that? It was in evidence, and he knew it would be in your mind, that this was a case in which an administrator sued a railroad company for damage caused by the death of ———, not a passenger, but a man who had driven on to their track and had been killed; if he could make this Senate believe that Judge Cox, in deciding that motion, used language referring to, or made a long stump speech upon the railroad company's liability to passengers, when that had nothing to do with the case, he might thereby convince this Senate that the Judge was not in his right mind; that he was not sober, that he had not full possession of his judgment and acted not as he ought to act. That was the object.

Now, I have called upon that question and that statement, Mr. Seward, Mr. Main, Mr. Andrews and Mr. Butts. Mr. Seward, a promising young attorney from Marshall, tells you, that he was present during the trial of that case; that he paid particular attention to the whole case; that he staid there during the whole case and paid particular attention to it for a very good reason. He had been asked to take hold of that case. It had been offered to him. He and his partner had examined the case and determined that there was no cause of action and had refused to take charge of it. John Lind, in his superior wisdom, thinking there was a case, or thinking he might make a fee out of it, goes to work and takes the case, and now these young men, Forbes and Seward were naturally anxious to see if the court would uphold their view of the case, and it was, therefore, very natural that Mr. Seward should pay particular and more than ordinary attention during that trial. He tells you that that Judge laid no stress upon the liability of railroad companies to passengers; that he mentioned it, but mentioned it only *en passant*, and only for the purpose which John Lind denies of comparing that liability with their liability to strangers or trespassers, and for the purpose, as Mr. Seward puts it, of marking out the distinction to the counsel, so that he could see what the views of the court were as to the different degrees of negligence that it would be necessary to prove in order to hold them, in different instances. Mr. Main tells you, in the first instance, that he was the administrator for the party who was plaintiff in that case, that the Judge's language at that time was very clear and lucid, and he tells you there was no fault to find with it in any way; no indication in the language that the Judge was intoxicated.

Mr. Andrews, the attorney, who was there and watched the case informs you the Judge acted perfectly proper and spoke very clear. Mr. Butts says that the Judge was, at that time, very clear in his mind and expressed himself in a clear manner. He tells you he took considerable interest in the case, because Mr. Gale, who was one of the attorneys for the railroad company, was one of his old preceptors, and therefore he took an interest in seeing Mr. Gale, whom he knew to be a good lawyer, try the case on his account. He says: (page 780.)

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 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.

This was a plaster given to Mr. Lind when the Judge had to beat him, I suppose.

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?

This is in contradiction to what Mr. Lind afterwards testified to in the same case.

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 statutes 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 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.

I asked him prior to what I now have read:

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.

Q. On that motion you mean?

A. Yes, on the motion, and Mr. Lind opened the case, etc.

Now, from what I have read you have learned that Mr. Butts denies that anything that the Judge there stated came in irrelevantly or improperly on that motion, as Mr. Lind, in his evidence stated it did. Another falsehood that we have nailed, not only by Mr. Butts but by Mr. Seward and by Mr. Main also. Those three men stayed right there and watched that case and they tell you in what instances Mr. Lind has told you a falsehood. Upon cross-examination, he was asked if it was not a fact which had come out on cross-examination, that the man who was killed was drunk, when he started towards the railroad track, and if it had not also appeared, on cross-examination, that he was about half a mile from the highway when he was struck by the train.

John Lind tells you that it was not so; says positively that it wasn't so. He saw what I was driving at, that I wanted to show that there was a question of contributory negligence in that case, and he denies it boldly. Mr. Seward tells you that the evidence showed that the man at the time he was struck was from eighty to a hundred rods from the highway, and that it had also appeared that he was drunk when he left town to go home. Mr. Main tells you that it had come out on cross-examination that the man was drunk. Now, these things do not amount to much in determining whether Judge Cox was drunk or not, but they all go to illuminate and I trust eliminate the testimony of John Lind,—to show whether he is a man who tells the truth in one thing and whether having misstated as to one material fact, he can be trusted in any statements he makes.

I desire to call your attention, so far as John Lind is concerned, to another thing, and that is that you will find that he has been beaten in every case in which he has been an attorney, during the trial of which he has claimed upon the stand that the Judge was intoxicated. He was beaten in the Main case; he was defeated in the Dingler case, and he was routed in the Davis and Young case.

He was beaten, also in the case he was engaged in with Severance and Pierce, the Gezike case, as well as in the McCormick vs. Kelly case. In short, in every case in which we find, during this trial, that he has been interested, it has also appeared that he was defeated. It is a remarkable coincidence that every time this man is beaten in a lawsuit Judge Cox is drunk. That, probably, in itself, ought not to be a sufficient motive for a man to swear falsely, and I do not know that it is with him, but from my knowledge of the man I actually believe that when he is defeated, and can not have his own way he gets so mad with the Judge, so incensed, works himself up into such a heat, that he thinks that everybody but himself, the Judge included, are either crazy or drunk. I have actually seen that man, when nothing but right and justice has been done,—I have actually seen him when the Judge charged against him, or when he thought the Judge ought to charge for him (because he is a man of very set ideas, and always thinks he is right; that there can be no mistake about it)—I have, I said, seen that man when the Judge has charged against him in any way, which he thought was not right, turn pale from rage. His face would assume a livid hue, so that you would think he was going to expire right then and there. He would get so mad that he would crush the fingers of his one hand together, swing it, threaten and curse, yea, almost froth at the mouth. I have never seen a man get so infernally mad as that man, and on occasions too when he had no right to get mad. I remember one case, where I was present

when he tried a lawsuit where the jury beat him, and he was actually so mad that I thought he would thresh every man on that jury. He went and spoke to them and insulted them, tried to argue with them to show them what fools they had been, and that in deciding as they had, they had shown themselves to be fools or knaves, and yet that jury was right and he was wrong. You probably noticed when he was on the stand, that the young man was unfortunate enough to be a cripple. That, he can not help, but I venture the assertions that as a rule, a man, who is a cripple, has a mean, envious and hateful temperament. A cripple generally is misanthropic.

You have undoubtedly seen evidences of this rule in your life, so that you know it is not only an exceptional occurrence, but that it almost invariably follows that a man who is a cripple, either by nature or who has become so by accident, becomes sour as vinegar; that he has no kindness for anybody but himself, if he has any for himself; that he looks with malice, with hatred, with disgust, with suspicion and envy upon everybody with whom he comes in contact. Now, I say, that may explain to a certain extent John Lind's testimony all the way through this case. It may explain the way he acted towards the Judge in the Young case when he was beaten there. It may explain his testimony in the McCormick against Kelly case, where he got beaten, too, and where he and Mr. Webber are the only ones who swear to Judge Cox's intoxication, while four or five men come in and swear that he was perfectly sober at the time. I say that it my explain such feeling, such testimony, and I suppose that the young man really can not help himself. He is so full of venom that it must out.

I will now come to the next witness, Mr. Sullivan, who says that he *thought* the Judge was intoxicated. He was asked by the learned manager to what extent he thought he was intoxicated, and he said on the first and second day to such an extent that he was incoherent in his speech. Well, we find out that on the second day all he heard the Judge say was, turning to the clerk when the grand Jury came in, "Mr. Clerk, file that in the presence of the grand jury." There probably was not much incoherency in that, and that was all he did hear.

As to the question whether or not the Judge was incoherent in his speech at any time we have called Mr. Weymouth, Mr. Seward, Mr. Main, Mr. Matthews and Mr. Andrews, five witnesses against Mr. Sullivan, and they all tell you there was nothing of the kind; that there was nothing indistinct, much less incoherent in the Judge's language. Mr. Sullivan, as you will remember, was a very short witness. We asked him nothing upon cross-examination. We thought we could afford to let him pass.

Mr. Patterson was the next witness and he says, "*In my judgment* he was intoxicated; *to the best of my opinion* he was for the three first days intoxicated." Now, the evidence upon which he bases his opinion, and the evidence that he gives of the Judge's action which seemed to indicate that he was at all intoxicated,—part, at least, of the *indicia* that he speaks of, was what passed at the time of the naturalization of about forty-eight different foreigners. We have not been able to contradict any of that part of his testimony for the very good reason, of course, that the attorneys and others who were in court did not pay attention. This took place, if it took place at all, at the desk where the naturalization was going on. The Judge looked at the papers, etc., with the clerk, and all

these parties wishing their papers surrounding him, and it was impossible, of course, to get anybody who was present there, who wanted to speak the truth—and we wanted nobody else—who could give any information in regard to what passed.

I think I can convince you in a very short time that whatever did pass between Mr. Patterson and Judge Cox did not in the least indicate intoxication on the part of the Judge. The first thing that Mr. Patterson complains of as indicating intoxication, was that he called his attention to the fact that there was a place in the book, where the applicant had not signed the record; but upon cross-examination he was compelled to admit that there was a blank there, not where the applicant should sign, but where his name should be filled in. I asked him if he would swear positively that the Judge did not say, "You have not filled in his name." Yes; he would swear positively to that. This is a year ago and of that little remark Mr. Patterson is positive. Mr. Patterson is positive of several things in which we have shown him to be the most unmitigated liar that ever lived, and he may be just as positive of this as the other things about which we were able to call witnesses and show how he lied. But does the fact which he has to admit that there was a blank in that record show that the Judge was intoxicated, even it be true, as he says, that the Judge said the applicant had not signed his name there?

It might be a *lapsus linguæ*, or it may be that the Judge thought the applicant should write his name at that place. Would it show that he was intoxicated, with forty-eight raving Norwegians and Dutchmen around him there all trying to get ahead of each other, one tramping on the other, with eighty-two witnesses around them, if he should make a slip of the tongue at the time and say "Here, the applicant has not signed" instead of "the applicant's name is not here?" On the contrary when he turned to that book and found a mistake, found a defect in the record, it showed that he was not intoxicated, but that he had his senses about him, and knew more than the clerk.

Again this Patterson says that he turned to that record during the process of naturalization and said to him "Here are two applicants who have signed the same record." He says the Judge turned to the wrong place, that that was the place for the witnesses, and that it was two witnesses who had signed instead of two applicants.

He tells you on cross-examination that his books are in a peculiar shape, that the names of the witnesses come first and the name of the applicant afterward. If that is the case it would be a very natural thing for Judge Cox, or any other judge, who is used to a record which is a proper record (and in all these naturalization records which are properly made, the party's oath comes first and that of the witnesses afterwards), when he saw two names under the first affidavit, where the party's signature *should* be, not to read further than that, but to say, "Here are two applicants that have signed the same paper." That, I take it, would be no indication of intoxication with any fair-minded man.

Then, the next thing is that the Judge says: "The devil himself can't read this name; see if you can." The clerk tells you the name was a regular jaw-breaker. Now, if this had been during a session of court, and people were sitting all around there expecting great decorum in the Judge, it would probably have looked very strange, and it might

have been an evidence of intoxication or of recklessness or bad habits, but what is the evidence?

The evidence is that a recess had been taken for the purpose of naturalizing these forty-eight men; that the Judge sat up there with the clerk and said to him; not so that it could be heard in the hall or anywhere in the room, but in an aside and in a jocular manner, "Here, Joe," or whatever his name is, "the devil can't read this name, see if you can." There is nothing in that, under the circumstances, indicating that he was intoxicated, or has he no a right, except when he is intoxicated, to say "the devil" or to swear?

The fourth complaint of Patterson is, and I mention this not because it amounts to anything, but just to show you what little hairs he hangs his opinon upon—"what slender threads earthly things may rest upon"—that the Judge said "Those folks act like a drove of cattle." I suppose that was put in to see if he could not hurt Judge Cox in the eyes of some Senator who happened to be a foreigner by birth. Now, I apprehend that is a matter that does not show intoxication in the least. The testimony is that when Judge Cox is drunk he is very civil and polite—exceedingly polite—if he had been drunk, he probably would not have said anything of that kind; he would have been afraid of offending somebody, but he was sober and he speaks just as he feels.

Here comes a crowd of men up there—perhaps one hundred and twenty all together—forty had made applications and each had two witnesses, all scrambling for the papers, and crowding up around his table and he says they acted like a drove of cattle. Well, I have seen men coming up for their second papers, and even Americans coming around when there was anything to be distributed, who acted more like a herd of cattle than anything else. It is not anything peculiar to foreigners under such circumstances, the one who gets to mill first gets the first grist; all want to grab and have no regard for other's feelings, or of the feelings of the parties with whom they deal. The fact that he made that remark does not tend, in the least, to show that the Judge was intoxicated, it has no bearing that way at all. Patterson tells you farther, as an evidence of the intoxication of the Judge, that his eyes had a puffed up appearance, that his face was swollen and very much flushed after recess.

Now, so far as his eyes having a puffed up appearance, we have called upon that question Messrs. Weymouth, Seward and Matthews, men who have known Judge Cox for a long time, and they say there was nothing of the kind noticeable, and Mr. Weymouth and Mr. Matthews say they never saw his eyes have that appearance in their lives. Mr. Patterson evidently thought that indicated intoxication. He did not bargain for the fact that Judge Cox's eyes never puffs up when he gets drunk. He had not studied the anatomy of the man or his peculiarities when intoxicated; and he says what, in his judgment, will clinch the thing, "His eyes had a puffed up appearance." Mr. Davis tells you that Judge Cox's eyes never have a puffed up appearance, but that they are hollow, sunk in his head, when he is intoxicated. So Mr. Patterson misses it that time. He admits, on cross-examination, that the appearance of the Judge might come from weariness and fatigue and not from drink.

He further said the Judge did not expedite business at this term of

court,—the first three days,—as usual. Now, of course, if he did not it would be something that would be evidence of intoxication. Mr. Weymouth, Mr. Seward, Mr. Matthews and Mr. Andrews all tell you, and all tell you without hesitation, they being the leading lawyers of that town, that it is not true.

Mr. Matthews tells you, that his firm was engaged in most of the lawsuits, in a majority of the lawsuits, on that calender; (there was seventy odd suits;) Messrs. Forbes & Seward were engaged in most all of the cases and Mr. Weymouth tells you that he was associated on one side or the other in almost every case—these men who testified that they had attended that court for three weeks, tell you that the Judge expedited business as well the first three days as he did during any time of that term, and as well as he did at any time in his life. Those four men gave absolutely the lie to Mr. Pattersen when he tells you the Judge did not expedite business, and if you go over the testimony of Mr. Patterson upon cross-examination, where I made him read from his minutes, and show what business was done and see that two, three and sometimes four jury cases were disposed of in one day, as there was on the second day if I do not disremember, you will easily come to the conclusion, that it is nonsense to come here and talk about business not being expedited.

If the Judge had disposed of four or five cases, tried one jury case, naturalized forty foreigners and charged the grand jury up to five o'clock the first afternoon—and a recess besides for dinner—nobody can say that business was not expedited. If you see that a dozen or more witnesses are examined the third day in the case of Lindsley against the Winona & St. Peter railroad company, and business proceeded with in that way, cases shoved ahead one after another, I say it is evidence enough in itself, that business was expedited. But the same clerk says recesses were too frequent; that there were from six to twelve recesses a day, and when we come down to the record, when he knew the records would belie him; when he knew the records would show that that was a lie as false as hell, he comes here and he tells you that he did not put them all down for the purpose of screening Judge Cox. Screen Judge Cox? Screen him? In the name of heaven, what would he screen him for? Would a recess show that he was drunk?

If he ordered a recess at the time, and it appeared in the record, would that show that the Judge was drunk? Would the clerk have to put down in his record that Judge Cox took a recess to go down and take a drink? I say that man lies and knows that he lies. He knew that those records could not be falsified, because I have been there and copied them verbatim. He knows that he could not falsify them, and when he is asked why he knows Judge Cox was drunk he tells you that business was not expedited, because there was from six to twelve recesses a day, when he knows the record does not show but three, and then to crawl out he tells you that he did not put them down because he wanted to screen Judge Cox. Why? There is nothing impugning Judge Cox's condition in a recess. There is no indication of intoxication in a recess. A man who will come with that sort of stuff is hardly worthy of notice, besides that, he is contradicted by every witness that we called who was present there in court, by every one of the attorneys.

Hs is not corroborated by any of the attorneys called for the prosecution. He stands alone and is contradicted by every attorney we have called. He is contradicted by Judge Weymouth, by Mr. Seward, by Mr. Andrews and by Mr. Mathews. Judge Weymouth tells you that there were two recesses the first afternoon, just as the record shows, one for dinner and the other for the naturalization of citizens. Judge Weymouth tells you that he thinks as a general thing during that term there were two recesses every session. Nothing unusual about that; just the usual number. Mr. Seward tells you he thinks there were about two or three every day. Mr. Andrews and Mr. Mathews say they think there was about the usual number and that most, if not all, of them were taken at request of the attorneys and they add, both of them, a statement which is peculiar, that there were more recesses the latter part of the term, when Judge Cox is claimed to have been sober, than there were at the time when he is claimed by the prosecution to have been drunk, and they give as a reason for it that it became hotter and hotter, that it was very hot weather—about July before they got through—and it became necessary, on account of the heat, to have recesses more frequently.

Now, that is what becomes of clerk of the court Patterson and his recesses, that were to show that Judge Cox was drunk.

He tells you also that there was a staggering in the movements of the Judge. Now, that is denied by Judge Weymouth, by Mr. Seward, by Mr. Matthews, by Mr. Main, by Mr. Butts and by Mr. Grass—no, Mr. Grass was not asked about that—Mr Main and Mr. Butts were.

He tells you that the Judge reeled in his chair. That is denied by Judge Weymouth, by Mr. Seward and by Mr. Matthews. The latter says there is always something free and easy about the movements of the Judge, but that there was nothing unusual at this time. It is also denied by Mr. Andrews, by Mr. Butts and by Mr. Main. As I said, I think the clerk is pretty well disposed of.

There is one thing more that I desire to call your attention to, and that is, that he says that on the first afternoon, when the Bedowry case was called, Mr. Matthews was not ready, and claimed that there had been no preliminary call of the calendar, and therefore he should not be compelled to go on, and that Judge Cox insisted that he should go on at once. Now, that does not amount to much, but I see that the manager, Mr. Collins, stated that there was no preliminary call of that calendar, and that that certainly showed that something was wrong; that if there was not a law to that effect, there was, at least, a rule of court which made it necessary for the Judge to make a preliminary call of the calendar, and if he did not, it showed he was not in his full senses. Now, as to this particular case, as to Mr. Matthews objecting and the Judge insisting upon his going on at once, this ready-swearing clerk is contradicted by Judge Weymouth and Mr. Seward both; by Judge Weymouth, who says that the Judge called the case without proceeding with the preliminary call—and I will explain that hereafter that the parties stated that they were ready and only wanted five minutes in which to send for their clients; that the Judge then turned to the clerk and said: "Mr. Clerk, impannel a jury."

Mr. Seward states that, when the Judge first came up to court, and after he charged the grand jury, he said, "Gentlemen, it is getting so

late that I will not make a preliminary call of the calendar." Mind you, if he had gone to work and made a preliminary call of the calendar containing some seventy odd cases, heard preliminary motions etc. which is usually done in the country on the preliminary call, that would be all he could have done that day, and it would have spoiled the whole day. The Judge made the remark because it is his habit, as it is the habit of every judge who comes to hold a term of court, to start in the first thing with the preliminary call of the calendar. Now, this court I apprehend should have convened, according to law, at ten o'clock in the forenoon, but the Judge was busy with a term of court up to the night before and couldn't get up to Marshall earlier than the afternoon, because the trains did not run so that he could connect, he had to go on two roads and consequently he came in late.

Mr. Seward told you that the Judge said, "It is late and I will dispense with the preliminary call of the calendar, and will go on until I find a case in which the parties are ready for trial and will take that up this afternoon." That explains why he did not make the preliminary call of the calendar. It does not show intoxication; it shows, on the contrary, on his part, a good and sound judgment. Then Mr. Seward tells you that he found this case,—number three on the calendar. He did not have far to go when he found that case; the parties said they were ready, he called the case and Mr. Matthews stepped up and said, "I did not expect it to be called up to-day; I will want time to send up for my client." And the Judge said, "All right; how long will it take?" And he said, "Five minutes," and he sent his partner and they went along with the case. But the testimony of this witness, Patterson, shows how he has tried to pervert the facts, (even in little things that do not amount to anything) so as to account for them for the intoxication of the Judge, and so as to have this Senate infer from them that the Judge was intoxicated.

I now come to the testimony of Mr. Drew, who says he saw the Judge when he first came to town. He says he saw him when he came across the bridge; that the Judge carried a big valise and staggered; that he came across the bridge, came up to the hotel and said, "Hello, Yankee-doodle," which of course, offended him, and which, of course, showed to his mind that the Judge was drunk. If he did say it it would not be anything unusual for him to do, nor would it show that he was drunk. But this man tells you the Judge was so intoxicated when he came up there that he staggered. Now, is it not remarkable, has it not struck some of you as being extremely remarkable, that Judge Cox, while he was upon the cars just before he came to Marshall, should be so little affected, if he was affected at all, by the use of liquor that Mr. Sanborn and Mr. Allen could only tell you they thought he was under the influence of liquor, and when his whisky bottle was crushed so that he could get no more, should suddenly, upon his arrival at Marshall on the same trip, and a few minutes, or, at least, only an hour afterwards, get so drunk that he staggered in the streets of Marshall? I ask you if it does not strike you as remarkable that the man who has been called before you, and has testified as to the Judge's condition when he left Tyler in the morning, and those who have testified as to his condition on the train, and those who saw him at Marshall, when he arrived,—that all those men, I say, should be able to testify that the Judge was not in-

toxicated at all, or under the influence of liquor so that it was apparent, at least, and that this man Drew can find him staggering in the streets of Marshall, and the only man, by the bye, who did find him staggering?

He tells you that the Judge staggered across this bridge and he claims it was over the new bridge that had been built there. Was it completed at that time? Oh! he was sure of that; that was his version of it, and he was sure it was not over the foot bridge, because you see, it would be rather difficult to stagger with a big valise in your hand over that foot bridge, so it was not over that bridge he came. Well, we thought we had Mr. Drew; we thought we had him on the bridge just where we wanted him. Our witnesses were unaminous to the effect that the bridge was not there at the time; that there was nothing but the foot bridge. Judge Weymouth tells you that he is positive he went down to the bridge and stood there, waiting until the Judge came over and there shook hands with him. Mr. Seward tells you that the bridge was not completed at that time. Mr. Gley tells you that it was not completed; there was only a foot bridge. Capt. Webster tells you that was all, that there was no bridge to drive over except farther down. That he knows it, because he came in that morning when he came to court over the lower bridge and that the other one was not fixed until sometime after the fourth of July.

Mr. Eastman tells you there was no bridge, that there was only the foot bridge there. Mr. Butts tells you that when he came the next day from the depot and walked over to the hotel that the foot bridge was there; that he walked across it; that there was no other bridge that a man could walk over on; that he hesitated because he was dizzy-headed and because it was a dangerous-looking institution to cross upon.

That is six witnesses on the part of the defense who are all positive on that point. Two of them were positive that they were right there; one that he attempted to cross, and the other one did cross the bridge. Now, that did not amount to much, but it was brought in to characterize Mr. Drew's testimony. It does not show either that Judge Cox was drunk or was not drunk; but it seems that the board of managers have got into their heads the idea that if they could only put that bridge there they would save this article and prove the Judge wes drunk.

It does not tend to prove anything one way or the other. It only raised a question as to the credibility of Mr. Drew, and rather on an immaterial point, because the question is, did the Judge stagger, not whether he staggered over the foot bridge or over the wagon bridge. So the managers called down here Mr. Robertson, Mr. Morgan, Mr. Thorpe and Mr. Sullivan, four witnesses, to support Mr. Drew, making five against six, and did you notice that Mr. Drew fixes that new bridge as ready a long time before court? Did you further notice that particular coincidence, that those new witnesses fix that bridge ready just on that very day, just in time to have Judge Cox pass over it? It was made ready just in time to have Judge Cox pass over, I suppose. In honor of his coming, probably on the 21st, in the morning. The embankments were not fixed so that you could drive or go up on it, some planks were left; they then went to work on it and about noon, before noon, a few

teams had driven across, and at the time the Judge came from the train it was just so far completed that a 'bus could go across it; just then they got it so they could drive across it.

Now, gentlemen, does it not strike you as rather peculiar that this bridge should be ready just in time for Judge Cox, and that these five witnesses should come down and testify to it? One of them, Mr. Robertson, claims that he built it and remembers the date of its completion, because he kept a diary. We did not see the diary, so we do not know whether he lied about it or not. We did not get to see it so as to know whether it was in there or not. Then there is Mr. Morgan who remembers it, because he sold some lumber that was in the old foot bridge, that was taken off the day before, before the other was ready. They took the old bridge down before the new one was ready, that seems remarkable too.

And then there is Mr. Thorpe, I think that is his name, who says he remembers that it was fixed there the twenty-first. How does he remember it? Because he wrote a letter, finished it and mailed it on Monday, and in going back he went over the new bridge. He wrote a letter on Monday, and mailed it on the train.

Now, how does that fix it in his mind? How does that show that it was that time? How does he know about the date of the letter and all that? Why, I think the matter was really cooked up to kind of strengthen the backbone of the testimony of Mr. Drew. It seems so to me. Mr. Sullivan sits in his office and sees a bus drive across the new bridge and remembers it as the first day of the court—of course!—the twenty-first of June that the 'bus drove over there. Now, it strikes me that the bridge was gotten ready to order and they could not get it any nearer, so they got it ready the day we were coming to use it. It strikes me as a remarkable coincidence, and if it is true, it is a very remarkable truth.

Now, here is one of the subjects upon which the action of the Senate refused to allow us any rebutting testimony. Big capital was made out of this small fry, and when these men were brought down here after the managers had been up for them, why letters and telegrams poured in upon me at the hotel from people who wanted to come down here and state absolutely that the bridge was not ready before the Board of Trade from La Crosse, was there in July.

It seems there was a hundred people who were willing to swear to it, after the matter was stirred up. They seemed to think that Judge Cox's drunkenness or sobriety depended upon that bridge, but I did not think it did, and do not think it amounts to anything, anyhow. But if the managers have done anything, they have created a doubt as to whether the bridge was there or not. They have brought four witnesses to corroborate Mr. Drew, five witnesses who have sworn to it in all, against our six witnesses who swear positively that the new bridge was not there; that the old bridge was there, two of them traveling right over it. And I think it is doubtful whether they have got Judge Cox on that new bridge yet.

Now, this same Mr. Drew, who says the Judge staggered in coming from the train to the hotel, keeps him staggering going up to the court-room and on to the stage, and when he gets up to the stage he reels and pretty nearly falls back. Now, is it not a remarkable fact that Mr. Drew

is the only witness for the prosecution even who can see with so sharp an eye, is the only one who noticed his staggering and his almost falling backwards? Subsequently he says that he fell into a stupor and thought he was going to die right away.

Is it not remarkable that nobody not even the clerk, nor even Mr. Coleman I believe, nor Mr. Sullivan, nor Lind, nor any of those men who are so interested in seeing Judge Cox convicted, should have remembered it and that he should? He has a remarkable memory. The trouble is not only but the witnesses for the defense, Judge Weymouth, Mr. Main, Seward, Matthews and Andrews tell you there was nothing of the kind, if there had been they certainly would have noticed it. Mr. Andrews sat near to the Judge when he walked up there and certainly would have noticed it. There was nothing in the Judge's condition to show any such thing. As to the charge of the Judge, Mr. Drew says, he was not so drunk that he could not see well enough to go on with it. Their own witness Lind tells you the charge was all right. Mr. Patterson does not find any fault with the charge, except that the Judge asked him if it was not a daisy of a charge after he got through with it. Mr. Main, amongst our witnesses, was present and heard the charge and said it was just the same charge as usual. Mr. Matthews just the same, and Mr. Andrews tells you that there was no difference between that charge and other charges of Judge Cox's, so I think that is sufficiently contradicted.

So far as the glare of the sun only existing in the morning, Judge Weymouth contradicts that, and tells you how that was—that although this building was to the north-east, yet there were white buildings on the opposite side of the street and whether it was the reflection of the sun or something else there was a strong glare through those windows all day, there being no curtains, so that you could not sit on the stage and see anywhere in the room.

The same Mr. Drew tells you that the Judge did not perceive what was going on at the first part of that term, that he could not see the points as quickly as usual. That is expressly denied by Judge Weymouth, by Mr. Seward, by Mr. Main, Mr. Matthews, Mr. Andrews and Mr. Butts,—six witnesses against him alone,—who all state that his manner was not different but about the same thing; that he was just as usual; the same as he always had been; could see a point as quickly as usual; and Mr. Matthews says he was as clear as he ever was. Mr. Andrews says his mind was perfectly clear during the whole term.

This same man Drew tells you, on cross-examination, that although the Judge was so fearfully drunk there, there was nothing particularly wrong going on there. Now, is it not remarkable that a man should be as drunk as he claims the Judge was, staggering, not able to walk up the steps without falling down, sitting on his chair and falling into a sleep or stupor, not being able to charge the grand jury, because he was too full for utterance, and that no accident should happen; that nothing particularly wrong should take place?

So far as the second day is concerned, this man Drew tells you he is not clear as to that day; does not know whether the Judge staggered that day or not. He says, "We got kind of used to it the second day, it was not so new as to attract any attention."

Senator Crooks. I would like to inquire, Mr. Arctander, whether there is any prospect that you will be through with the article tonight?

Mr. Arctander. I shall not take more than an half an hour longer on this article.

Senator Gilfillan, C. D. Mr. President, I move that we adjourn.

Senator Mealy. I second the motion.

Senator Hinds. I offer an order changing the daily sessions of the Senate.

The President *pro tem.* The secretary will read the order.

The Secretary read as follows:

Ordered, that unless otherwise ordered, there shall be three sessions of the court held daily, viz, from 9 o'clock A. M. to 12:30 P. M.; from 2:30 P. M. to 6 P. M; from 8 P. M. to 10 P. M.

Senator Hinds. Mr. President, I move the adoption of that order.

Senator Campbell. Let it be read again.

Senator Hinds. The order provides for three sessions daily; the first from 9 A. M. to 12:30 P. M.; the second from 2:30 P. M. to 6 P. M.; the third from 8. P. M. to 10 P. M.

Senator Buck, C. F. If we are to have three sessions let us start in at ten o'clock.

Senator Campbell. I think that would be better.

The President *pro tem.* It will go over under notice of debate.

Senator Campbell. Do I understand that notice of debate was given? I have not heard it.

The President, *pro tem.* Yes, sir.

Senator Campbell. Then I move you, sir, that when the Senate adjourns, it adjourn to meet at nine o'clock in the morning.

The President, *pro tem.* Gentlemen, you have heard the motion; is the Senate ready for the question? Those in favor of the motion of Senator Campbell will say "aye;" contrary minded, "no."

The ayes have it; the motion is carried.

On motion of Senator Johnson, F. I., the Senate adjourned.

FORTY-SEVENTH DAY.

ST. PAUL, MINN., Tuesday March 14th, 1882.

The Senate met at 9 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., Campbell, Case, Castle, Clement, Gilfillan, C. D., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Mealey, Morrison, Perkins, Powers, Rice, Shaller, Tiffany, Wheat, 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. 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 this morning?

Senator HINDS. Mr. President, I call up the order that was offered last evening, proposing to modify the sessions of the court.

The PRESIDENT *pro tem.* The Secretary will read the order.

The SECRETARY, (reading). *Ordered*, That unless otherwise ordered, there will be three sessions of this court held daily, to-wit: from 9 o'clock A. M. to 12:30 P. M.; from 2:30 P. M. to 6 P. M.; from 8 P. M. to 10 P. M.

Senator HINDS. Mr. President, while I do not desire to discuss this, perhaps an explanation of the present situation may be proper. I believe it is the desire of the managers, of counsel and of all the Senators, to close this matter this week, if possible. Now, it is not to be expected that any one speaker can endure three sessions a day, it would probably be too severe; but as we understand now Mr. Arctander expects to close his address some time to-day; if so, then a fresh speaker would occupy the rest of the day, continue to-morrow, and perhaps close before to-morrow night. If that should be the case, the manager who closes the case would have a night to rest, thus dividing his labors. It is true that the course of the discussion may vary from this somewhat; if so, if it become too fatiguing upon any one, by reason of not having a night's rest to divide his labors, why, it is very easy to change the order to accommodate him. It is very important now to know whether there are to be changes in the sessions of court, so that Senators may have notice in order to be present.

The PRESIDENT *pro tem.* Is the Senate ready for the question? As many as are in favor of the adoption of the order as read will say aye; contrary no. It is adopted.

Mr. Arctander will proceed.

Mr. ARCTANDER. Mr. President and Senators, I believe when we adjourned last night, that I had advanced so far in the discussion of article 15 that I had disposed in full of the testimony of Mr. Drew. I now come to the testimony of Mr. Coleman. Mr. Coleman was not called upon the stand upon any article to testify before all the other evidence was in. What the reason of it was I don't know. He was here from the first day of the court until the last day, during the taking of evidence for the prosecution, and was called only upon the last day. It seems that on this article it has been the desire of the managers as well as upon other articles, to have Mr. Coleman give the last impetus to the testimony. He is to supply any links that are missing, he is to supply anything that is not brought out strong enough, he is going to strengthen it. He does so here. It seems that the managers had feared that Judge Cox was not sufficiently drunk when he arrived at Marshall to make a good sized and decent drunk in court there that day, and Mr. Coleman was called upon to supply that link. It is true that Mr. Drew had testified that Judge Cox, when he first came there, was so drunk that he staggered before he came to the hotel, but that was evidently not considered sufficient,—probably from the fact that it had appeared in evidence upon the part of the prosecution that Judge Cox *never* staggered; and Mr. Coleman was therefore called upon to show that if Judge Cox was not drunk when he came there, he was certainly drunk when he went into court, because he made himself drunk after he came; and he fills the bill to the satisfaction of the managers, I apprehend. He tells you that there was quite a time elapsing between the arrival of the train and the opening of court; that the train arrived there about eleven o'clock in the forenoon, and that the court did not open before two o'clock, or sometime after two.

It is necessary for him, I apprehend, to put in that large amount of time, to enable him to show the excessive drinking of the Judge during that period, to be sure to land him in court at two o'clock, in a perfectly drunken condition. It is unfortunate, to say the least, to the managers' case, and to the testimony of Mr. Coleman, that the witnesses even for the prosecution gainsay him upon that point. Mr. Patterson, their favorite clerk up there, tells you that the train was due there at 1:25, and that it was a little late that day, and that court opened at two o'clock. Mr. Drew, another one of their favorite witnesses tells you that he don't think the Judge had time to get his dinner before he came into court after the train arrived. In this, they both contradict Coleman. It is necessary for Mr. Coleman, I apprehend, to fix up this length of time to enable him to gulp down the Judge five drinks of whisky, which he did. It takes time to do all of this. First he arrived there, then takes a walk up town, then comes back and then drinks with the Judge five drinks at least,—of gin,—"gin was in the majority, anyhow." Now, I say that some of the other witnesses for the prosecution gainsay that and contradict it absolutely. Show that there was not sufficient time for such a debauch, and if they do not, the witnesses for the defense don't fail to do it. We have got the testimony of Judge Weymouth upon that point, telling you that he met the Judge at the bridge, that he walked up to the hotel with him, that he waited outside of the hotel, and that the Judge was not any longer in the hotel than to dispose of his baggage and wash his face, and that they all walked up to the court

room together; and he tells you that that was all the time the Judge stopped, before they went into the court room.

Mr. Seward tells you that he saw the Judge immediately after his arrival at the hotel; that he was in court when it opened, and that it was not to exceed a quarter of an hour between the time when the train arrived and when court opened. Mr. Andrews, who was upon the train with the Judge, tells you that he only had time to run to his office, which was one square beyond the court house, and to gather up his books and go into the court room, and that when he came there the Judge was there. He tells you that he don't think it was more than from five to ten minutes from the time when the train arrived until the Judge opened court that day. I say that testimony, taken in connection with the testimony for the prosecution, shows conclusively that Mr. Coleman, as usual, has lied. And that is about all there is to Mr. Coleman's testimony, except that he tells you that the Judge was drunk during the first three days.

I now come to the testimony of Mr. Hunt; and I desire to say right here, that upon the cross-examination of Mr. Hunt, as was probably apparent to the gentlemen of the Senate, we tried to lay the foundation to impeach him, by his former record; that we asked him questions that would rather be pregnant with the idea that Mr. Hunt was a fugitive from justice, and had been arrested and prosecuted in other States before he came here. I desire to state to the Senate that when I asked those questions of Mr. Hunt, and when he denied them, I had what I considered full authority, I had information which I considered reliable, which led me to believe that we could establish the charge against him which we asked him about. I desire to say, in justice to Mr. Hunt, that I don't know whether that information was correct or not, but that all the efforts that we have made since that time, to discover and get the record in evidence in regard to the fact, have been fruitless, and I desire to say in justice to the witness, that when I asked the questions I was perfectly confident that we could prove the matters that were denied by him, and I don't desire unjustly to attack any witness; I desire to give him all he is entitled to so far as the evidence is concerned.

I do not desire to ask any witness in this case or any other, a question that would be degrading to the witness; unless I think I have good authority for it. I had, in his case, what I considered good authority; my authority has failed me, so that I have not been able to show that Mr. Hunt testified falsely to any of those questions and I take it for granted that the fact is as he has testified in regard to his past life, as we have not been able to show it was not true. I say I don't desire to do the man any injustice, and I withdraw all imputations lying in those questions, for fear I might do injustice to the witness. But, there is no question but that Mr. Hunt, without that proof, stands before this house impeached. He testified that the Judge was drunk there for five days. He is not particular about what he is testifying to. There is none of the other witnesses who claim anything of the kind; and this same man who tells you that the Judge was drunk for five days tells you on cross-examination that he was not in court at all, and that the Judge left his house the next morning after the afternoon when he arrived on the train, and went to the other hotel; and I say that there probably lies the secret of his testimony against the Judge; there probably lies the secret of his testimony before the judiciary committee, that the Judge

was full all through that term; there probably lies the secret of his testimony that the Judge came the first afternoon into his bar and drank as many times as once every hour at least,—when it is in testimony before you that the Judge was in court during the whole of that afternoon; that he had only two recesses, one to go to his dinner, the other one when he took the naturalization of forty odd citizens, and when he presumably was in court and looked after the matter and examined into the papers, so that he could not have gone out at all.

The first recess was a recess for dinner, and that was the only one at which he was absent from the court room, as has been testified here, which shows that Mr. Hunt has told a false tale. The managers made quite a splurge here during this witness' testimony of the fact, if it is a fact, that Judge Cox, after he had been at Marshall at least some ten days, settled a bill with him for whisky, cigars, etc., amounting to $17.70. Now I take it that, under the testimony of that man, Judge Cox would never go up and drink alone, that he would get with him a crowd of from two to six persons, and that that bill is a very small one for ten days—that being the length of time he tells you it was running. Besides that he brings nothing to show it here except his word. I asked him whether or not some of that bill was not due from earlier occasions; he denies it. What his denial amounts to must be for this Senate to say, under all the testimony.

This same man who told you, upon the 18th article, that Judge Cox was drunk first during the whole of the term, that he held there in 1879, afterwards takes that back and makes him drunk for four or five days *after* he had held the term, and then takes that back and says that he was drunk at the time he gave the temperance lecture, and then takes *that* back and says it was the day after the temperance lecture. At evening or dinner time he claims that Judge Cox, on the day after that lecture was at his house, when it was shown by trustworthy witnesses that Judge Cox was not there at all but in a private citizen's house. He tells you that Judge Cox was drunk four or five days after the term of court, when it is shown that he went away from there on Monday, court being adjourned Saturday night. He testifies that the Judge was drunk at his hotel and talking smutty language at the table at noon to one of the waiters, and then it is shown by Mr. Seward and Mr. Todd that the Judge went away at eleven o'clock that day.

It is shown that Judge Cox was not in Marshall at all when this honorable witness, saloon keeper and hotel keeper, tells you that he was drunk at his house. I say that under such circumstances his testimony under the article under consideration, must be taken with considerably many grains of allowance, especially as none of his testimony goes to the court. He don't appear to know anything about what went on in court; he don't appear to know whether the Judge was drunk in court or not. And he tells you on his oath, while on the stand, that he would say he was full during the term, although probably there was room for another drink. A man who is so frivolous, with all the obligations that are upon an honest man when he is to give testimony before a court of this importance and consequence, is not worth while dwelling upon at all.

I will now simply call attention to the witnesses and view them on each side with regard to their credibility and I will close upon this article. As I said before, the witnesses for the prosecution are, first, Mr.

Patterson, the clerk of court, and his name brings to my recollection a fact to which I have called the attention of the Senate, namely, that on this first afternoon of court, when the Judge is claimed by Mr. Patterson, by Mr. Drew, by Mr. Lind and by Mr. Coleman to have been intoxicated, it appears that the replevin case was proceeded with, that the Judge made a remark, which remark elicited an answer from the counsel, and that more than two months afterwards that remark was fresh in the mind of the Judge and that he called the attention of counsel and the attention of the clerk to the fact of that remark being made and that it had been omitted from the proposed case. Now it seems impossible that men after hearing that remark, after seeing that the Judge remembered it, can for one moment doubt the sobriety of the Judge, that men who have to admit that that was the fact, that the Judge remembered two months afterwards an almost inconsequential remark, you may say, that he made during the progress of that trial, can come up and swear with a saved conscience that the Judge, in their opinion or even in their judgment, as Mr. Patterson does, was intoxicated when that remark was made.

It is not in the nature of things that such a thing could be. And that reminds me again of the fact that Mr. Patterson stands to a certain extent impeached before you. He was asked if he did not make a certain statement to Mr. Matthews in regard to this same trial, in regard to the fact, that he did not consider the Judge intoxicated after he had heard that; that he had had that idea before but that now he was ready and willing to go up and swear that the Judge was not intoxicated for no intoxicated man could remember as the Judge had done that day what was passing at the time he was thought to be intoxicated. He denies to have made that remark to Mr. Matthews. Mr. Matthews tells you that it is so. I say therefore, he is not only impeached by his own testimony, he is not only impeached by the testimony of every witness that has appeared for the defense as to the condition of the Judge at that time, but he is impeached because he denies statements inconsistent with his testimony here upon the trial, and because those statements are proved upon him.

As to Mr. Coleman, I have spoken so often of him, that I don't want to waste any more words upon him. I think, as I have said before, that he is out of the case and that his testimony has been so thoroughly contradicted, and that he has been shown to be such an unmitigated liar that it is no use for me to spend any powder upon him.

As to Mr. Drew, I call your attention to the fact that Mr. Drew evidently has a feeling and a grudge against Judge Cox. His testimony upon the stand showed it. He showed it in every movement of his face, and I suppose it is natural that he should have such feeling. Judge Cox is a smart and bright man himself; it is not natural for him to take to fools, and undoubtedly if ever there was a man upon this stand who is a fool, it is Mr. Drew. It appears from his own testimony that he is a briefless barrister up there: it appears from his own testimony that at this term of court, after he had lived two years in that community, he had succeeded in having, out of a calendar of seventy odd cases, two little appeal cases that term. It shows that he is not a man that is trusted by the people of that district and county and vicinity, and I say that that of itself is good evidence against the man. I have no doubt but that the Senate did get the impression from his testimony, from the

way in which he delivered it, from all that has come out in regard to him, that he is not only a briefless barrister, but that he is an ignoramus and an incompetent lawyer. It appears, from cross-examination, I believe, that this man had been snubbed once or twice by the Judge—it has appeared at least in the testimony of other witnesses. He was beaten in his case at the time when he thinks the Judge was intoxicated down at St. Peter, and he was beaten by the Judge at the time when he thinks the Judge was intoxicated at that special term at Marshall, the September term, in the case of McCormick against Beasely. It is in evidence uncontradicted, by Mr. Seward, that the man comes into court to defend against a motion that is made to strike out his answer as sham and irrelevant. In the first ins ance, a lawyer who knows anything is not liable to have motions of that kind made upon him. Now, then, when the motion was made and argued by Forbes & Seward, he sat there like an old drone, didn't open his mouth or have a word to say or have anything to argue to the court, until the Judge had imposed ten dollars costs upon him, had struck out his answer and imposed costs, in case he should see fit to make another, and then only Mr. Drew gets up and begs off from the court, wants to know if he can't get off with five dollars costs; that is just about the size of the man, I apprehend. I think upon him and upon his testimony before this Senate can, with great propriety, be applied the lines of Pope:

> "A little learning is a dangerous thing,
> Drink deep, or taste not the Pierian spring;
> There shallow draughts intoxicate the brain,
> And drinking largely sobers it again."

I think that he is a standing instance and example of the truth of those lines. That he has shown before you that he is a man who professes to have learning, professes to belong to a learned profession, but that he has drank only shallow draughts from the spring, and therefore is intoxicated and his brain is whirling. When he sees anything go on in the court-room he is intoxicated by those shallow draughts, and his brain is whirling when he comes upon the stand before you. It is shown in testimony that he is no associate of the Judge. When Judge Cox didn't seem to take to him he naturally hated him for it, I suppose, and he therefore had no occasion to learn the peculiarities of the Judge. It seems that he had only been there a couple of years and seen the Judge probably two or three times at terms of court, and then never associated with him, and then never had any cases before him, and never had any practice in the district court, so that he could have had any occasion to learn anything about the Judge's peculiarities.

I call your attention also—and this goes to the credibility of that witness—to the fact that he has sworn, also, under article seventeen, namely, the charge of the September term, 1880, the special term up there, at the time when the court adjourned for the purpose of giving the attorneys a chance to go to the Republican convention. I want to call your attention to the fact that he is the only one of the attorneys who were present at that term of court who come down and swears to the intoxication of the Judge; that all three of the others come down and swear that it is not true, that there is no doubt but that the Judge was perfectly sober at that time.

I also call your attention to the fact that he is flatly contradicted by

Mr. Forbes one of the prosecuting witnesses as to the drunk he claims Judge Cox to have been upon in St. Peter at the time he was down to hear a motion,—I call your attention to the fact that he has been contradicted flatly and absolutely as to every occasion on which he swears that Judge Cox was intoxicated. The Bedbury talk is explained, and it shows how he draws upon his imagination, and how he lets his malice get hold of the reins and drive him along. Mr. Bedbury tells you what was the true inwardness of that story. I call your attention to the fact that his testimony in regard to the Judge being drunk in 1879 the day after the temperance lecture has been denied by Mr. Todd and by Mr. Seward. I want to call your attention to the fact that there isn't anything that that man has testified upon in this case where he has not been shown to have lied all the way through. And I ask you if a man of that caliber, of that stamp and that character is to be believed? If this Senate is going to put any credence upon his testimony whatsoever?

Now, as far as the witness Sullivan is concerned, he don't amount to much upon this charge. His testimony is flatly contradicted by four or five men; the matters that he has sworn to are matters that nobody else has thought of swearing to; but I desire to call your attention to the ridiculous manner in which Mr. Sullivan has sworn upon other charges before this Senate, to show you that as little as his testimony amounted to, even that little should be blotted from your minds and have no bearing in this case.

You will remember that Mr. Sullivan testified, under article eighteen, to three drunks. One was when he claims that Judge Cox walked down with Judge Weymouth upon the other side of the street from his office. He saw them coming down and he tells you that at that time Judge Cox was as drunk as he could be, and that Judge Weymouth had to hold him up, that he staggered and jabbered along. Upon cross-examination we showed that the man was not near enough to hear anything that Judge Cox said, that he didn't hear a word that he said; but, nevertheless he don't hesitate for a minute to tell you that Judge Cox jabbered; nevertheless, he don't hesitate to tell you that Judge Cox staggered and that Judge Weymouth had to hold him up. We called before you Judge Weymouth, who remembers that occasion, and he tells you that his conversation with Judge Cox was of a confidential nature at the time, that they were talking pleasantly and quietly together; that Judge Cox was not intoxicated on that morning; that he did not stagger; that there was nothing of the kind. That Judge Weymouth did not hold him up, that he did not jabber,—contradicting Mr. Sullivan absolutely upon every point.

Again this man Sullivan tells you of another time when he was confident Judge Cox was intoxicated; he gives it as evidence upon the stand that he was intoxicated; and when we enter upon cross-examination to find out what means of knowing he has, we find that Judge Cox stands up and talks with James Bevier on the hotel piazza, and that Mr. Sullivan turns the corner and passes right by, that he don't hear Judge Cox say a word, that he don't see Judge Cox make a move; that he does not see Judge Cox walk; but that he stands up leaning against the piazza and talks with the man at his side. And yet this man Sullivan, walking fast, as he says he usually does, walking only about fifteen steps after he has discovered the Judge, before he has lost sight of him, comes before this Senate and swears upon that information that Judge

Cox was drunk. I say that such testimony shows the great and glorious character of the man.

Again he claims that Judge Cox was drunk at the time, when he says he met him in the store, when the Judge was sitting down and had some socks upon his knees; and we asked him how he knows the Judge was drunk. Did he hear Judge Cox say anything? No, he had made a remark just as he came in but he didn't know what it was in answer to or what it was about, and didn't hear him say anything farther; he didn't see him walk, didn't see him do anything, but he says he saw in his eye that he was drunk; and I followed it up on cross-examination, and showed that he didn't have a view of more than one eye, that he saw Judge Cox was drunk in one eye!! I say that a man who swears in that way is certainly not entitled to any credit whatsoever. It shows what stuff he is made of; it shows that he had a particular object in coming before you to swear away the reputation and the honor of the respondent in this case. It shows that there is some motive that drives him along, which certainly is not an honorable one, and for those reasons if for no other his testimony should be given very little weight or credit. It don't amount to much anyhow, but whatever little there is of it, should be stricken out from your minds and from the record.

As far as Mr. Hunt is concerned, I think I have already shown him up sufficiently, and can safely leave him to wash the spot off from his conscience in the waters of Lethe. It is the mildest fate he can expect from any honest judge.

Now let us see what we have got against the testimony of the prosecution. In the first instance we have Judge Weymouth,—a man of standing in the community, who has been a practicing attorney at law for forty years, a man whom, it has been shown, the people of that section have sufficient confidence in to elect to the responsible position of judge of probate, a man who has known Judge Cox for thirty years, who knew him in Wisconsin, before he came up here, who has known him here since he came here, and who, for the last four years has known him, as he says, intimately; who has tried cases with Judge Cox as an attorney, who has tried cases before him since he was elected Judge in Lyon, Lincoln, Brown and Redwood counties, who particularly observed him, as he tells you, at the time he first met him that day. "I had heard," he tells you, "about the letter which it was rumored had been sent from Tyler the week before, stating that he had been drunk there, and I, on that account, particularly observed the Judge to see what his condition was when he came." And he tells you that although the Judge looked fatigued there was no vestige whatever in his face, in his language, or his manner of any intoxication. Now, I say, he knowing him so well, having the opportunities of observation he did have, meeting him there and having a private conversation with him, seeing him in court as soon as he came in there, trying law-suits before him every day during that term, having the occasion, having the means of knowing the Judge, as he did on account of his long acquaintance and friendship with him, his attention being particularly called to the condition of the Judge as to sobriety or inebriety by the rumors that he had heard from Tyler by the letter that had been sent from there, certainly could and would have seen if there had been anything the matter with the Judge as far as intoxication was concerned.

Judge Weymouth stands so near the border of the grave, he bears so

high a reputation for incorruptibility and for honesty that you could not for a moment lend any thought to the idea, lend any credence to the idea, that when he comes before you he would not tell you honestly just what he means, just what he thinks, just what he saw, and nothing more and nothing less. He is honest in his testimony. He tells you that he has seen Judge Cox intoxicated. He tells you that he has seen him prior to this time intoxicated several times. He tells you that he has seen him intoxicated when he might have had business to do, but when he was not in a position to do business. He don't try to hide anything. He don't try to conceal anything. He is open and frank. His manner is open and frank, and his testimony is open and frank.

The next witness is Mr. Seward. There is no witness in this case, I apprehend, who has made a more favorable impression upon this Senate. He tells you that he was present during the whole of that term except during the charge to the grand jury, and the managers have tried in every way to break that man down. They discovered the danger that there was in his testimony, the candor and intelligence there was in it, and they were bound to break it down if they could. They tried, and, I claim, they tried in vain. In the first instance they tried to bring in the bar meeting and show that at that time Mr. Seward told a member of the bar that he ought to stand by Judge Cox. He didn't deny that. Now, does that show anything? Does that show anything wrong upon his part? What was that bar meeting called for? How were the grand jury resolutions introduced in evidence before you? They were sneaked in by trying to get Mr. Seward to tell what was the contents of those resolutions. They asked him if those resolutions didn't refer to drunkenness at that term, and he denied it. And then, under color of showing that they did, those resolutions were introduced, and when they come in it is shown by the resolutions themselves that they do not refer to any drunkenness at this specific term. The grand jury resolutions were brought in to the Judge, and they accused him of almost everything; accused him of want of integrity, or want of honesty, of "Conduct unbecoming a citizen, gentleman and judge."

This matter was submitted by the Judge to the members of the bar, who were present at that term of court. Some of the members of the bar, headed by John Lind, refused to pass any resolutions at all unless they could go to work and constitute themselves into a "smelling committee" and examine into the Judge's actions all over that district. Mr. Seward deprecated such a course; he told them that that was not what they had come there for, and he told one of them, when he didn't want to do anything about it, when he wanted to help along that assassinating preacher up there, Mr. Rodgers, "You ought to stand by the Judge in this thing." Was there anything wrong in that? It showed the noble heart of the man. There was no occasion upon their part, to examine into whether or not the Judge had not been drunk at some time or another,—that was not a charge that the proposed resolutions tried to meet. Those resolutions were that they had full confidence in the integrity and the ability, and the judgment of the Judge. That is all Seward wanted those men to state to or of the Judge. There was nothing wrong in what he said. It was simply an exhortation to show decency towards the Judge, show him due consideration, to make the Judge feel better after he had been made to feel bad by the resolutions of the grand jury,—abusing him in open court. Now, I say it shows

the heart of the man; it shows the good will of the man; it doesn't show anything wrong or out of the way, it doesn't show anything mean, it doesn't show anything dishonest.

Now, as I say, the managers introduced these resolutions to show that Mr. Seward had not told the truth when he said that those resolutions did not have reference to this particular term particularly, when he testified, as he did, that the grand jury resolutions specified no time or place except on and off the bench; that was what he told you in his testimony, and to deny that, they bring forward those grand jury resolutions. Now, let us see whether he is not correct and whether he did not state the truth. Let us see what those resolutions were, I will read them:

WHEREAS, We the grand jury of the June term, 1881, and of the 9th judicial district, having reverence for the laws of the land, and also for all instruments and officers through whom it may be administered,—

It seems to me I can feel the pen of the assassinating preacher, Mr. Rodgers, all through here; it is a regular ministerial document.

and priding ourselves on the unsullied reputation of our officers, and

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 known to them*, and

WHEREAS, The said grand jury understood 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.

Where in those resolutions, is any reference made to this term of court? Where, in those resolutions is there any reference made to the court? Why, on the contrary it appears that this Rev. Mr. Rodgers charged him with "Appearing upon the bench and in our streets in a state of intoxication;" but it don't say where nor at what time.

It don't say whether it was a year before or that year, nor whether it it was at a special or a general term, but that "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" How could it be that on the 22nd day of June, when court had only been in session one day, that there could be numerous instances, charged and proven by those witnesses, "Personally known to them" that had reference to that term of court? I say it is clear as daylight that that resolution had nothing to do with that term of court, but rather to charges and accusations brought by Mr. Rodgers as to the Judge being intoxicated some other time or times. That resolution has nothing to do with the charge of

this article, and young Mr. Seward was correct when he stated (although not having the resolutions of the grand jury when he testified,) that the grand jury did not specify any time or place except "Upon the bench and in our streets," and that it had no particular reference to that term.

And he tells you how the thing came about. The managers told you they would call a witness to show you that the evidence introduced before that grand jury was as to his drunkenness at that term of court. Did they do it? Not at all. There is not a particle of testimony here, that any evidence was introduced before that grand jury as to the conduct of the Judge at this term of court. Mr. Seward tells you the true inwardness of that matter. He tells you that this man, "Mr. Rodgers had divided his time for the last two or three months between preaching the gospel and working up a boom against E. St. Julien Cox;" and that he, when that grand jury came there, and when he found that he had several of his friends and dupes on it, went before the grand jury eager for revenge upon the Judge for what he considered an insult offered to him by not recognizing this great priest, this great minister of the gospel, this great light that had come to bring the word of life and the word of God to the people of Marshall. This great and good Christian never could forgive Judge Cox, that he could have mistaken him for a baggage smasher. He felt that now had the hour of vengeance and revenge arrived for him, and he improved the occasion.

He is the same man who is one of the originators of this proceeding; the same man who has, over his own signature, in a public newspaper in this State, admitted that it is true, that before this grand jury matter came up, he offered to head a gang of ten to thirty men to throw the Judge into the Redwood river and drown him. I say he is a fine specimen of a minister of the gospel; he is a fine follower of the teaching of his Master, the illustrious Savior of mankind, and when the learned manager, Mr. Collins, undertakes to compare that man and place him side by side with the Right Reverend Father Ireland, he offers an intolerable and uncalled for insult to that great and good Catholic divine; I say when he says it is right that the ministers should take charge of the temperance cause, and that this man has done nothing but his duty, that Father Ireland has set him a good example, and that he wished the ministers generally would follow it as this man Rodgers had, he offers an insult to Father Ireland and the cause—the holy and laudable cause that he represents. Father Ireland don't go around the street trying to traduce men, he don't go around the streets trying to assassinate men, he don't try to destroy a man's usefulness, as this preacher up there has done, because he has been insulted by the defendant, or because he *feels* insulted rightfully or wrongfully. The work of Father Ireland is the noble work of bringing the drunkard up from the gutter by kindness, trying to make a better man of him; in short, the spirit that moves him is the spirit "That raises mortals to the skies," while the spirit that moves that wolf in sheep's clothing up at Marshall,—that so-called minister of the gospel,—is the spirit that Dryden sings about when he says, "That it draws an angel down." If our ministers could get imbued with the spirit of Father Ireland,—if they would devote their time to efforts for "Raising fallen mortals to the skies," as he has done and does day after day, it would be commendable and desirable; but if their temperance zeal is to show itself, *not* in the humane manner in which Bishop

Ireland works, but in breaking down and destroying the usefulness of all men who imbibe the dangerous fruit, then I say, eternal damnation ought to follow them and their work.

Mr. Seward is sought to be attacked again. He is a strong man, and he *must* be destroyed by the managers if they shall succeed, and they try it hard. But I maintain that with all their efforts they have not succeeded in breaking the force of a syllable, he has uttered. They have tried hard but they have failed, and signally failed. Their next attack is directed to a remark that they claim he made upon a certain occasion, the second day of this term of court, when the grand jury was in session, and we find it referred to on page 733.

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?

The witness said he did not, and that he would like to make an explanation, and he makes it and I shall hereafter come to that explanation. Now, then, the question was, did he use this lauguage. He says he did not, and he tells you what he did say.

The manager called four witnesses to prove that he used that language, and one of them is Mr. Whitney, the man who has been shown to be a mortal enemy of the Judge, the man who has been shown to be the editor of a newspaper published in that town, and a man who has had to admit upon the stand here himself that since the first day of June, last year, there had not been an issue of his paper in which there had not been contained some violent abuse against E. St. Julien Cox, which shows the spirit that moves that man, which shows whether he is friend or a bitter enemy and hater. The second witness is Mr. Sullivan, the man who has been down here and sworn so ridiculously, as I showed awhile ago, contradicted by everybody who is called to contradict him. The third one is Mr. Burchard, *another* of the employees of the Winona & St. Peter Railroad Company, and the fourth one is Mr. Forbes, the partner of Mr. Seward, the county attorney of that county. Now what do those four men swear to? They tell you that Mr. Seward came up and made this remark to them and that he made it in just that language; and we were explicit in asking every one of them, are you sure that he used just that lauguage? "Yes sir." Did he say "An habitual drunkard, to-wit, E. St. Julien Cox?" "Yes, sir." Are you sure it was with the *to-wit* in? "Yes, sir." Now was there anything said before that remark by which he could be induced to make it,—what was the talk that came before that? "Not a bit, sir. He came rushing right across the street and stated to those men standing there, well, if the grand jury of this county should do its duty it would indict E. W. Mahoney for selling intoxicating liquors to an habitual drunkard, to-wit. E. St. Julien Cox." Now I ask you to say, gentlemen, is that a reasonable or probable story? Have these men told the truth?

Have you ever heard a man, lawyer or otherwise, who has ever spoken in that way? Who has ever talked in that way,—that the grand jury ought to indict a man, naming him, for selling liquor to an habitual drunkard, *to-wit*, E. St. Julien Cox? Why, the natural way to talk would be to say, "To indict him for selling liquors to E. St. Julien Cox,"

or words to that effect; but you never heard a man yet, I apprehend, not even in a speech, expresses himself in that way. And young Mr. Seward appeared upon the stand before you and appeared to be too natural in his ways, too natural in his language, to be guilty of any such affectation as that. Now, I say, that that alone will damn the testimony of those men, it will show that they lied, because you know it is unnatural that a man should ever use such language as that. Again, I say that it is yet more unnatural, unreasonable and improbable that he should have rushed over to them and without any provocation make any such remark as this language evidently calls for, if it had been used. It looks like a remark thrown in when somebody had been talking about the Judge, just as the young man explains it himself that his language came in. I say his explanation is natural, it is reasonable, it is probable; but that he should come rushing across the street, and those men standing there and talking together, and he put his nose in between them and say that the grand jury of this county should do so and so, it is unreasonable, it never was the truth, it never could be the truth.

Now let us see what Mr. Seward himself says in regard to this matter and see if it is not a reasonable explanation and story that he tells. He says 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.

What was his name? "Samuel J. Rodgers. 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." Mind you, it was before the court met that all this talk had been had about what would be done when the grand jury met. How then could the matter have reference to his condition at that term of court? He continues: "I was talking with some of those men you have mentioned—" and he shows his correctness, because the managers mention four men here, of whom they only call two; the other two are neither called nor shown to have been present at all; the young man shows his perfect recollection of those matters. "I was talking with some of those men that you have mentioned; I could not 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"—now they were talking there about having Judge Cox indicted; and he says, " that the only proper way that they could take cognizance of such an offence 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 a question of *practice*. It had no reference whatever to that term of court,—the question of his drunkenness at that term of court 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."

Now is that a reasonable story as compared with the story of these other men, and which one would you prefer to take in a matter of your own? Which one, the unreasonable story told by these four men, or a story as plausible and reasonable and as probable as this one is?

I take it that if all the scoundrels, all the perjurers, there are in Marshall, should come down and try to impeach Virgil Seward, a man with his intelligence, with his probable and reasonable story before you, with everything to support him, and perjurers up there, with everything against them, with the unreasonableness of their story against them, with the improbabilities of the occasion as they testify against them, that you would take the word of Virgil Seward against all of them. Another thing. How is it those men can remember exactly the words that that man used, even to a "to-wit;" to the dot over the "i" and the cross over the "t," as they do, a year and more afterwards? How is it that they all should agree so absolutely when they are told to reiterate just what he said? one witness gives it in just the same language as the other. I say, gentlemen, whenever that occurs, whenever two or three or three or four men attempt to tell a story, attempt to describe anything that has been done, anything that has been said, and they follow each other exactly, and cross their T's and dot their I's in the same way, when they give it exactly in the same manner, I always know in my heart that it is a lie, and every one of you who is a thinking man will know the same thing; because you know it is impossible that four men can stand and see the same transaction and tell it absolutely in the same way. One will naturally notice one thing particularly and another one will notice another thing particularly, and four men cannot hear a conversation or a remark, and a year afterwards reiterate it in the same way unless they have compared notes, unless they have made up their story; and that is what these men have done, and the evidence bears upon its face the ear-marks of falshood and perjury.

I take it, therefore, that Mr. Seward stands unsullied before you; that he stands there in all his native brightness, in all his native intelligence, with his natural honesty surrounding him, and that when the testimony he has given before you is corroborated, as it is by the best men of Lyon county, by men knowing the Judge as well as he knows himself—knowing him better, even—when it is in all things corroborated by those men who all had the opportunities to observe him, and who all have the reputation of honest men, his (Seward's) reputation will stand pure and clear as the icicles on the pinnacles of the Temple of Diana, if all the perjured rascals and all the enemies of Judge Cox in Marshall should come down and endeavor to swear him, and whoever would tell the truth in his favor, into the innermost recesses of hell.

The next witness is Mr. Main, a reputable lawyer from Tracy; a man who was present in court, he says, from Tuesday to Saturday, during this term of court, every session; a man who does not try to shield the Judge. He has not known the Judge more than three years, but when he is asked if he has ever seen the Judge intoxicated, he tells you that he has. He tells you that the Judge was perfectly sober during the whole of that term as long as he was there, which covers all the time during which it has been charged that he was intoxicated.

Now, Mr. Gley, the young bookkeeper, the man from New Ulm, who had known the Judge for twelve years—is that man coming down here to lie, to perjure his soul for the sake of Judge Cox, a man that he has got no business with, a man that he has got no particular relations with.

And Captain Webster, another man who has fought for his country, who has been selected by the citizens of that county term after term to

serve in one of the highest offices within the gift of the people, a man who has known Judge Cox for ten years, known him drunk and known him sober, a man who has no connection with the court now, to whom it is nothing whether Judge Cox is beaten or whether he goes through gloriously, a man who is, as three-fourths of our witnesses, a Republican, who opposed the Judge when he was elected, and who would likely oppose him again—I say, are you going to say that a man of Mr. Webster's standing, of his reputation, of his honesty, is coming down here to perjure himself in favor of Judge Cox? I think not.

The next witness is Mr. Grass; a lawyer who does not reside there, a bright young man, as you could see, an intelligent young man; a man who seemed to be very cautious about whatever testimony he gave, and a man who is not affected by any change of Judge in that district, a man who does not live in the district. He lives in another county and in another district and only happened to be there during the term and he also testified as to the perfect sobriety of the Judge.

Now there is Mr. Matthews. A man who has known the Judge since 1872, has been intimate with him, has been his partner for three years at New Ulm, before the Judge went upon the bench; a man who is an attorney and who is so trusted by the people of that county that he tried as attorney a greater portion of all the cases that was there upon the calendar; a man who was in court about nineteen-twentieths of that term, who was there the first day and tried a case himself before the Judge, apt to know whether the Judge was intoxicated or not, tried the Bedbury case; who, the next morning, the morning of the second day, tried the Edwards case, and so testifies before you; who that same evening tried the case of the State against Farrington, and tells you that the Judge was perfectly sober; who says he was present during the trial of the Main case which was tried the second day and watched with interest the proceedings and who says the Judge then was sober.

He was present the third day, at the trial of the Lindsley case and watched it with a good deal of interest, and he tells you that the Judge then was sober. He is a man who has the ideas of a temperance man, as he is himself a man who never drinks, and who tells you that he has got such ideas of drinking that he thinks that when a man takes one glass of liquor he is intoxicated, and that when a man is said to be drunk all that is necessary to show is that his better judgment is influenced by drink; a man who has stronger theories upon the subject than any of the witnesses for the prosecution,—with the exception of the Rev. Mr. Liscomb, who says he thinks a man is drunk when he has drank a drop. Now, I say is this man worthy of belief? You noticed how careful he was in his testimony; how honest he was about everything he testified to; what a time he took to consider before answering my questions as well as those put upon the other side; how careful he was that he should not be led into telling anything but what was the strict truth and how guarded he was in his expressions. I say a man of that stamp is entitled to your full credit. They try to impeach him by what? The managers tried to impeach him by showing that he wrote a certain letter. It had no reference to anything he testified upon; he might have admitted that he wrote it and he would not have hurt himself nor the respondent a bit if he had said so. They asked him if he had written a certain letter that was published in the Lyon County News, about the Judge being intoxicated over at Lincoln county, a term that Mat-

thews did not testify about at all. They asked him if he wrote that; he told them no.

When I asked him to state whether or not he was the author of it he said emphatically, "no, sir." They try to impeach him by calling upon the stand whom? This same Mr. Whitney, this same sworn enemy of the Judge, who has been abusing him and reviling him since the first of June last and up to the present day in every issue of his paper. They called him, and they proved by him what? That it was Mr. Matthews' handwriting? No. That he had received it from Mr. Matthews? No. It was signed by one Mr. Matthews, and that this Mr. Matthews came after it, as he claims, a month after it had been published, and got it back.

Now, we were, by the action of the Senate prevented from bringing in any testimony in sur-rebuttal; we were prevented from bringing Mr. Matthews down here to testify before you to the fact that it was a lie that he had ever been and got that letter; but the manager admitted that he would so testify, at the time, and it so appears in the record, and I will therefore take it for granted that it stands denied by Mr. Matthews. It does by the admission of the learned manager. And I will say this: that I am further authorized by Mr. Matthews to tell this Senate that when Mr. Whitney says that he ever went and got that letter from him, that he is the most consummate scoundrel and perjurer that ever walked the earth. That is Mr. Matthews' message to this Senate. It is hardly needed to deliver such a message for the man's character is shown up by himself. A man who gets a private letter and will take and publish it in his paper, will publish it to the world, and not only do that but take that letter and go around and show it, as he testified, to his own disgrace upon the stand here, will not hesitate to stretch the truth. I supposed that even a newspaper man was presumed to have some bit of honor about him, but that man seems to have left every scintilla, every vestige of honor behind him whenever the point was to injure or hurt E. St. Julien Cox.

I say that a man who will act upon those principles is a man who places himself in a position where all honorable men despise and shun him, where no honorable men will want anything to do with him, and they will place no credence in anything that he says or does. He is not worthy of the society or companionship of any honest man; a man who will do that, will steal; a man who will steal will lie, and a man who will lie will swear false, and that is what Mr. Whitney has done before you. He showed this letter, as he tells you, to Sullivan, the boss swearer, from that county, a man who sees the Judge drunk *in one eye*, so that he could come down here and testify. And showed it to him when? Showed it to him a month after it had been published. What in the name of heavens did he want to show the letter for, after it had been in the paper? Is it a reasonable story? I think Mr. Matthews stands unshaken. That the attacks upon him by such menials as Mr. Whitney and Mr. Sullivan repel themselves; that he has the armor of truth around him, against which the poisoned arrows they send out against him recoil. They can do him no harm, can wound him not.

Our next witness is Mr. Andrews, a man who has known Judge Cox for twenty years, a man who has clerked with him and is apt to know just when Judge Cox is sober and just when he is drunk. And he tells you that he was in the court room the whole time except a few minutes

Nobody has dared to attack Mr. Andrews' honesty or his standing in that community; he stands too high for that. He is not even a drinking man. Mr. Butts is in the same shape. Mr. Butts from Lake Benton, not a drinking man; a temperance man entirely.

He tells you he came there the second day and stayed all through, and he says that he stayed with the Judge at his hotel; that he roomed there with him; went down the second day to his hotel after he had stopped one night over at this Mr. Hunt's, and stayed right with the Judge and knows what he drank. Says he took one drink, I think, that he saw, and that was all he saw him drink during that whole term of three weeks.

Mr. Morgan is our last witness, a man who has known Judge Cox since 1862, who has seen him several times at court, who has served as a juror up in that county for two or three terms, and he says that he was in court in the afternoon of the first day and in the forenoon of the second day, and that the Judge was sober, perfectly sober. He is an honest man. He tells you, when asked,—and there was no need of his telling it unless he desired to tell the whole truth,—that that second morning, about six or seven o'clock, shortly before breakfast, he and Judge Cox went in and took a drink. He cannot remember what the Judge took, whether he took beer or what he took; he remembers that he himself took beer. He admits that the Judge took a drink there that morning. Now, if he had been a man who would come here and shield the Judge do you think the managers would have brought that out of him? No, sir. This was during the term. It was in the morning, right before the Judge was going into court. If that man was not an honest man and would not tell the truth just as he saw it and understood it, you cannot believe for a moment that he would have admitted that fact, that he would have testified to that fact.

I say that the evidence brought forward by the defendant,—and I believe there are twelve witnesses in number upon this article,—as far as respectability, as far as standing in society, as far as intelligence are concerned, outweighs all testimony introduced for the prosecution.

Besides that, our witnesses are called, as I said upon another article, from all classes of society; we have here lawyers, farmers, book-keepers, and ex-sheriffs; we have men of standing in society, men of intelligence, men who were there and who observed him, and we have got them against the testimony introduced for the prosecution, which is all made up by lawyers, except this Mr. Patterson, the clerk of the court, who had been offended, it seems, at remarks made by the Judge, when the indictments found by the grand jury were stolen. You remember that upon his cross-examination he was asked if the Judge did not abuse him very much, and he says he did speak up something about him. Can you blame the Judge for going for him? A man who was so careless that he let the indictments found by the grand jury be stolen away from his custody. Now he comes down here to pay the Judge back the rebuke with interest.

I say that, when against the five or six witnesses, that the prosecution has introduced upon this point, (and when you take out Mr. Coleman,—which you certainly have the right to, and it should be your duty to do it,—only four or five witnesses), there are twelve respectable and honorable citizens before you as witnesses for the defense, contradicting his drunkenness at any time during that term, and farther than that, con-

tradicting the singlehanded testimony of each of the witnesses for the State in regard to the facts and circumstances which they claim make the foundation of their charge of drunkenness, I don't understand how any honest and fair minded man, in judging upon this case, and deciding upon the law and upon the evidence, can, under his oath, say that there has not been at least a reasonable doubt awakened in his mind as to the guilt of the respondent of the charge in that article contained.

Will the Senate kindly allow me five minutes' recess.

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

AFTER RECESS.

Mr. ARCTANDER (Resuming). Mr. President, I will now proceed to the consideration of

ARTICLE SEVENTEEN

And its different specifications. And first,

SPECIFICATION ONE,

Which charges intoxication upon the part of the Judge at the time of the hearing of certain proceedings supplementary to execution in the case of the Cleveland Co-operative Stove Company against Robinson & Maas and others, had at Marshall on the 7th of November, 1879. On this specification we find as witnesses on the side of the prosecution Mr. Forbes, J. A. Hunter and W. J. Hunter; on the part of the defense, Mr. Whaley, Mr. Langworthy, Mr. Maas and Mr. Andrews.

Now, these witnesses for the prosecution are the sheriff, the deputy sheriff and an attorney who was present there in court. On the part of the respondent are both of the parties to the proceedings, to-wit: Mr. Maas, one of the defendants, and Mr. Langworthy, the representative of the plaintiff company; also Mr. Whaley, one of the attorneys and Mr. Andrews, an attorney who saw the Judge later in the evening upon some business and had a conversation with him.

Now, as far as the evidence for the prosecution goes, you will notice, with the exception of one of the Hunters, it is rather flimsy. Mr. Forbes, the attorney who was called for the prosecution, tells you that he *thought* at the time that Judge Cox had been drinking some, but says positively that he couldn't swear he was intoxicated. Well, now, that is pretty weak testimony to base a charge upon, and I expected when that testimony came out that the managers would see fit to drop this charge, but they did not.

Now, J. A. Hunter tells you that he didn't know the Judge any before that time, that he had only met him once before, and he says, "From my short acquaintance with the Judge *I should say* he was very much under the influence of liquor." It is shown that he knew nothing about the Judge, that he had only met him once before.

W. J. Hunter says he *thinks* the Judge was very drunk.

That is the testimony upon the part of the prosecution as to the question of whether or not the Judge was intoxicated. As you will see, the testimony for the prosecution is very slim, is very slender, as a matter of fact, there is really nothing to base a verdict upon, even if it stood

uncontradicted. It is too indefinite, too uncertain to base a verdict of a decent jury upon. This fact as to the Judge being intoxicated is really only pretended to be testified to, by the two Hunters, because Mr. Forbes deprecates the idea that he could testify as to whether the Judge was intoxicated or not at this time. It is contradicted, I say, by Mr. Whaley, the attorney who was present there in the afternoon at the session, and during the whole of the evening session. It is denied absolutely by Mr. Langworthy who was present all the time in court and who met the Judge socially at the hotel, who stopped at the same hotel with him and spent most of the time with him. It is denied absolutely by Mr. Maas. It is denied absolutely by Mr. Andrews in this way: Mr. Andrews was present, it is true, a few minntes in the evening at the hearing in Mr. Todd's office, but he don't undertake to testify what the condition of the Judge was then, because he only saw him a few minutes. But after he was through, of course he would show it just as much as he did at the time he was acting.

Then Mr. Andrews, in the evening, comes up to the Judge, meets him, has a conversation with him, submits certain papers to him, upon which he desires to get an order to show cause. The Judge examines the papers and tells Mr. Andrews that his papers are insufficient, that there are mistakes and errors in them. Now, I ask you if that is the action of a drunken man. He looks through papers presented to him by the lawyer and he tells him "This is wrong; this is a mistake in your papers and you can't get your order." Well, if there was a mistake it would not likely have been apparent to a drunken man; but Mr. Andrews tells you that he went home to his office and looked up this point, that the Judge had pointed out to him and he found that the Judge was correct. Now, I ask you, if at eleven o'clock that night, or at ten o'clock, or at nine o'clock, whenever these proceedings were over, the Judge had his mind and judgment about him to that extent that he could examine into these papers and show this attorney the mistakes he had made, and *he* afterwards finding, upon examination of authorities that the Judge was correct, is it reasonable or probable, that the Judge was intoxicated during the hearing of that case from six or seven to nine.

Now, these witnesses for the prosecution, have, with the exception of Mr. Forbes, who only gives his opinion, and gives it with a mental reservation, given certain indications as they claim of intoxication. And we have in this case, as in all other cases, not felt satisfied with simply contradicting the statement of the witness as to whether or not the Judge was intoxicated, but we have contradicted in this case, as in all other cases the incidents, the facts which are alleged by the witnesses for the prosecution as a basis for their opinion.

Mr. J. A. Hunter testifies that very little was done that night; that business was not proceeded with very fast; that both attorneys joined in asking a recess of the Judge, throwing out the hint, or rather leaving us to draw the inference, that they thought the Judge was intoxicated and therefore wanted a recess. Now, Mr. Whaley, who was one of the attorneys, tells you that this is not true. Mr. Whaley tells you that the business went on all right that evening. He tells you that he went on and examined Mr. Robinson, and that Mr. Gove, who was the attorney on the other side, and who was desirous of delay,—the attorney for Robinson & Maas, the judgment debtors,—was tryiug to delay the cause and he probably asked for a recess, but their side never did but wanted to

go on and push the matter as fast as they could; and that at six o'clock, as soon as the sheriff had come, he being the one they were waiting for, so that he could amend his return, they proceeded with business and worked until between nine and ten o'clock.

Mr. Maas tells you that Mr. Robinson was examined and that they adjourned abount nine o'clock; that business went right straight along and that there was no recess asked for as he can remember at all.

Mr. Langworthy tells you that business went on all right; that the only interruption there was was the arguments of attorneys there, and that the Judge acted perfectly proper all through the evening, and that he was perfectly sober, as they all testify upon the part of the defence; and that no recess was asked for upon their side; that Mr. Gove asked for one or two, but that the Judge refused it: that they never joined in asking for a recess.

The third witness for the prosecution is W. G. Hunter, and he is a remarkable witness. He is the man who can see in the dark; he is the man who has got the eyes of a cat, so that he can tell the flush upon the Judge's face and the color of his eyes when it is dark as pitch—when two of the witnesses testify it was too dark to even distinguish features: but he sees it. He is a remarkable witness, and a remarkable eyesight he has got. He sees and hears things that nobody else hears or sees. In the first instance he shows with what recklessness he swears in this case. He tells you first, that at the afternoon recess the Judge was slightly intoxicated, was slightly under the influence of liquor; he was a good deal different when he adjourned at three o'clock than when he took his seat between one and two, after recess, and yet he was not out at all; but he got a good deal worse, he got drunk just sitting there. By just sitting there and hearing the foolish arguments of the attorneys, I suppose, he got drunk. Now, it so happens that all of the witnesses for the defense, Mr. Andrews amongst them, testify that the Judge came up there that day at about two o'clock on the train, and that he went right into court, consequently that there was no noon recess; that there had been no session that forenoon; that the first business they had was at two o'clock; that it was discovered that the sheriff had made a mistake in his return to the papers, and that an adjournment was had until six o'clock or until half-past six, at least after supper, for the sheriff to come up and amend his return; and that at half-past six, or whenever they met, they went right along with their business.

Now I say Mr. Langworthy and Mr. Whaley and Mr. Maas saw the Judge at this time when he came in on the train, and after he had had his dinner, when he went over there and held a session, and they deny absolutely the statement of Mr. Hunter that he was under the influence of liquor. They say he was perfectly sober at the time. Mr. Andrews also tells you that it was not true that the Judge had done any business before noon as the deputy sheriff testifies to, because he knows that the Judge came up on the train that afternoon.

This same deputy sheriff sees the Judge again at six o'clock,—he puts it ten minutes before six, all the other witnesses say that it was after supper, consequently it must have been after six o'clock sometime,—he says he is on the bridge first, and the first thing he sees there is the Judge embracing somebody. Now in the first instance I suppose that is going to show that he was intoxicated. Then the Judge comes down to where he is, at Mr. Todd's office, and he says to him, "G—d d—n

you, why don't you open that door? That is the first thing; and then afterwards, "Open that door or I'll smash it in." That is what this witness testified took place there at the bridge,—first the embracal on the bridge, then the Judge's remarks to him down there at the door in Mr. Todd's office. Now, it so happens that Mr. Hunter and Judge Cox were not alone at that time; it so happens that the evidence for the defense shows Mr. Langworthy, the traveling man, who was interested in the case, was present; that he walked down with the Judge from the hotel to the office there in the evening; that he walked with him across the bridge. And he tells you that the Judge did not embrace anybody,—that anybody that says that is a liar; that he walked right down with him, that he came down and found the deputy sheriff there, and that he found Mr. Maas there; and Mr. Maas tells you that when Langworthy and the Judge came down he was there at the office. And both Mr. Maas and Mr. Langworthy tell you that the Judge didn't say anything of the kind in their presence as this deputy sheriff claims,—"G—d d—n you, why don't you open the door?" or "If you don't open that door I'll smash it in." That he didn't make any remarks of the kind. There are two witnesses against that deputy sheriff, who sees in the dark.

The man goes farther. He says that the Judge spoke very drowsily, not as quick as usual. Mr. Whaley was called upon that point. He tells you that that is not so; that the Judge was just as quick in his actions and in his speech as usual. That his mind acted rapidly, and that he even anticipated points in law that he was making before him, and as soon as he got up and made a point, saw it at once and told him what his views were upon it; that he could see the points as they were coming. Well, now, that shows that the Judge was not drunk, that he was not full there that evening; that he was not as this sheriff would have him to be, drowsey in his speech, and not as quick as usual.

Now, this same deputy sheriff does not know anything else about this matter except what he saw outside, as I understand. It don't appear that he was present and heard the proceedings as they were going on in the evening. But in return he tells you that at the time on the bridge there, when he met the Judge, his face was flushed and that his eyes were colored, that they were glaring and colored. I asked him if they were red, and then he took it back and said he didn't think he had said that they were colored at all. But he stated, in the first instance, that his face was flushed, and he stated also that his eyes were colored, and afterwards makes it the other way,—a peculiar glare in them. I asked this man how it was that he saw this; I asked him if it was moonlight. "No, sir, it was not moonlight; positive about that." Well, what kind of light was it? "It was daylight." What time of day was it? "Well, it was ten minutes before six," he says.

Very well. That man must have remarkable eyes, it must have been remarkable daylight there was at that time. I in my opening argument in this case called attention to the fact that on the 7th of November, the time when this took place, the sun sets in Chicago at 4;45, in New York at 4;48; Marshall being about three degrees north of Chicago sunset would be at least ten minutes earlier, which would make it 4;35. This was ten minutes before six, in the winter, the 7th of November. You all know that at that time of the year it is dark as pitch about an hour after sunset, and yet he claims it was daylight enough for him to see the flush

upon the face of the Judge and the color of his eyes. We know that is false. But we have not left the matter there; we have called upon the stand witnesses like Mr. Maas and Mr. Langworthy, who tell you that at the time they walked down, and when the deputy sheriff tried to open the door it was not ten minutes to six, but about half past six. They have located the occassion perfectly, there is no mistake about it. The Judge could not have been there before because it is the same occassion, when they come down and try to get in and he finds he can't, and the deputy goes down to Mr. Todd's for the keys. They tell you it was half past six, that it was after supper; and they both tell you that it was as dark as pitch; that you couldn't see a man's face at all, and you know it is true, in the nature of things. Now, I claim that after we have caught this man Hunter in lie after lie, after we have shown by nature itself that he *must* lie, and then called witnesses and shown by them that he *does* lie, there cannot be much confidence or reliance placed in that man, and that his whole testimony, as a matter of fact must go out; and if it goes out, there is nothing but that of his brother, J. A. Hunter to support the case, because Mr. Forbes don't amount to anything, he don't claim anything.

And against it, as I said, is the testimony of Mr. Whaley, who has seen the Judge at three or four terms of court besides. I desire to show how the managers tried to impeach this man Whaley. They asked him if he didn't tell Gen. Sanborn, on his return from that trip, after this hearing, that Judge Cox was drunk. He said no, he had no recollection of that kind. Now, why did they ask it. Under the testimony he gave, if he had told Gen. Sanborn anything of the kind it was their privilege and right to call Gen. Sanborn upon the stand to show it. They didn't do it. Why didn't they do it? Because Gen. Sanborn would have said nothing of the kind I apprehend. If it had not been for that they would surely have done it. Now, this man Whaley lives here in St. Paul. He is a young attorney who has no interest in Judge Cox's district. He happened to be up there representing the firm of Sanborn & Sanborn at the time. He has no interest in the district, and no interest in Judge Cox. Besides that, he was the attorney who got beaten in that case. His side was beaten by Judge Cox. He could not have any particular love for him. He is honest and fair in his testimony. He tells you that the Judge did take a drink with him that night at about 11 o'clock. Mr. Langworthy, representing one of the parties in the case, representing a party that had nine thousand dollars at stake in that case—do you believe that he, an old friend of Judge Cox, would have let the Judge go to work and have a hearing there with nine thousand dollars of his principal's money at stake if he had been in an intoxicated condition? Not if I know him right.

The learned manager threw out the unjust aspersion against Mr. Langworthy that you could judge from his face that he has got drunk occasionly himself. Now I say it don't take the eyes of a physician, when you see the face of Mr. Langworthy, to discover that he has been a sufferer from a disagreeable disease, namely, erysipelas; and I should think the learned manager who opened this case, if he did not know Mr. Langworthy and did not know how respectable a man he is, would have judgment of human nature and judgment of physiology enough to tell that his face exhibited the effects of erysipelas and not of drink. But even if it was the fact, even if Mr. Langworthy did take a drink occas-

ionally I don't suppose that would affect his testimony. He has told here a truthful story, and I suppose he is to be judged by his testimony and by his standing, not by the fact as to whether he takes a drink or not. Mr. Langworthy is honest in his testimony too; he tells you that he has seen the Judge intoxicated at other times, at any rate at another time. He admits that he took one drink with the Judge; that the Judge had a drink at about half past five o'clock, right before supper; that it was the only drink; that he had nothing after supper; that he asked the Judge if he would not take another drink and he said no, he wouldn't. Now, I say there was no necessity of bringing forth all these things if it was not the fact that the witnesses were honest, that they didn't try to tell a false story, to screen anybody or to help anybody out, but that they wanted to tell the truth, the whole truth and nothing but the truth.

Mr. Maas was a party to the case, as I said before. He comes and tells his story, I have called attention to what Mr. Andrews' testimony was. He is a man that ought to know when the Judge is sober and when he is drunk; and he not only tells you that he was sober but tells you facts and circumstances, which go to show that the Judge must have been sober at the time. I take it, therefore, that there is no need, under the circumstances, for me to spend any more time upon this specification. I desire, however, to correct a statement made by the learned manager, Mr. Collins, when he summed up on this article. He said, if I remember right, that Judge Weymouth, when he was examined upon another article, was asked whether or not he had ever seen Judge Cox intoxicated when he was in the discharge of his business and that he said that he had, and that it was in testimony that this specification was the time when Judge Weymouth had so seen Judge Cox intoxicated; and that he was one of the attorneys in the case. Now, I will state first, that there was no evidence that what Judge Weymouth testified to had any reference to this case at all; that there was no occasion given him so to testify. He was asked when and where it was, upon cross-examination, and we objected and the Senate sustained the objection and didn't allow the testimony to come in. That is one thing. Another thing is that it is very peculiar, if that should be the case, if Judge Weymouth should know anything about this and should say that Judge Cox was intoxicated at this time, that the managers did not call him and prove it by him when they were at their case. When you look over the witnesses on their behalf you will find that they only had three, when they were entitled to five. I have been wondering where Judge Gove was, the old partner of Col. Hicks, the chief of the managers, why he was not called, and why he didn't show that the Judge was intoxicated.

I have been wondering since I heard manager Collins' argument when he claimed that Judge Weymouth had testified that the Judge was intoxicated at this time here, why it was that he didn't call Judge Weymouth. When they had two men left of their number, instead of calling men who would only say they couldn't swear whether the Judge was intoxicated or not, or men that have cat eyes and can see in the night, why didn't they call a man who was known to be the Judge's friend, if it was the fact that he would be willing to swear to that fact, and make the evidence so much stronger? If one of the Judge's old friends and associates would come up here and swear to it, why didn't

the managers call him? I think it is rather late in the day to come now, after they had shown it was not the fact by not calling him, to insinuate that Judge Weymouth would swear to anything of the kind. They might say, why didn't we call him if he was there? Well, I don't know, in the first instance, whether Judge Weymouth was there or not; I think he was, though, but I know that I considered that when I had four witnesses against one of theirs,—for that is all it amounts to, one of them says he don't know anything, and the other one knows so fearfully much that he shows he is a liar all the way through,—when I had four witnesses, I say, I thought I had rather take witnesses who had not been called, on other articles, and so spread the testimony out, and not have the same witnesses to swear Judge Cox through upon every article; I didn't want to follow the example of the learned managers to take four or five witnesses and prove twenty drunks by them; I wanted to spread my witnesses out. That is the reason I did not call Seward, nor Matthews, nor Weymouth up in Lincoln county, because I had enough there without them to prove it. I had them on other articles and I didn't want to have one man on more than one article where I could help it. I wanted upon each article a different set of men, and as much as possible, men who were likely to be disinterested, and I therefore called Mr. Whaley, who is living down here, and Mr. Langworthy, who lives at Minneapolis, and I finally called Mr. Maas, who was no attorney.

I think we have brought in witnesses enough here to show that when the managers claim the Judge was intoxicated at this occasion, they claim what they know is not true; they claim what the evidence has established beyond a reasonable doubt was not true; they have been overwhelmed, they have been crushed by the testimony for the defense upon this specification, and I will not waste any more words upon it.

I come now to the

SECOND SPECIFICATION,

which charges intoxication upon the part of the Judge at New Ulm during the hearing of an order to show cause in the case of Coster against Coster, a divorce case there. This is the case, gentlemen, in which the managers have brought in this dramatic figure, this *deus ex machina*, this swill-cart in which the Judge is said to have ridden, and which I think we have thoroughly exploded, and in so doing, have succeeded in spilling swill over them instead of having it spilled over us.

The witnesses for the prosecution under this specification are four; the witnesses for the defense are also four. The witnesses for the prosecution is Mr. Webber, for one,—this eternal Webber, this candidate for Judge, this man who has canvassed the district to try to get into Judge Cox's shoes, and not satisfied with that comes down here and swears against him upon all occasions that the managers will give him, at all possible occasions, under all possible articles and is ready and willing to swear to anything if he only can get rid of the Judge; and his henchman, Mr. Eckstein, a clerk in his office, I believe, or who has been, at least,—Mr. George Kuhlman and Mr. E. Kuhlman, his son. There is somewhat of a difference in the testimony of these different men as to the condition of the Judge at the time.

Mr. Webber, who is anxious for the shoes, has no hesitancy to say right out that the Judge was drunk at the hearing; Mr. Eckstein, who

of course wants his boss, Mr. Webber, to get the shoes, but whose conscience, I suppose, is not quite so hardened as Mr. Webber's, says he *thinks* he was intoxicated. Mr. George Kuhlman says, "I *thought* the Judge was very much intoxicated." He is not after the shoes, I apprehend; and Mr. E. Kuhlman, his son, don't swear anything about the Judge, whether he was drunk or not, until later in the evening; he don't say anything about the condition of the Judge at the hearing. As a matter of fact, although he testified he was there at the hearing, yet we have shown by Mr. Manderfeld that he was not there at all.

You will see that the prosecution have got all who were present there at that time except Mr. Manderfeld; he was the only one they have told us was present there that they have not got, outside of the party to the suit. Now, we have got Mr. Manderfeld down here and he tells a different story. He tells you that the Judge at that time was sober; he tells you that the Judge at the time of that hearing was just as sober as he ever was; that he acted just as usual and appeared just as usual. And we have called farther, upon the question of the sobriety of the Judge, Mr. Seiter, the hotel keeper where the Judge stopped. He says that he remembers the occasion, remembers the time that the Judge was up there to try that case of Coster against Coster, or rather to hear the order to show cause,—that he remembers it because the Judge told him about it, and that he should have to send the defendant to jail; and he remembers it because the Judge at that time had his boy with him, and he knows the Judge was sober as long as he was at his house,—and he was at his house until he went into court,—came back again after court and went out hunting, and came back in the evening and was sober all of this time.

And he tells you a particular incident there which goes to show, to his mind, that the Judge was perfectly sober, and it was this: That when he came back from hunting Mr. Seiter told him about something his son had done—some kind of a trick he had played, I suppose, and he scolded him thoroughly, and he says, if the Judge had been drunk he would have said, "You are a good boy, Willie;" and he therefore knows—knowing him so well, and knowing the way he acted toward his boy, that the Judge was sober at this time.

Now, unfortunately, that is all the testimony we have got as to the sobriety of the Judge. But I think that off sets fully, the testimony of the candidate for judge and his henchman, Mr. Eckstein, or that it offsets fully Mr. Webber and Mr. Kuhlman, if you please; for the reason that we did not need to offset Mr. Eckstein and Mr. Kuhlman, Jr, because we have caught them in a falsehood right in the same connection. Mr. Eckstein tells you that he went down to the hotel after the Judge; Mr. Kuhlman, Jr., tells you that *he* went down there first, and that the Judge wouldn't go, and that he started back and met Mr. Eckstien and that they went back together and got the Judge. And they both tell you that Judge Cox hailed the swill cart, driven by Mr. Steube the butcher, and rode in the swill cart up to the court house. We called Mr. Steube before you and he tells you that it was an infernal falsehood; that Judge Cox never was in his swill cart, that he never drove him in his swill cart, or any cart at all, either to the court house or any where in New Ulm. Then the managers see that they have got into a trap, and they try to crawl out of it by showing upon the cross-examination of Mr. Steube that he did not drive that swill cart always, that during

this time he had a man that drove the swill cart. Very well, it didn't daunt us in the least.

We telegraphed to New Ulm and got that man down,—Mr. Steube testifying who he was—and showed by him that he never in his life drove Judge Cox in the swill cart nor in any other cart anywhere; that those men lied when they said it. And yet that was partly necessary because Eckstein himself says *Mr. Steube* came along in the swill cart; but when the managers tried to crowd into a hole and tried to hide their shame we went into the hole after them and smoked and dragged them out of it by the other butcher. I say that men who will testify like Eckstein and young Kuhlman did, are not worthy to be believed by any jury or court in Christendom. But that is not all the testimony of these witnesses, few as they are, connected as they are, contradict each other right straight through.

Before I go into that, though, I desire to call attention to the fact, not only that Steube and Myers swear to the fact that this is a lie—that they never drove the Judge up there—but that Mr Manderfeld, the son of the sheriff, testifies to the fact that he saw the Judge when he came up to the court house, and that he walked up to the court house with Mr. Webber or Mr. Kuhlman and did not ride up at all.

I now come to the evident contradictions in the testimany. Mr. Webber, in the first instance tells you that he was the one who suggested to the Judge that they hold court out on the steps and should not go up into the court room. Mr. Eckstein tells you that the Judge suggested that they should stop there on the steps. That is not material, but it shows how they design all the way through. If it was the only thing I should not take it up. Then Mr. Webber says that the Judge was there first, that they waited for Kuhlman.

Mr. Eckstein tells you that Webber and Mr. Kuhlman were there and waited for the Judge, and they told him to go for the Judge. Mr. E. Kuhlman tells you that he went after the Judge, down to the hotel; that he couldn't get him to come, that he met Eckstein and he told him to go with him. Now you see how they contradict each other,—all these three witnesses. Their testimony is loose as sand; their statements turn one here, one there and the other another way. Mr. Manderfeld contradicts them all. He says that the Judge was up there before any one had come up, before either Mr. Webber or Mr. Kuhlman was there. He says that the Judge went up into the court room, and when young Manderfeld came up there he told him he wanted the sheriff or the deputy sheriff; that he sent him for the deputy sheriff; that he went down, before Kuhlman and Webber came up, to search for Joe Eckstein, and having found him, told him to come up, and that when he, young Manderfeld, came up, he found Webber and Kuhlman there with the Judge, and that Mr. Eckstein came up later, after young Manderfeld did.

Now, that shows that Mr. Eckstein tells a story, because young Manderfeld is corroborated by Mr. Webber who says that the Judge was there first, and that they waited for Kuhlman. Young Kuhlman tells you that he was sent down for the Judge, and that he got Eckstein to go for him. Eckstein tells you that Kuhlman was there waiting for the Judge and that he and Webber sent him down. Now, I say, what confidence can you place in the testimony of men who can not agree any better than that? What do they know about the affairs there anyhow?

Now, as to this treating business, as to this matter of the Judge asking Mr. Coster to go down after some beer.

We don't deny but that was the fact. It was true undoubtedly, I have no doubt at all,—that the Judge did ask Mr. Coster to go for some beer. It is in evidence that it was a hot day in August. They were sitting up there on the steps, and that don't tend to show that he was drunk, nor does it tend to show any impropriety. They were holding rather an informal court, upon the steps of the court house, and when they were proceeding with their business, or when they were through, or while they were waiting,—the witnesses disagree upon that,—this man Coster was sent down to the nearest place there by the Judge for a quart of beer; and he came back and they had a glass of beer there upon the steps. It is not claimed that the Judge drank more than one glass of beer, and it is not claimed that it made him drunk at all. Mr. Webber says that it was not enough to hurt him in the least what he drank there. And I suppose the Judge had a right to do it; I suppose, even if it was an impropriety upon the part of the Judge, that he did take a glass of beer while hearing that matter, that it isn't any crime, that it isn't anything that would unfit him for the position of Judge, that it isn't anything for which he could be impeached, or anything particularly wrong.

Now, upon the question as to when that treating was, and under what circumstances it was, all the witnesses differ again. Mr. Webber says it was while they were waiting for Mr. Kuhlman to come up, before anything was said about the case. Mr. Eckstein says it was after they had gone on with the case, after Kuhlman had come and after they had proceeded with the case, and after the Judge had stopped them in reading their affidavits; that then the Judge spoke to Coster about treating, and that he drank there while the business was going on. Mr. Webber places it before they had started on with the business at all. Mr. Eckstein wanted to go it one better, and he has the beer drank while they were going on with the business. Now you see how these men agree about the beer business; Mr. Webber says it was before they started in upon the business, while they were waiting for Kuhlman, Mr. Eckstein says it was in the middle of the proceedings, while the Judge was hearing the case, and according to Mr. Kuhlman it was after they were through with the case. Now, that is about as much as these witnesses agree upon anything.

Mr. Webber says that he read the affidavit that he had prepared, that he got through and tried to read some authorities, but that the Judge wouldn't listen to them,—some authorities from Waite's Practice. Mr. Eckstein denies that; he says that Mr. Webber tried to read some affidavits and that the Judge stopped him in the midst of his reading and told Mr. Kuhlman that he could go on then and there, and that then he stopped him; that there were no books there and that Mr. Webber did not read from any book nor try to read from any book. So you see them give the lie to each other right straight through from the word go, in this case. Mr. Kuhlman says that he don't remember of the Judge refusing to hear the affidavits; that the affidavit didn't amount to anything any way, and that there was no excuse set up in it.

Now, Mr. Webber and Mr. Eckstein both tell you that the Judge, when they were going on with the business there, was sitting there and talking and saying, "I've got to lock you up, John; sorry, John," and that

he ordered Mr. Eckstein to lock him up. Mr. Eckstein tells you that the way he did it was that he said to him: "Joe, put him in." And he has to admit that he didn't know whether it was in a joke that the Judge spoke, or whether it was really an order for the incarceration of the man. But he has to acknowledge that he never heard such an order before or afterwards for committing a man to jail. I don't suppose he has, or anybody else. I don't suppose anybody who was not prejudiced against the Judge would take that for an order, but see that the Judge was joking there among them. Mr. Kuhlman tells you that he did not understand it as an order at all; that all the Judge said was that he would have to send him to jail; that it was a friendly chat between him and Coster, and that he was coaxing him to pay all the time; trying to get him to pay the alimony he should have paid under the order of the court, so as not to have to send his old friend and old acquaintance, Mr. Coster, to jail. Mr. Kuhlman tells you definitely that he didn't understand it as an order.

Now, it shows how these men are prejudiced against the Judge. Mr. Kuhlman contradicts them upon almost every position that they take. They try to make this thing a grand farce there, and the Judge trying to send a man to jail when he was so drunk that he didn't know how to do it, and all that kind of thing. Well, it crops out, by Mr. Kuhlman's testimony, that the whole thing was a joke between the Judge and this man; that he talked in a friendly manner to him and tried to coax him to pay, and that he never gave any order of that kind.

Again Mr. Webber and Mr. Eckstein meet in drawn battle. Mr. Webber tells you that Mr. Eckstein asked him, before he went to the court house, if he was going to lock him up, if he should lock him up if the Judge told him to, and Mr. Webber says: "I told him if he got a written order he should lock him up and not otherwise,"—Mr. Webber being the county attorney. Mr. Eckstein tells you that it was not at that time, before he went up, that he asked that question, but that it was after the Judge gave him the order, as he claims, up there, after he said, "Joe, put him in," that "I stepped up and asked the county attorney if I should lock him up; and he said not unless the Judge gives you a written order." All the way through those men disagree. Mr. Webber—and his malice crops out all through in this—says first, upon his direct examination, that the Judge would not make any order to have him locked up. After he has first told you that he had made an order to Joe to "put him in," he tells you that he would not make any order, and tries to show that the Judge would not perform his duty. On cross-examination he has to admit that there was no written order presented, and that there was none requested of him by Mr. Kuhlman, and that he didn't ask for one. Of course you wouldn't think that the Judge would do it of his own motion, that he would set to work and draw it himself; that is not the business of the Judge, the attorneys have to do that much, they have to ask for it before they can get it. In court, as well as in any other business or under any other circumstances a man don't get anything unless he asks for it, not generally.

Now, it appears by the testimony of all the witnesses for the prosecution that this was not at any term, nor was this hearing in the court room; even if it is true, as they claim, that he was a little off, it was not upon the bench. It was an informal gathering, to hear an informal motion, an informal gathering down there on the steps of the court house,

and if they did take a glass of beer, and if he had had a little, it was not anything by which justice was outraged, there wasn't any great crowd around there; there was not jurors, suitors and attorneys from all directions there present to see it,—it was a little informal gathering of those attorneys, the Judge evidently coming up there to accommodate them and to hear this matter, and no damage was done. It appears that the Judge did give his order after he got home; Mr. Kuhlman drew up the order and sent it down to the Judge and the Judge corrected it and sent it back and ordered the man to jail, because he had not obeyed the order of the court; and Mr. Kuhlman tells you that it was perfectly proper to send him to jail on the showing then and there made. There was no clerk of court there, no opening of court, no adjournment of court, it was a particularly informal gathering of friends and acquaintances coming together, and the Judge came there to accommodate them upon the hearing of a little matter, where there really was no defense and really nothing going on, no showing and no excuse, for the affidavits didn't amount to anything. It was a foregone conclusion, simply a matter of form to have the order issued and the man sent to jail.

I now want to call attention to what I drew out on the cross-examination of Webber, not knowing at the time whether we could get any evidence to contradict their testimony as flatly as we have. I wanted to see whether we could not get evidence on other articles which would show comparatively that the Judge was not intoxicated at this time, knowing that we were right in the hands of the enemy,—between Webber and Eckstein and the two Kuhlman's,—the most pronounced enemies that Judge Cox ever had in that district.

I did not expect to get the truth from them, I did not expect, by cross-examination of them, to show the true state of affairs, but I expected to draw out from them, a comparison between the Judge's condition at this time with other times, where we could get plenty of witnesses, where jurors, suitors and attorneys were present and I expected in that way to show that these men lied. And I succeeded in it. We got from Mr. Webber the statement that Judge Cox was not at this time as much intoxicated as he was when the case of Howard against Manderfeld was tried, at the May term of 1881. And in that way, we have indirectly, besides the testimony heretofore commented upon, showing that he was sober at this time, as Mr. Manderfeld and Mr. Seiter say, obtained upon this specification the testimony of all those, who testified to his condition in the Howard against Manderfeld case, because Mr. Webber says that he was not so intoxicated at this occasion as in the Howard against Manderfeld case; and we have got, in that case, the testimony of Mr. Brownell, the testimony of Mr. Current, the juror up there, we have the testimony of Col. Francis Baasen, who was there, the testimony of Mr. Peterson, the agricultural machinery man, the testimony of Mr. Wright, the livery man, who was a juror there, and the testimony of Mr. Robinson the lawyer, who all tell you that the Judge was not intoxicated during the trial of the case of Howard against Manderfeld, that he was perfectly sober. Now, I say those witnesses come in here and corroborate the testimony of Mr. Manderfeld, because those witnesses tell you that at the time when Mr. Webber says he was more intoxicated than he was here, he was not intoxicated at all, and therefore are proper witnesses under this specification.

Again, when that man Webber tells you that the Judge's condition at

this time when the Coster case was under consideration was about th same as when the Wildt case was tried, the witnesses who have swor upon the Wildt case upon the part of the defense, Col. Baasen, who sa the Judge immediately after the case was tried, and who says he wa perfectly sober; Mr. Peterson, the agricultural man, who was prese there in court during the trial of the Wildt matter, and who says he wa perfectly sober; Mr. Sturgis, the deputy sheriff, who was in court, an who says he was perfectly sober; Mr. Subilia, who was in court righ after, and who says he was perfectly sober; Mr. Wright, who was the in the afternoon when the case was opened, and who says the Judge wa sober at the time, come in here as witnesses on this specification, an testify against Webber and his henchmen and corroborate Manderfeld I say, then, that even upon this specification, when you take that com parative testimony in, the prosecution has been overwhelmed by the te timony for the defense. But whether you do or not, there is no que tion about the lies we have caught their witnesses in, for instance, M Eckstein and Mr. Kuhlman, Jr., as to the swill-cart. Under the contr dictory statements, as I have shown to you, made by all the differen witnesses for the prosecution, and under the testimony of Mr. Mande feld and Mr. Seiter in regard to the sobriety of the Judge at this occa sion, there can at least be no question that a reasonable doubt must hav been awakened in your mind as to the guilt of the Judge under th specification. There can be no excuse for anything else. Mr. Collin the learned manager, under this specification, told you that Mr. Mande feld was mistaken as to the occasion. This Coster case was up seven times, he says. Now, in the first place, where is there any evidence i this case that that Coster case was up at any time except this one?

In the second place he says that the witness locates the Judge in th court room when as a matter of fact he was holding court outside on th steps, and that therefore he is mistaken as to the time that he is testif ing to. What is Mr. Manderfeld's testimony, gentlemen? He tells yo it is true, that when he saw the Judge first, he was up in the court room he says he saw the Judge coming up and that he walked up to the cou room, and that the Judge told him to go and bring the deputy, but th when he came back Mr. Webber and Mr. Kuhlman and Mr. Coster we there, and that they were down on the steps. But besides that his test mony does away with all the insinuations of the learned manager, b cause he tells you that it was at this occasion that he remembers th beer scene, Mr. Coster going for beer, and the drinking of beer dow there; and that locates the time if nothing else does. I suppose th there is no other ground, no other reason, no other basis upon which w can with justice excuse the learned manager from that mistake, if mi take it was, except on this, that he is unfamiliar with the testimony th he was talking about, that he did not know what he was talking abo and did not know what the testimony of Mr. Manderfeld was; that h had not read it sufficiently, and had not grasped the points in the cas I say there can be no doubt under the testimony. To repel any dou upon that, I desire to call your attention to Mr. Manderfeld's testimon showing that very fact. Mr. Manderfeld, in his cross-examination b Mr. Dunn, states:

Q. Well, now you say the Judge had been up there that morning, and we 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 knew all about the beer?
A. Yes, I do.
Q. They drank the beer there, did't they?
A. Yes, sir.
Q. Did the Judge drink some beer?
A. Yes, sir.
R. Coster?
A. Yes, sir.
Q. Did you drink some of it?
A. I didn't.

Now, you see here is the testimony of this man who locates the occasion there by the beer drinking if by nothing else. But he tells you also that when he saw the Judge in the court room it was before either of the attorneys had come up; the Judge was on the ground before any of the others were there, so that there can be no doubt about the fact that he testifies to that scene and to that particular occasion. There is no doubt but that Seiter testifies to that. They both say the Judge was perfectly sober. There is no doubt but that Eckstein and Kuhlman lie when they tell you that the Judge rode up in the swill-cart. There is no question but we have disposed of this specification, and that there is nothing left of it worth considering, and I now leave it to the tender mercies of the Senate.

Mr. President, I would, with the permission of the Senate, ask for a short recess.

The PRESIDENT, *pro tem.* If there is no objection, the Senate will take a receess for five minutes.

AFTER RECESS.

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

FOURTH SPECIFICATION UNDER ARTICLE SEVENTEEN,

Which is the settlement of the Tower case at New Ulm. I do not now remember the year, and it is not material. That matter is testified to, on the part of the prosecution, by only two witnesses—the witness Morrill and the witness Wallin. Upon the part of the defense we have introduced no direct testimony; we have called no witness who was present at that time, for the very reason that we could not find any one who was present; but we have tried, in different ways, to show that the

testimony given by those witnesses was false. In the first instance, I think that it was not necessary for us to have introduced any testimony at all, not even the circumstantial testimony we have introduced, because the witnesses for the prosecution and the record which the prosecution introduced (the record of the court), contradict each other in the most pitiful manner. And I will first dwell upon that portion of our defense. We claim that the prosecution furnishes us the best kind of a defense, because the witnesses for the prosecution contradict each other, and they are both contradicted by the record in the case.

This man Morrill, to whom I will come hereafter, tells you, when he was first examined on Friday (and it was a Black Friday for him), that the matter of the Tower case—the case of the county commissioners against Tower—was an argument upon a motion for a new trial. That what we call a "case" had been stipulated to by the parties, and that all the Judge had to do at the time was to certify to the case, they having stipulated to it, and that he was to hear their motion for a new trial, to be argued then and there. He tells you on Friday that they did not submit this motion for a new trial at this time, for the reason that the Judge was drunk; that they told him that they would not take it up, but that they would leave the papers with the clerk. That is his testimony.

Then Mr. Wallin comes in, on Monday or Tuesday, it was at all events after this witness Morrill had given his testimony, and says Mr. Morrill's testimony is not correct; "We did not stipulate to the case; counsel were wide apart as to what were the proper proceedings in court in that case, and we came down there with a case and proposed amendments for the purpose of having the court settle it, and not for the purpose of making a motion for a new trial, and we were there only to have the court settle our case and the amendments." Well, when Mr. Morrill heard that testimony he comes in on Tuesday and corrects himself, and takes back all that he first said about the stipulation of the case and about the argument upon a motion for a new trial which should have been had there, and then he corrects himself so as to have his testimony agree with that of Mr. Wallin. He is a pretty witness, that man Morrill is. As I said, he tells you, at the same time, that one of the reasons why he thought the Judge was intoxicated at this particular time was that he told him he needn't settle any case, that he would grant a new trial without any motion, that he had already made up his mind. He said that having heard him say that before he had heard argument in the matter he thought that he was drunk. Well, it so happened, gentlemen, that the Judge afterwards did grant a motion for a new trial, and it so happens that he was sustained by the supreme court in granting that motion for a new trial; so I take it that if that was evidence of the Judge being intoxicated, it was evidence that he had his wits about him and knew what he was doing, and that if he had drank any whisky it was whisky that was desirable for a Judge to have, because he was correct in his judgment. But this same man Morrill changes his testimony further. As a matter of fact everything that he swore to on Friday he took back and changed on Tuesday, so that if you take his Tuesday's testimony and his Friday's testimony, it is not the same man or the same testimony.

On Friday he told you that the Judge at that time, in another matter we had before him, made some very strange remarks, which

convinced him that the Judge was drunk,—no question about it,—and that was the case of McCormick against Shorrege. In that case, he told you on Friday, that the facts were these: that the Judge had filed an order discharging the garnishee in the case, and it so happened that the Judge in making that order, had made a mistake in the title of the case (and it is not claimed that he was drunk at that time, mark you), and he had filed his order. Mr. Morrill came before the Judge, at this time when the Tower settlement was to be had, and made an application to have the title of the case in that order altered and changed so as to be correct,—and here is where the wrong and strange remarks of the Judge came in, that made Mr. Morrill think that he was drunk. He said: "Mr. Morrill I can't grant that order, I can't grant that application; there are two ways in which you can do that; one is that you apply to me upon notice to the other party to have that order amended, another one is, that you apply to me upon notice to the other party to have another order substituted for it." This was his Friday story. Well now, Mr. Morrill, in his blissful ignorance of the law, thought that that was a very strange remark indeed, and one which showed that the Judge was intoxicated. I apprehend that between Friday and Tuesday the managers had come to the conclusion,—and Mr. Morrill undoubtedly had, by the smile he saw on my face at the time he gave the testimony as to these strange remarks,—that so far from that being a strange remark, showing that the Judge was intoxicated, it showed that the Judge at the time was able to make a very fine distinction in law; and whether "coached" to it by the managers or driven by his own desire to see Judge Cox convicted by all means, and that any mistake that he in his blissful ignorance of the law should make, should not prejudice that conviction, he comes upon the stand on Tuesday and takes it all back.

That strange remark did not happen at that time, it was at some other time. At this time he could not get the Judge to understand what he wanted at all. Now I say a man who changes from Friday to Tuesday his whole testimony, as that man did, who takes back all that he testified to, who when he understands that his testimony conflicts with that of other witnesses takes it back and gives new testimony, to conform to that of other witnesses, who when he finds that he in his ignorance and foolishness has given testimony which instead of, as he thinks, showing that the Judge was intoxicated, shows that he was perfectly sober at the time, and had his full judgment, comes in and takes that back and tells you that he was mistaken and all of that,—is certainly not a man whose statements you can give any credence to, upon his word and oath certainly very diminutive reliance can be placed.

What kind of credit can there be given to it? What does he know about what took place there at the time? A man who twice in the course of a week comes and tells you, "What I said before was not so, what I say this time is so" and changes, not only one little immaterial thing, but the whole of his testimony.

Again, here is a remarkable contradiction between those two witnesses which I don't believe was even corrected; I guess the learned managers overlooked that and did not make Mr. Morrill correct that so as to conform to the testimony of Mr. Wallin. Mr. Morrill says he saw the Judge on the street in the morning and that he was drunk, and that they talked about it, that if he wasn't better, when they met in court than when they saw him,—which was half an hour previous to meeting

him in court,—that they would leave the papers with the clerk, and submit the case. "We talked this way going up to the court," he says, "and we found him worse *when we came up there.*" That is Mr. Morrill's testimony. Mr. Wallin's testimony is that they went up to court and that the Judge did not come up there before an hour or two after the time set for court. Now, I say, the managers evidently overlooked that conflict and did not give Mr. Morrill a chance to retract that part with the others, so as to conform his testimony to that of Mr. Wallin's. Mr. Wallin says that the business was not done; the motion for a new trial was not made before another term, the case was long afterward's settled by correspondence; "The papers were sent to the clerk of the court by arrangement between us." How is that? They were right there, they had their papers there, they were going to argue the settlement of the case, they had their case, they had their amendments. If these things were to be delivered to the clerk why didn't they leave and deliver them when they were there if it was on account of the Judge's drunkenness?

If it was not some other reason why they concluded that they didn't want to settle it then and there, if it is a fact they did afterwards send it to the Judge through the clerk, as he said, why was it when they had their papers there, when they had a full understanding there that it was to be submitted, and Mr. Morrill says that the papers were given to the clerk there at the time. Mr. Wallin tells you that it was settled by correspondence and the papers afterwards sent to the clerk. Now, I say that unless there was some reason other than the Judge's condition why those men did not transact that business there at that time, why didn't they leave the papers there with the clerk at the time? Why did they go home, and take them with them, and send them back and pay postage when they were right there and could have handed them to the clerk at once? But, as a matter of fact, both of these men's testimony disagreed with that of the minutes of the court. The records of the court show what was done, and it shows that they, both of them, gave us falsehoods. It shows that when they say they did not take that matter up and did not submit it to the Judge because he was drunk they tell a story, both of them; because, the minutes of the court show that the case was taken up and it was submitted on briefs. I will call your attention to the testimony upon page 28, of the 17th day, the 20th day of January, where the records of the clerk of court are introduced in evidence.

"Special term of court, August 7, 1880. Court opened at 10 o'clock A. M."

Now, is Mr. Wallin's testimony true that the Judge did not come there before an hour or two after court was set? Does not every lawyer upon this floor know that that is the regular hour for special term of court,—ten o'clock?

"Present, Hon E. St. Julien Cox, Judge. Board of County Commissioners of the county of Redwood vs. Amasa Tower et al. Motion for new trial."

No settlement of case? Mr. Wallin lies, and Mr. Morrill, when he fixes his testimony over again, lies, and the record shows it upon them both. "Motion for new trial," the clerk has got down there in his minutes. "Case called from calendar and submitted on briefs;" that is

what he says. It shows that Mr. Wallin and Mr. Morrill both lie when they told you that they came there not for the purpose of arguing a motion for a new trial, but for the purpose of submitting the case, the settlement of a case, a case with amendments, and that it is not true that they did not do it because the Judge was drunk—took the papers with them and then left them with the clerk afterwards for fear the Judge would lose them, or that they sent them to the clerk. I say that they both of them lie. As a matter of fact there was a motion for new trial submitted there, and the record shows it, and it was not argued because they saw fit to submit it on briefs, as we attorneys often do.

Now, I state that we don't rely upon that to defeat this article. I think if it had been my own case I would have submitted a case upon the testimony of those men and the contradictions between themselves and between them and the records, and let this Senate judge upon whether they would take such testimony of such men and convict a man upon it. But as it is, we have not rested upon that. We have shown upon cross-examination that this man Wallin is another of the aspirants for the shoes of this respondent; he is another man that is willing to come down here and swear his honor and his reputation away from him in order that he himself can get a place. We have shown you, farther than that, that this man Wallin has got a farther reason why he should want to injure this respondent in every way that he can.

We have shown to you that this man Wallin was the one who was beaten by the respondent; buried under his majority of a thousand four years ago, when Mr. Wallin expected to reap in the persimmons and be the judge of that district, and had received the Republican nomination, and when the respondent came out as a candidate of the opposite party and buried him under a thousand votes majority, in a Republican district, with over 2,500 majority. Now, I say that man, of course, has got a grudge againt the Judge. You can't expect anything else. You can not expect that he should come here unbiased and tell the truth, and nothing but the truth, because he naturally feels himself abused, and the natural desire that he has, as I said, to get this respondent out of the way, to get rid of him, where he can not stand in his way to glory, to office and power, naturally drives the man to say what is not true. So far for his credibility, so far for what credence to put upon him.

And this man Morrill, the other witness, is in a worse shape yet. Here are eight of his nearest neighbors, of the men who live in the same community in which he lived till recently, who come before this Senate, and under the solemn obligations of their oaths, tell you that this man Morrill's reputation in the community in which he lives for truth and veracity is bad; that he is considered a liar on general principles; that he is so spoken of and so thought of by those who know him best, by those that have known him for two or three years, who have known him intimately and had dealings with him. And it is no slouches who come down here and testify to that. These are not men without a standing in society, without a standing in the town. They are the very best men of the town of Redwood Falls, they are the very best men of Redwood county.

They are men that the people have honored, as they have Mr. D. L. Bingham, for term after term as school superintendant of that county—a man who is a strong temperance man, a man who is a natural enemy of this respondent, who has been his political and his personal enemy,

who is a friend of Mr. Wallin, and desired his election at the time—this man comes down and tells you what kiud of a man Mr. Morrill is and what his reputation for truth and veracity is. There are among them other men the people have seen fit to trust as they have J. H. Bowers, an attorney of some standing in that city, an attorney that the people have seen fit to elect Judge of Probate of that county, who has held that position as long as I can remember. They are such men as the Hon. J. W. Braley, whom the people of that district, consisting, I believe of about twelve counties, have seen fit to elect as their representative to the last legislature, and who is a man of standing, a man of reputation, a man of business, a banker of Redwood Falls, and the proprietor and cashier of the only bank there. They are such men as F. Ensign, the clerk of court of that county, a man who told you upon the stand that he had never drank a glass of liquor in his life, and a man who must have made an impression upon all of you, as I know he did upon some of you, as being an honest, straightforward and conscientious man. There is the testimony of F. V. Hotchkiss, who is the chairman of the board of county commissioners of that county; there is the testimony of C. C. Stickles, and of Sam Stickles, two of the worthiest inhabitants and citizens of the town of Redwood Falls. There is the testimony of Jacob Tiffany, the man who has the greatest business in that part of the county in agricultural machinery. I say it is from the lips of that kind of men the testimony falls as to the character for truth and veracity of this man Morrill.

And I say it is a remarkable feature that the prosecution, when they had the occasion, and could have called men, if they could have found them, to show the standing and good reputation of this man Morrill, that they could not find a man in the village of Redwood Falls, who was willing to endorse him. And I know that they could not find such a man, for I happen to be acquainted over there, and when the Stickles, Morrill's best friends, the men that had held him up,—his own relatives,—who had tried to bring him forth, and had done everything they could for him, when I heard them coming down here, then I knew that there was not a man, woman or child in the village of Redwood Falls who would come down here for love or money and swear to anything else than what those men do. This man who stands under the testimony of those witnesses before you not only as having the reputation where his home was and where he lived, as that of an unmitigated liar and fraud, but also of a dishonest man, a man who would collect church money and make other collections and put them in his pocket and convert them to his own use,—I say a man of that character is what the managers bring down to support Mr. Wallin,—the deacon candidate for judge, the everlasting candidate for judge again. But we have not chosen simply to impeach this man by direct testimony. Not being able to find any men who were present at this time when the motion for new trial was had at New Ulm, we have thought that we would show, by circumstantial evidence that these men Morrill and Wallin have lied upon every occasion upon which they have testified outside of this time. That we have caught them where we had witnesses, where they were not the only ones that were present, and when we have shown that they have lied in those instances, we think we have a right to ask this Senate to judge from that whether or not their word is to be believed

upon this particular occasion, when they not only disagree with each other but disagree with the record.

Mr. Morrill testified to three other and different occasions, under article eighteen. He testifies to three occasions upon which he claims that Judge Cox was drunk. One of them was an evening during the trial of the case of Luscher against Braley, at the June term for Redwood county in the year 1880. Another was the evening when the bell-ringers were there, and the court was adjourned on account of them; that was at the same term. And the third occasion on which he testifies to Judge Cox being drunk is that of No. 10, under article 18,—the case of Thorpe against Brewster,—at the same term.

Now, here are three occasions on which Mr. Morrill testifies Judge Cox was intoxicated, and in just as strange terms as he testifies at this time of the Tower business at New Ulm. Now then, let us see with what testimony we have met his assertions at those other times. And I may state right here, gentlemen, that it has been thoroughly shown under article 18 that Mr. Wallin and Mr. Morrill,—and at other occasions Mr. Webster,—have lied, and lied deliberately. That was the reason we did not ask, when the prosecution closed their case, to have the 18th article stricken out and dismissed. We were fully convinced that there had been no case proven under it, and we were fully convinced that the majority of the Senate so felt; but we desired the privilege of bringing testimony to show that these men had lied, so as to throw suspicion, and the proper weight upon their testimony, at other occasions, when we could not make out so strong a defense, for the reason that we were caught in the camp of the enemy, with none but enemies surrounding us.

Now, at this trial of Luscher against Braley, Mr. Morrill is the only man who claims Judge Cox was drunk. Mr. Wallin does not support him; nobody else does. We called upon that branch the Hon. Mr. Braley, the banker up there, the representative of that district in the lower house of the Legislature, and we asked him as to what the facts are. He was a party in the case; he was the defendant. He tells you he was present during the whole of the trial. He was there on that evening and he says Judge Cox was just as sober at that time as he is now; says there is no doubt in his mind but that Judge Cox was sober. We called the sheriff, Mr. Gale, who was present at that term of court, who was present in court during that trial and during that evening session, and he says there is no doubt at all but that the Judge was perfectly sober; there was no difference in his actions or appearance, or anything else. We called Mr. Hawk, who was the clerk of court at that time, and he tells you that the Judge was perfectly sober.

Now, there are three witnesses who were present, one of them interested as a party, the other two, court officers, and they all tell you that Mr. Merrill, as far as that occasion is concerned, is a liar, that he tells a falsehood before you. Now, we go further, to the second occasion at the same term, when he testifies that Judge Cox was intoxicated. It is the Bell-Ringer evening. We have called before you Mr. McGowan, the clerk of court of Renville county, who testifies he was there during the evening; that he spoke to the Judge and walked up to the court room with him, and that he went down with him when he adjourned to go to the Bell-Ringers, and that the Judge was perfectly sober. Mr. McGowan is a man who has known the Judge for twenty-five years, and he

says that there was no indication of intoxication upon him at all. We called before you the two bell-ringers, Ed. and George Andrews, who have known the Judge for a number of years, and they tell you that they saw the Judge before he went into court that evening, and had a talk with him. They tell you that they saw him as soon as he adjourned court and came into the entertainment; that they saw him in the evening afterwards, at the parlor of the hotel; that he sat there about an hour and had a private talk with them, and they swear absolutely that the Judge was perfectly sober, and that there was no evidence of intoxication upon him at all. Now, I say, where is Mr. Morrill and his oath upon that?

We call upon the third charge (the case of Thorp against Brewster,) a man whose reputation stands unsullied all over this State; we call before you Mr. Brewster, the defendant in that case,—the superintendent, I believe, of the Sunday Schools of Blue Earth county, one of the pillars of the church, a man against whom it was never charged that he drank a glass of liquor; a man who stands as high as any man in the community where he lives or in the State,—a man with an unsullied reputation and of high standing; and he tells you he was there during that case and listened to the whole of it, and that the Judge was perfectly sober during the whole case, and that there were no indication of intoxications upon him at all.

We call before you Mr. Coon, his attorney, who was present during the whole of that case, and he corroborates Mr. Brewster in everything. I say I think that if we have established anything in the case, it is that he has not told one word of truth, and we have established it upon every charge were he claims that Judge Cox was intoxicated. Wherever there were witnesees to be had, we have shown him to have lied; and besides that, we have impeached his general character for truth and veracity. I ask you, then, if there is anything left of that man and his testimony under specification four of the 17th article?

Now, Mr. Wallin does not fare much better. All that Mr. Wallin testifies to was originally under one of the specifications namely, the Redwood Falls term, in 1880.

Senator ADAMS. Mr. President, there is no quorum present. It is almost the hour for our recess at any rate, and I move that the Senate take a recess until half past two o'clock this afternoon.

The PRESIDENT *pro tem.* That will be taken as the sense of the Senate unless objection is made.

The Senate then took a recess until half past 2 o'clock P. M.

AFTERNOON SESSION.

The Senate met at 2:30 P. M., and was called to order by the President *pro tem.*

Mr. ARCTANDER (resuming). Mr. President, I believe I had, at the time the Senate adjourned, demonstrated that the only two witnesses upon this specification—the fourth of article seventeen—Mr. Wallin and Mr. Morrill, both had been impeached; that one of them had been shown to have an undue interest and an undue feeling against this respondent; so on that account you should not give much credence to his testimony. The other one has been shown to be a man of general bad repute for truth and veracity in the community where he lived. I had gone far-

ther and demonstrated that Mr. Morrill, one of these witnesses, had upon every other occasion to which he testified, every other alleged drunk of the Judge to which he testified, been demonstrated to have told an absolute and malignant falsehood. I was about to proceed and show that the same was the fact with Mr. Wallin, who was the other witness, when the adjournment took place.

Mr. Wallin testified to two occasions outside of this one, upon which he claimed that the Judge was intoxicated. The first one of those was the trial of this same Tower case, at Redwood, in the month of June, 1880. He is the only witness who testifies upon that occasion. That was originally a specification. So little faith did the managers have in that specification that they saw fit to drop it and transfer the testimony to article eighteen, to see if they might not get some good of it there; and it was a remarkable circumstance to which I don't know whether or not I called attention in my opening, that the attorney on the opposite side Judge Baldwin,—another candidate for Judge,—was present here at the same time, and that he was called here to testify by the managers, I apprehend upon the same thing, under this same specification, but that the managers found that Judge Baldwin, if he was a candidate for Judge, was too honest a man, had too many years reputation behind him, had too much respect for himself and his future, to go upon the stand and perjure himself and corroborate Mr. Wallin in this particular instance, and that consequently they found that they had no use for him. Mr. Wallin, I say, is the only witness who testifies to this alleged drunk of the Judge, the intoxication of Judge Cox during the proceedings in the Tower case, at the June term, 1880.

Now, we have called upon that case four witnesses: Mr. Bingham, the school superintendent of that county; Mr. Hotchkiss, the chairman of the board of county commissioners, who was present in court and watching the case, being the party plaintiff in the suit. We further called Mr. McGowan, the clerk of the court of Renville county, who was there in attendance, and M. E. Powell, the present county attorney of Redwood county, who was there in court at the time, as a lawyer. And all four of those men testify that when Mr. Wallin says that Judge Cox at that time was intoxicated, he testifies to what he knows is a falsehood. His own testimony, when analyzed, would, to a certain extent, go to show it. He testifies absolutely that Judge Cox was intoxicated at the time. Upon cross-examination I asked him how it was that he knew it, and he says, "Because I tried to get possession of his mind that evening." You will remember that this had reference only to that particular occasion during that trial, viz., the time when the case was submitted to the jury by the court and counsel in the evening of the last day of the trial. He tells you that at that time he was anxious to get possession of the mind of the court—to control his mind. I asked him, "Did you get control of it, sir?" He said, "No."

The Judge, he claims, was drunk; he claims that he was sober himself; and I think his own testimony shows that Judge Cox was in the full possession of his mind and of his faculties, and could not have been intoxicated when a sober man, with the will-power of Mr. Wallin, with the feeling towards Judge Cox that he had, was not able to get control of his mind and get possession of his faculties so he could get him to charge the jury as he wanted him to,—wrong in law, probably. But, we don't rest upon that, we have called these witnesses, who, all of them

tell you that they were in court, that they watched the proceedings,—an intelligent man as Mr. Powell is, an intelligent man as Mr. Hotchkiss is,—and they both tell you that Judge Cox was not intoxicated, and that there were no signs of intoxication or inebriety about him. Now I say these men are not only remarkable for their intelligence and their appearance upon the stand, but they bear with them from their homes in the positions that they hold, a certificate of character, a certificate of intelligence that the people of that county who know them best, have seen fit to give them. They come here, men intrusted with high positions,—placed there by the suffrage of their fellow citizens,—who are presumed to know their true character and their qualifications.

Besides that, we call Mr. McGowan, another trusted official of the neighboring county, who has known the Judge for twenty years and more, who met him that night, he says; who talked with him after the jury had gone out that night, walked around the court house on the court house grounds while waiting for the jury to come in; who observed him in the court room first and afterwards had this private talk, and he tells you that there is no doubt in his mind but that the Judge was perfectly sober. Here are, then, four respectable witnesses who were present at the time and who flatly contradict Mr. Wallin. What kind of a man is this Mr. Wallin, what credence can there be put upon his testimony when four of his nearest neighbors and fellow citizens come in and say that he lies, that he tells a falsehood when he tells you that Judge Cox at that time was intoxicated. If he lied at that time, or was mistaken at that time, is there not a probability or a possibility that he might either willingly or unwillingly be mistaken at the time of the Tower case at New Ulm, when there was nobody else present that we can find and bring against him.

But that was not the only time at which Mr. Wallin testified where he is overwhelmingly crushed. He testified, also, in connection with Mr. Webber, to the fact that Judge Cox was intoxicated at the time when the jury called him in, in the Hawk case, in January 1880, at the time they asked for further instructions. Mr. Wallin and Mr. Webber, the two candidates for judge—agree that the Judge was drunk at that time. Against them stand whom? First, the three men who spent the evening with the Judge and who tell you that when Mr. Webber says that the Judge there, during the evening, drank eight drinks from a bottle Mr. Webber lies. That Mr. Webber was not in there when anything was drank at all, or was only in for a very short period; but, as a matter of fact, the Judge only drank twice during that evening, and that it had no effect upon him whatsoever. Mr. Ortt, Mr. Simmons, and Mr. Mather men, who have known the Judge for a number of years—men who have known him when he was sober, and known him when he was upon a spree, before he became a Judge, they all say they have not seen him intoxicated since he became Judge; those men all testify to the Judge being sober. They testify with reference to having a game of cards—this new game of "Bulldoze"—that they went from that game into an oyster saloon, where they met Mr. Braley, the representative of that county, and the banker of that town, and we called Mr. Braley upon the stand, and we showed by him that Judge Cox met him there and sat down and had some oysters with him and that Judge Cox was perfectly sober, and that there was no doubt about it.

We follow Judge Cox up to the court room; we show how Mr. Gale,

the sheriff, came after him, and we bring in Mr. Gale, who came after him, and told him that the jury wanted to see him, and desired further instructions. Mr. Gale tells you that he met him there at the restaurant and that he was sober then. Mr. Mather follows him to the court room and gives the lie to Mr. Webber when he says that he walked up with the Judge. Mr. Mather says he followed him to the court room and sat there until the Judge got through and went back with him again; he says the Judge was perfectly sober when he was in the court room. Mr. Gale, the sheriff, tells you he was perfectly sober when he was in the court room. Mr. Hawk, the defendant in that case, and the ex-clerk of court of that county, tells you that the Judge was perfectly sober there in the court room, and that there were no indications of intoxication nor drinking at all. Mr. Ensign, the clerk, and a temperance man, tells you that he was perfectly sober at that time. Mr. McGowan, who was not called by the respondent upon that occasion, the managers thought, would of course testify that the Judge was intoxicated, and when he had been called upon other subjects they cross-examined him and asked him what Judge Cox's condition was at this time, and he told them, "When I was there and saw him just before going up to the court room, only a short time before, Judge Cox was perfectly sober."

Now, I say, then, there are eight witnesses who say that Mr. Webber and Mr. Wallin either testify to a falsehood, or that they were mistaken, and that Judge Cox was sober at that particular occasion. All of them men who have known Judge Cox for a long time, some of them men who are well known to be strong temperance men, most of them men, who are not particular friends of the Judge,—quite the contrary; men of the best class to be found in Redwood county,—they come down here and tell you that it is not a fact that Judge Cox was ixtoxicated at that time.

Now, I say, gentlemen, if, we have shown, in the first place, that Mr. Wallin and Mr. Morrill contradict themselves in regard to the transaction that took place there in New Ulm during that day upon which they claim Judge Cox was drunk, if they contradict themselves, and if they are both contradicted by the record of the court of that day, that should be sufficient to throw a reasonable doubt around their testimony and awaken a reasonable doubt in your minds and your hearts as to the guilt of this respondent of what he is charged with in this specification; but still more so when it appears that Mr. Wallin is a perjured witness; that he is a man who comes here with an interest in his heart and an interest in his mind; that he has an object in his testimony here before you; when it is shown that Mr. Morrill is a man of bad moral character, a scoundrel, a thief and a liar; when it is shown beyond any controversy and beyond any amount of doubt that both of these men, Morrill at three occasions, Wallin at two occasions, have testified before you to the intoxication of the Judge, and testified absolutely false.

I say that when all this is taken together, I do not understand how any Senator can help but feel that there is enough of a cloud, enough of suspicious circumstances thrown around that specification to not enable him honestly and fairly to cast his vote of guilty upon it; that there has been sufficient doubt cast as a fire-brand into your soul and mind, upon the truth of that specification and the charge therein contained. And I claim that all this testimony introduced, if not virtually and actually under this specification, yet applying to it and with refer-

ence to that specification, is just as much and just as valuable as if we had brought forward five witnesses to show that they were mistaken at this particular time, or that they testified false; that it is just as strong as it stands now.

It is a fact which is admitted upon all hands by lawyers, that when a circumstantial case is strong, there is less danger of doing injustice than where there is direct testimony, for witnesses may lie, but circumstances will never lie, and I say that we have shown enough of circumstances upon this case to make out a strong, unbroken chain of circumstantial evidence to the effect that both Mr. Morrill and Mr. Wallin were either mistaken or they wilfully and falsely vilify the facts.

I will now take up the

FIFTH SPECIFICATION OF ARTICLE SEVENTEEN,

Which is the special term held at Marshall in the month of September, or I think on the 30th of August, 1880. There were two witnesses called by the prosecution upon that specification. One of them testifies to it, the other one don't seem to know anything. The one who don't seem to know anything about it is Mr. Patterson, the clerk of the court there. His testimony, I take it for granted, goes for naught. He says that he can't swear that the Judge was under the influence of liquor when he was transacting business in court that day, as he has no recollection particularly as to the session of the court. Mr. Drew, the other witness—and the same Mr. Drew who has testified upon several occasions, and whose falsehoods, I think, have been sufficiently established before this Senate—tells you that the Judge was intoxicated; that there was no doubt about it, in his mind, at this time when he appeared there before him, in the case of McCormick against Beasley, and he says on cross-examination, "I considered him drunk, sir." Now, I claim that that is the only testimony, besides the testimony of Mr. Patterson, which I have not yet read, to this effect: "I had an impression that it was during recess that I saw him, and that the term died off with that recess and that it was not called again."

Now, that portion of Mr. Patterson's testimony is not got in as a matter of fact but as an impression. That impression we have seen fit to entirely wipe out. We have called Mr. Andrews and Mr. Seward, who both testify that the business was all done after the recess, so that the term did not die with that recess. You will remember that there was a recess taken to enable certain attorneys to go to the republican county convention where they were candidates or delegates. Mr. Andrews tells you that the business was all done after that recess; that he argued one of the cases that was up at that term and that he was present at the argument of the other, and that there was no business left unfinished. Mr. Seward tells you that there were no delays; that when the term first commenced, in the afternoon, it was immediately adjourned, in his absence, before any business was done, and that when they re-convened, the business was disposed of and all the business there was; that there were no delays there except a recess for the attorneys to attend the county convention, and that there was no adjournment over of the term; that they finished their business and when they had finished, the term was adjourned *sine die*. That testimony of Mr. Patterson, that he threw out as a slur or impression, is thoroughly "nailed." Of course Patterson's

testimony, as to whether the Judge was intoxicated or not, don't amount to anything, for he don't claim that he was; he is not certain; he cannot testify as to whether he was under the influence of liquor in court, or during that term of court, even. So Mr. Andrews testimony stands there in barren solitude, as it does at some other places, and it is just as effectually wiped out of existance as it has been in other places and under other articles and specifications. It stands there alone.

He is the only one of the four attorneys who attended that term of court and had business before the Judge who testifies that the Judge was intoxicated or that there was any sign of intoxication about him at all. We called all the other three attorneys, that were there. We called Mr. Andrews, we called Mr. Seward, we called Mr. Forbes, one of the witnesses for the prosecution, we called all of those men who were before him that day and attended during the whole of that term. Mr. Andrews tells you what? That there was no doubt about the Judge being perfectly sober at the time; that he discovered nothing in his rulings, his actions or his appearance that indicated any other condition but a perfectly sober one; that his mind was very clear and active indeed. And this Mr. Andrews appeared and argued one case and heard the other argued. Mr. Seward tells you that from the time the term first began until the final adjournment, the Judge was perfectly sober. Mr. Forbes, the witness who was called for the prosecution, (whom we have recalled and brought back here,) says, "I have no doubt at all of his being sober, nor had I at the time, nor have I had since." I think I can say, that the testimony of Mr. Drew is entirely disposed of; and the way in which it is disposed of characterizes his testimony upon other articles, it works back with effect upon his testimony under other articles; and shows the Senate what weight to give to the oath and evidence of that man. I take it, therefore, that as far as that specification is concerned, the defense has overwhelmed the prosecution, and that there is no remnant,—no ruins even,—left of the case of the prosecution.

I now call attention to the

SEVENTH SPECIFICATION UNDER ARTICLE SEVENTEEN.

This is a specification under which considerable evidence has been given; considerable evidence upon the part of the State,—five witnesses were called,—considerable evidence upon the part of the defense,—ten witnesses were called. This specification treats, virtually, of the three days of the term of the District Court held in and for Brown county, in May, 1881. The first day of court was when the case of Howard against Manderfeld was tried, the second day when the case of Youngman against Lint was tried, and the third day when the Wildt divorce matter was brought up, in the afternoon. So the specification naturally divides itself into three sub-heads. Before going into any of those trials or any of the actions of the Judge at that term of court or on any of those days, I desire to call the attention of the Senate to the testimony of witnesses as to the condition of the Judge to hold that term of court, and also to some of the general testimony that goes to cover the entire term or to give facts generally which it is claimed goes to show that the Judge was intoxicated.

In the first instance, as to the condition of the Judge at the time he came. Mr. Webber testifies that the Judge was intoxicated when he

came there; Mr. Lind testifies to the same thing; Mr. Somerville says that he *thought* that the Judge was intoxicated when he came. These are all lawyers. Mr. Thompson, too, the fourth lawyer, *thinks* the Judge was under the influence of liquor when he came there. Those are the only four witnesses who testify as to that. Mr. Blanchard, the fifth witness, says nothing about what the condition of the Judge was when he came there. There are four witnesses, then, that testify,—two of them that the Judge was intoxicated or under the influence of liquor when he came, positively,—two that they thought he was.

I desire to call your attention to the fact that this same man, Mr. Lind, who seems to know so much about the condition of the Judge, can tell so much about whether he was intoxicated at any of these times, testifies upon cross-examination that he noticed nothing peculiar in the personal appearance of the Judge at the time when he came there. Now, I think it is established, not only by the witnesses for the defense, but also by one of the witnesses for the prosecution, that it is a fact that when the Judge arrived that morning his personal appearance was very much neglected; that he had not been shaved for two or three days; that he did not have a clean shirt on—in fact, had a very dirty shirt on; and that he was not washed nor was his hair combed, when he came there into court. That is testified to by Mr. Richard Jones, it is testified to by Mr. Brownell, it is testified to also by Mr. Somerville, a witness for the prosecution, and it is testified to by Mr. Wright, a witness for the defense. Now I call attention to that fact, and I ask Senators whether it is not peculiar and remarkable that this man, who knows so much about whether the Judge is drunk or sober, knows nothing about whether there was anything the matter with his personal appearance or not. I take it for granted with the evidence there is upon this specification as to the Judge's personal appearance at the time when he arrived, that that would be something, on account of his general neatness, that would strike anybody who was acquainted with the Judge, and when Mr. Lind didn't know anything about that, and cannot tell us anything about that, he is not in a position to come here and claim that he knows anything about whether the Judge was intoxicated or not; because, if he did not observe the one, there is not much likelihood that he would observe the other.

Now, I think the testimony of those four witnesses has been fully offset; that besides that want of observation on the part of the witnesses for the prosecution as to the exact condition of the Judge at that time, their testimony has been fully offset by the testimony of the witnesses for the defense. We have called five to their four on that point, and called witnesses who I think are entitled to some credit before you. We have Mr. Current, the juryman, who was discharged that first day, but who was there until in the afternoon. He tells you he was there and saw the Judge when he came; that he spoke with him; that he heard him talk when he made the preliminary call of the calendar; that he heard him talk when he ruled upon challenges to the jury, and that he is confident that there was no evidence of intoxication upon the part of the Judge at the time; that the Judge was not intoxicated; that he believed him as sober at that time as he ever saw him; that he thought at that time, and on that day, and on that particular occasion, the Judge looked better even than he did when he sat here in his chair while the testimony of the witness was given—not so worn and as thin as he did now. We have the testimony of Col. Baasen, who met him right there

when he stepped out of the buggy, who shook hands with him and talked with him there and followed him up into the court room and heard him proceed with the preliminary call of the calendar; and Mr. Baasen tells you that the Judge was sober at that time, and that he has no doubt but that he was so.

We have got the testimony of Mr. Brownell, who says that the Judge at the time, it was true, looked fatigued; that his personal appearance was not neat; that he was dirty and spattered with mud from the drive, but that he appeared perfectly sober. We have got, indirectly, the testimony introduced on the part of the State, in rebuttal, the testimony of Mr. Jones, who, when Mr. Webber spoke to him and said that the Judge was intoxicated and drunk said, "No, sir, I don't believe he is drunk." We have got the testimony of Mr. Wright, who was present there during the whole term of court and saw the Judge all right from that buggy, who says that he was sober, that he was just the same as he had always seen him, except his personal appearance in regard to his dress, his shirt and his shave. We have the testimony of Mr. Peterson, who has known him for twenty years in St. Peter and New Ulm, known him intimately, who says he was perfectly sober when he came there. I say I think, when that testimony is considered, there must be a doubt in your minds, and that a grave and reasonable doubt, as to whether or not the witnesses for the prosecution, the four of them, swear to the truth when they say that Judge Cox was intoxicated at the time when he came there.

Now then, these same witnesses further swear,—Mr. Webber, that he was drunk the entire term. That is Mr. Webber's testimony on direct. He don't put it on sparingly nor thin; he goes it the whole hog or none. But when you come to the cross-examination you find what? That Mr. Webber don't remember anything about the second day of the term,—and there were only three days,—that he was only in court once, that he didn't pay any attention at the time when he was in court, that he can't swear Judge Cox was drunk the second day.

How is it that a man who has to admit that, and when it is wrung out of him that he was not in court at all, that he did not pay any attention that one minute when he was in court, and that he cannot swear Judge Cox was intoxicated the second day,—how is it, I say, that he, dare to come up with a recklessness that is almost unsurpassable and tell us that Judge Cox was drunk all through that term?

Again, we have the testimony of Mr. Lind to the same effect—"The Judge was drunk the whole term there." This he says upon direct examination; when you come down to his cross examination you find that he was only in court a short time Wednesday forenoon, and not at all in the afternoon, that is, the second day. The third day he was in only when the Subilia matter was up, which is shown to have been the last five minutes work of that court before the court finally adjourned, Thursday afternoon; that he could not swear that the Judge was drunk then, that he saw nothing out of the way then and could not swear that the Judge was drunk. Here is a man who again, with a damnable recklessness comes up and tells you that Judge Cox was drunk during that whole term, and when cross-examined he has to confess that he was not in court neither the second day nor the third day more than about a minute each day. And at least one of those days he tells you he didn't pay any attention or see anything out of the way

and than he cannot swear that he was drunk at that time. I suppose the second day, when he had no business, that he did not see any more, that he cannot tell any more then. He tells you he was just in for a minute in the forenoon, and in the afternoon of that day he was not in at all. What kind of testimony is it that those men offer to us? What kind of perjury is it that they come here to commit?

Now, we have got the testimony of Mr. Somerville. He tells you that he thought the Judge was intoxicated. He is rather a careful man. He thought the Judge was intoxicated the whole two of the first days; "the third day he was *almost sober*."

Now here is the man Thompson,—another of Mr. Webber's henchmen,—he tells you what? On his direct-examination he tells you that the Judge was under the influence of liquor during the whole term, which lasted three days. Upon his cross-examination he tells you that he considers a man to be under the influence of liquor,—and that is what he said the Judge was,—when he has drank one glass; but he swears to you what he don't know anything about, for he tells you that he left the second day, in the evening, and was not there at all the third day. I say, in the name of God, what kind of testimony is it the managers come here and offer you? Are they not ashamed of themselves? Are they not ashamed of their witnesses?

Again. It appears that Mr. Lind and Mr. Webber have entered into an agreement or an indenture to be sure to make this thing look as strong as they possibly can against the Judge, to stretch the truth and everything in it and throw out all the hints that possibly can be used against him, for we find them both testifying,—Mr. Webber, that "We continued most of our cases on account of the intoxication of the Judge;" Mr. Lind, "I continued all of my cases on account of the intoxication of the Judge. The other attorneys continued a number of their cases." "There were twelve trial cases," he says, "on the calendar, and there was only one tried;" leaving the inference to this Senate that there were eleven cases continued at that term of court on account of the intoxication of the Judge.

What was the fact? We called Mr. Blanchard, with the records of that term of court to show to you what there was done, what cases there were, and what is the result? It is true that there were twelve matters noticed on the calendar of that term; but it is also true that it was not twelve trial cases. It is not true that only one case was tried there at that term, because it is in evidence here, and you will undoubtedly remember it, that the case of Howard against Manderfeld was tried for one; that the case of Youngman against Lind was tried for another; that the case of Hughes against McCarty was started in to be tried, and on account of some defect in the papers, the parties desiring to make an amendment the case went to the foot of the calendar, and they not having made the amendment in time, for that reason was continued. Mr. Blanchard, the clerk of the court, tells you what every one of those cases or matters on the calendar was and how they were disposed of, and we will run through them so as to see that when Mr. Lind testifies as he does he does it for a purpose and testifies falsely. One matter that was upon that calendar was the Wildt matter, which was simply an order to show cause. Now, that matter was tried and disposed of. That is number one. (I don't take them in the order in which they were on the calendar.) As to the second and third of the cases, they were the

Maderliner foreclosure cases, which were default cases, just simply to introduce your proof and take your judgment by default; the proof was introduced in both of those cases and they were tried and the judgment was rendered. That is three cases disposed of at that term.

The fourth was a bastardy case, which was stricken from the calendar. That was not continued, then, on account of the Judge's intoxication; it was stricken from the calendar because it had no place upon the calendar,—was improperly put on, I suppose, on account that probably the child was not born, or something of that kind. The fifth was another bastardy case, in which Mr. Webber was for the county and Mr. Lind for the defense. That case was continued, and Mr. Webber and Mr. Lind both would have you infer that that was continued on account of the condition of the Judge. What does the clerk of the court say upon that,—their own witness upon this very article? He tells you that that case was continued because the complaining witness, the girl, did not appear, and to give the county attorney a chance to settle with the fellow; that he had been authorized by the county commissioners so to do, and that that was the reason of the continuance in that case. The sixth case was a case that was dismissed. I don't remember now the title of the case, but you will remember it was in the testimony of Mr. Blanchard that one case was dismissed. The seventh and eighth matters was the Howard against Manderfeld case, and the Youngman against Lind case, both of which were tried by jury and disposed of. The ninth case was the case of Hughes against McCarty,—the case where they had commenced the trial before a jury, when a question was raised upon the pleadings and on account of a defect in the pleadings the matter went to the foot of the calendar, and was then continued because they didn't have time to get their papers in; so that was not continued on account of the intoxication of the Judge.

The tenth matter was the case of Pfaender & Miller against Fenton, in which the clerk tells you that there was also a motion to amend the pleadings, that there was a defective pleading and that the parties consented that they could amend and that the matter could go over. That was not, then, continued on account of the Judge's condition. We find then, that all there is left is the eleventh and twelfth matters on that calendar,—two cases, in which Mr. Lind was attorney in both cases on one side, Mr. Webber an attorney on one side in one and Mr. Thompson in the other. Now, I say if it was not the fact that both of the attorneys in both of those cases were against us, were bound to crush the respondent in this case, if we could go into their hearts, we would probably find that there was some ground for the continuance of those cases too, as well as for the continuance of the others that have come up here and where we have shown, that those men lied, when they said they were continued on account of the condition of the Judge,—as we did in the bastardy case, where the clerk of the court happened to know all about it,—if we could have penetrated into the true state of the facts we should probably have found that those two cases which were continued, where no ground of continuance was given, was continued for some default or negligence on the part of the attorneys and not on account of the condition of the Judge. In the meantime I call attention to the fact particularly that the only causes that were continued, as it is claimed, on account of the Judge's condition, were the cases in which John Lind was engaged. I call attention to the fact, which stands admitted, (which he

denied upon his cross-examination,) but which stands testified to here by Mr. Davis, that only a short week before, when he had been beaten by the Judge in the motion for a new trial in the case of Young against Davis in St. Peter when he was mad at the Judge so that he threatened to "Cut his d—d drunken guts out" that at that time he told Mr. Davis that he should get even with the Judge; that if he showed to have drink, or to be the least bit under the influence of liquor when he came to New Ulm he should go in with the other attorneys and get them to continue all their cases upon him, and in that way create public scandal, I suppose.

I say, take that statement, and take his declaration to Mr. Ladd, which we wrung out from the unwilling mouth of Mr. Ladd, put them together, with the fact that his cases were the only cases that were continued, and it shows a conspiracy more than anything else; it shows that there was some reason other than the condition of the Judge. There is another fact that shows that. Mr. Thompson, it seems, continued one of his cases with Mr. Lind, and he gives as a ground for it the Judge's condition. He says, "That is what Mr. Lind said; that was the ground that was given." But immediately after he has continued that case, because Judge Cox was drunk, or drinking, and could not hear it, he goes to work and tries another case, and tries it all day before a jury—the Youngman against Lint case. I asked him how it was that when he continued one case on account of the condition of the Judge he did not continue the other; if the Judge's condition would not allow him to try one case how it could allow him to try another; and he says, very childlike and blandly, "*There was another attorney against me in that case.*" Yes, John Lind was not in that case; the conspirator was not in that case. The man who tried to poison the heart of that bar against this Judge, and tried to get up a scandal upon him, was not an attorney in that case; and that is the reason why that case was tried and why the other was continued.

I say, therefore, that I think the allegations and charge here that on account of the Judge's condition a great number of cases were continued is shown to be wholly without foundation. Why, you would almost think, when you heard the testimony of Lind and Webber, that that whole calendar was swept away on account of the Judge's condition, and we find upon examination that there were two *whole* cases continued. Gentlemen, there is not a term of court anywhere when there is not at least that proportion of cases continued, and sometimes without any ground at all. I remember terms of court within my own experience where the bottom has fallen out of some case that we expected to last two or three days, and other cases have come up; I have known where ten or a dozen cases have been continued by consent of parties, because they were not ready to take them up, did not expect their witnesses right then, or something of the kind; because they were not quite prepared upon the law, or the evidence, or something of that kind. There is not a term of court held in this State when there is not from five to ten cases continued, and the fact shows nothing. The facts, as they have come out here now, show that that was put up, as I explained here, to make this Senate believe that Judge Cox was in a condition in which he could not proceed there. This was a lie and a falsehood. It was thrown out in a loose manner, thinking, probably, that there should not be any investigation—thinking, perhaps, that there should not be a

day of judgment upon that lie; but it is here now, and you can see it and penetrate the veil heretofore covering the naked form of truth.

This John Lind is a remarkable character. He comes here upon the stand a pretender, puts on a mask of honesty and of straightforwardness, and tells his story, that he has studied well. Then he is asked if he didn't have considerable feeling against this respondent. Oh, no! He is asked if he did not state to Sumner Ladd—another candidate for Judge—a few weeks or a week before this term of court, that he would like to cut the damned drunken guts of respondent out, and he tells you what? He denies it point blank. And when he is asked the question again he turns, as you probably will remember, to the President, with an awfully honest face, and a fearful grin on it, and says, "I really believe it is malicious!"

Now, no doubt that man thought, when he denied, upon the stand, what he knew he had said, when he lied, maliciously, knowingly and willfully upon that point, that Sumner Ladd had too much at stake to testify to the truth and that he would deny it, that we couldn't call him and wring it out of him, and I do not suppose Mr. Ladd would have admitted it, (it was hard enough to get it out of him, it was preceded and followed with many explanations and so many attempts to cover it up,) if it had not been for the fact, that he had not kept his mouth shut upon that thing; that he had told of it to Mr. Davis and Mr. Rogers, and that he had found out at St. Peter, when this thing came up, that we knew of his telling about it, I don't believe he ever would have admitted it gentlemen, if it had not been, that he knew that it is a rule of law, that where a party denies a statement having been made to him, you can show by other witnesses that he has so communicated to them. Mr. Ladd found himself in a bad boat, and he had to come, unwilling, as he was, and admit that Mr. Lind said so, and deny Mr. Lind's statement that he hadn't, or run the fusilage of two respectable witnesses to whom in an unguarded moment he had tattled. I say Mr. Lind undoubtedly relied upon Mr. Ladd to stand by him; he didn't think that Mr. Ladd had a mouth that knew no locks, and that he was in such a position that he could not deny it. The testimony and the circumstances under which it came out, shows not only John Lind's feeling against Judge Cox, shows not only what a spirit of revenge, malice and hatred moves his soul, but it shows that he has no regard for his oath, for he comes here upon the stand and tells you not only that it is a lie but tries to turn the bulge upon us by making this Senate believe that it is a malicious question that we cannot prove.

It is only six or seven short years ago when a poor ragged and crippled boy came to the city of New Ulm; some lawyer there took pity upon him and took him into his office to sweep the room and do other dirty work around. Poverty and necessity—two very effective incentives—drove that boy to reading and study, and two years thereafter, John Lind, (for he was the boy), was, upon the recommendation and earnest solicitation of this respondent, E. St. Julien Cox, admitted to practice as an attorney. He took a particular interest in the boy, who then had just attained the age of manhood. When he came upon the bench, he tried in every possible way to succor and help him and make his labor easy. He recommended him and spoke well of him as an attorney. He got him business, and he kindly helped him along in court,—guided the foot of the ignorant boy, as he was at that time, guided him over the

shoals and over the mountain tops of difficulties that are always found in the practice of the law,—guided him with a father's hand, stood by him as a friend. One short year ago mainly through the recommendation and earnest work of the friends of this respondent, that same young man was elevated to an important and lucrative office of the United States.

The thanks for all that this respondent has done for him appear here before you to-day. The gratitude that he exhibits towards this respondent appears here in his testimony. It has appeared heretofore. It appeared at this time in St. Peter when he was conspiring with the enemies of the Judge, when he told them that he "would like to cut his damned drunken guts out!" It appeared in full blast up at Lyon county at the time when those resolutions of the grand jury were brought in—when this man whom the Judge had nurtured and ushered into manhood, whose feeble steps he had guided after he was admitted as a lawyer, whose friend and protector he always had been—when this man I say, stepped into the meeting of that bar committee, and with crocodile tears in his eyes told them "that all that he had in this world, and all that he was, he owed to E. St. Julien Cox, but that he didn't want to stand it any longer, that it was about time they have a change," and tried to discourage the other attorneys from standing by the Judge; I say that when you see this man down here not only to bear witness against this respondent—for if he spoke the truth, I suppose that was nothing but his duty—but when you see him conspiring with his enemies, when you see him doing everything to crush this respondent, when you see the man, as you, Senators, have seen him, not being satisfied with coming down here as a witness, not being satisfied with doing his lobbying while he was down here as a witness, but see him, as we have seen him during the last week around this Senate chamber lobbying with one Senator after another, trying to induce them to abrogate their oaths to decide this case upon the law and the evidence, trying to use the influence that he may have with his friends upon this floor, as I have seen it done, as you have seen it done, I say truly, then, this respondent has good ground to say about that man, as King Lear said of his ungrateful daughters:

> "How sharper than a serpent's tooth
> It is, to have a thankless child."

But that is John Lind. That is his handiwork in this case. That is the gratitude that he extends towards the man that has been more than a father, more than a guardian to him; the man who has always treated him kindly, with kind feelings, has always outstretched his kind, helping hand towards him. That is the way he treats him, and why? Because, in some case or other where he was wrong, this respondent would not violate his oath and decide the case in his favor, because he would not stretch the law in his favor, because he has thought it enough if he, within the bounds of law, extends his favors to him, because he can not, he will not go beyond the line and violate the law to help his friends, that, and that only, is the reason and the ground of John Lind's conduct towards this respondent to-day.

I will now take up the first subdivision of this specification, viz., the first day. As to that day there are four witnesses upon the part of the

prosecution: Webber, Lind, Somerville and Thompson. Mr. Webber tells you that he was drunk on that day. But, upon cross-examination he tells you that he noticed nothing the matter with his eyes or his hair, and that he cannot describe either his appearance or his actions. That he cannot give a scintilla of evidence of intoxication during the day, and he admits that he might be mistaken. Mr. Lind tells you that the Judge was drunk during the trial of the case of Howard against Manderfeld, also when he charged the jury in that case. Mr. Somerville, after telling that he thought the Judge was intoxicated when he first came, says, after adjournment he was worse,—which took place soon after he came in. Mr. Thompson tells you that he remembers nothing out of the way in any of the rulings or decisions of the Judge; that everything went on as usual,—his charge, and other things there in court, and that there was nothing wrong in that respect on the first day. That is Mr. Thompson's testimony. I take that Mr. Thompson's testimony is rather killing itself when you takethe direct and cross-examination together, but be that as it may, that isthe testimony of the four only witnesses upon that day.

Now, as against that, we have the testimony of Mr. Brownell, the testimony of Mr. Jones,—for I am going to appropriate the testimony of Mr. Brownell, the testimony of Mr. Jones, which the prosecution brought in,—the testimony of Mr. Peterson, the testimony of Mr. Wright and the testimony of Mr. Seiter, the barber that shaved the Judge at noon, before he went up to try that case.

Now, Mr. Brownell tells you that he saw no indication of influence of liquor upon the Judge during that trial. Mr. Jones tells you that he was not drunk. He tells you the story about Mr. Webber stating to him in court there, when they came back again after adjournment, that Judge Cox was drunk, and that he, Mr. Jones, told him no, sir, I don't think he is drunk, he is not drunk. Well, Mr. Webber says, he has got worse since noon; Mr. Jones says, it can't be so, because he has been in our company all the time, he has not had any chance to get drunk. Now, here is a witness called for the prosecution who has to admit and does admit that he did not consider Judge Cox drunk at that time. Mr. Peterson tells you that he has known him for twelve years, that he was in there an hour and a half of that afternoon, during the trial, and that the Judge was perfectly sober during the afternoon. Mr. Wright, the liveryman, who has known him for nine years intimately, tells you that he was there during the whole of that trial and that the Judge was perfectly sober; that he looked a little better than he did in the morning when he was not shaved, etc., and Mr. Seiter, the barber, told you that he shaved him that noon; that he came in there the first day at noon and had two or three days' growth of beard on him; that he shaved him; and that he noticed no indications of intoxication upon him at all. Now, taking that in connection with the testimony of Jones, and connect with it the testimony of Mr. Current and Mr. Baasen, who saw him when he came in, and we have the testimony of seven witnesses against the testimony of these four that Judge Cox was not intoxicated during that trial.

I am now going into the details of the testimony and will show by the witnesses for the defense that each of the witnesses for the prosecution are contradicted overwhelmingly as to the first day. Mr. Lind tells you that he noticed in his rulings a wandering of his mind, a non-pos-

session of mental ability. Now, it is remarkable that Mr. Webber, when he was upon the stand, tells you that there were no rulings at all. He says that there were no objections, no rulings, no exceptions; but Mr. Lind sees them where there are none at all. Now, as against the testimony of Mr. Lind is the testimony of Mr. Brownell, for one. He says, "No wandering of his mind occurred to me; his rulings, whenever he made any, seemed correct; there was no contradiction in his rulings. The Judge was somewhat weary and dull that day, the charge he gave to the jury was not in as clear a manner nor as clear as usual, I thought." Now, this is the charge, with reference to which he afterwards, upon cross-examination was asked to say whether he did not state at one time that it was drunk all through; and he said very likely he did; he thought at the time that the charge was not good law, and besides that, said it was not as clear as usual. And he has given his explanation of that before, that when the Judge came in he thought he looked fatigued and weary, as though he probably had been on a spree or had been out and up and suffered by traveling for a long time, or by poor accommodations. The Judge was fatigued, he says, when he first came into court; but he also says that his rulings were clear and concise, that there was nothing contradictory in them, at the same time he admits, even in his direct examination, that the charge was not as clear as usual with the Judge. And that is the charge that possibly he afterwards characterized as a charge "Drunk all through;" and he explains to you what he meant by that, that he had no reference to the condition of the Judge when he said that, but merely expressed the opinion that the charge was not good law.

And he tells you also, when I asked him upon re-direct examination, whether or not this charge, where he thought it wrong, was upon well-settled principles of law, or whether it was upon matters, as to which lawyers and law books differ, that it was upon a subject upon which, I suppose, you can find a hundred decisions each way, and where it is hard to tell, before our supreme court settles it thoroughly, which is the law in this State. One judge will charge it one way, in one case, on account of the peculiar circumstances of the case, and another will charge it in another way in another case, and the same one will do so too. Now, this part of the charge was upon the question of fraud; it was upon the question of what was fraud in fact and what was fraud in law; what was a question for the jury and what was a question for the court, —one of the most mooted questions, as the lawyers on this floor will bear me out in stating, that our jurisprudence knows; a matter that has not been settled, and probably won't be settled, for some time. Now, upon that I have no doubt but Judge Cox has his own peculiar ideas, and that he gave that charge in accordance with those ideas. They may not be Mr. Brownell's, they may not be Mr. Jones', they may not be the views of the supreme court of this state, if the question is ever carried there, and if you can get them to reverse about half a dozen different opinions that they have given in different directions upon that subject, but that does not show that he did not charge the jury good law.

Further, this was not necessarily an indication of intoxication upon the part of Judge Cox. Even if his charge upon that subject was not as good law as some lawyers or some persons would wish; it would simply show his erratic mind, if you please. I have seen questions of law upon which Judge Cox has a fixed opinion,—the matter that was brought

ip here, in the McCormick against Kelly case, about warranty in case of atent defects, is one of them,—I know of questions, where I, as a law-er, have thoroughly disagreed with him, where he has wanted to charge he jury in my favor upon the subject, and charge what I did not think vas law, and where I have told him I did not stand upon that theory nd did not want it charged. Now, would that show that he was intox-cated? It shows that he may get an idea of the law into his head, vhich may be in advance of the times,—on account of his peculiarly rilliant mind,—in advance of the settled law, one that is not the law of his State, but it does not show that he is intoxicated at all. Now, I now such an incident has happened to me in his court, in a case that had before him, in which I had to beg him not to give a certain harge, really in my favor, because I did not think it was good law and vas afraid the supreme court might reverse the verdict for error, and at hat time he was just as sober as I am or as I was, or as anybody in hat court room was, and it was only on my importuning him not to ive it, that he desisted from giving that charge to the jury. Now, nind you, I will not say that I was right and that he was wrong. I am nclined to think probably that he was right and that I was wrong, but is ideas, although we will probably have to come to them hereafter, vere in advance of the times and in advance of the books and therefore, dared not accept them.

Just so it might be here in this case. We know not what that charge vas. It certainly don't appear anywhere from any testimony that the Judge was incoherent or inconsistent in it in the least. All that appears s, that it was not considered by Mr. Brownell and probably by Mr. Jones to be good law, although it was in their favor. Mr. Brownell tells ou upon cross-examination expressly that, when the Judge gave that harge he was not intoxicated, that he was not even "happy," as he de-cribes the Judge to have been later in the evening when he drank a lass or two of beer with him and walked up to the court house with im. He says that at that time he thought he felt happy.

Now, Mr. Lind tells you again that the Judge was "Wild by spells" luring this trial. Mr. Brownell, when asked as to that, says, "No, sir, here was nothing of the kind." Mr. Wright, who sat right there, and vho has known him for years, was asked about it and he says there was othing of the kind. Lind also tells you that he acted in a wild and in-oherent manner during this case. Now, this about the wildness and ncoherency during the trial of that case is not testified to by Mr. Web-er, who testified before Mr. Lind. It strikes me that it is remarkable, f there was anything of that kind, that it should not be brought out. There if not a word said about it by Mr. Somerville, who testified, I believe, after Mr. Lind. There is not a word testified to by Mr. Thomp-on in regard to that business, on the contrary Mr. Thompson says there was nothing unusual, nothing out of the way, his charge and his rulings were all right and correct. Now then, Mr. Lind is contradicted upon his matter in regard to the rulings and all of that by the witnesses for he prosecution itself, and he is contradicted by the two witnesses for the lefense, that were right there and heard the thing. He is contradicted in regard to this wild and incoherent manner by Mr. Brownell and Mr. Wright, besides by Mr. Thompson, and by the silence of Mr. Somerville and Mr. Webber.

Mr. Brownell says that there was no incoherency Mr. Wright tells you

that he could see no difference in the talk or in the manner from what he had been at other terms when he had seen him. Certainly it won't be claimed that it is a characteristic of Judge Cox to be wild ond incoherent. Mr. Somerville on the other hand says that sometimes there during the trial the Judge interrupted counsel. Mr. Brownell tells you that there was no more of that than usual; that there was a sparring between the counsel of course as usual, and that the Judge would put his lip in, but nothing in an unusual manner. Mr. Webber tells you that the trial went on there irregularly. Now, that is contradicted by Mr. Thompson, one of the witnesses for the prosecution itself, mind you. By Mr Brownell, who says that he was clear and decided in his rulings; that he grasped points quickly and that there was no irregularity whatsoever. It was further contradicted by Mr. Webber himself on cross-examination, who, after he had said first in direct examination, that the trial was very irregular, tells you on cross-examination that he don't remember anything wrong in his rulings. "I do not think there was any rulings." I don't see, how consonant with the showing before us, this trial can have proceeded in any way irregularly. It appears, witnesses were sworn, counsel proceeded in the usual way and the trial was disposed of and five or six witnesses were examined in an afternoon. Let us examine the records in the case. It seems that in the forenoon of that day the jury was called and empanelled, and sworn by the clerk; that they were cautioned by the court about speaking to any persons about the case. Then an adjournment was had until half past one, P. M., at which time court convened pursuant to adjournment.

"The jury in the case of Howard against Manderfeld was called. All present. M. Howard, called and sworn for plaintiff. Plaintiff rests.

"Blake, sworn for defendant, examined and cross-examined; A. Blanchard, sworn for plaintiff, examined and cross-examined; B. F. Webber, sworn for plaintiff, examined and cross-examined; J. Manderfeld, sworn for plaintiff, examined and cross-examined; M. Howard, recalled, examined and cross-examined; Isaac Gallagher, sworn for plaintiff; Charles Hutchings, sworn for plaintiff.

"R. Jones then addressed the jury for the defendant; B. F. Webber addressed the jury for the plaintiff; and the court then charged the jury and the jury retired at five o'clock under the charge of Charles Hughes, a sworn bailiff; court then adjourned until half past 8 o'clock, Wednesday morning, May 18th."

Now it appears that the case was opened by the plaintiff, that one witness was sworn for the plaintiff and cross-examined, that the case was opened for the defendant, that seven witnesses were sworn and examined and cross-examined for the plaintiff, and that the jury was addressed by two gentlemen, one on each side, for the plaintiff and defendant, and that the Judge charged the jury. And all of this was done between half past one and five. Now, it seems to me that there was no irregularity in that trial; it seems to me that the record shows that the Jndge certainly conducted himself in a proper manner and expedited business in a proper manner during the trial of that case. The record also shows that when the court adjourned that day it adjourned until the next morning, that it was not expected that the Judge would be in court any more, that the Judge had no reason to expect that he should be called up in the evening, so that if he was a little "happy" in the evening, when he received that verdict, it was something that he had a right to be, for he did not expect to be called upon. As a matter of fact, everything shows that even if he had been drinking a few glasses

that evening after court had adjourned, he was fully competent to discharge the business that was to be done there in receiving the verdict of the jury.

Having gone over the trial, I have shown I think conclusively that the trial proceeded in a proper way, that there were no indications that would justify anybody in saying that the Judge was intoxicated during that trial nor during the time that he charged the jury. It was all done at one session, no recesses, as appears by the record, no chance for him to go and get intoxicated anywhere.

We come, then, to the evening, when the Judge,—without any notice, without knowing anything about it beforehand, after he had adjourned court, as the record shows, until the next morning, after he had no more to do with court,—was suddenly, at 9 o'clock, called upon by the sheriff to come and receive the verdict of that jury. Mr. Webber tells you that at that time the Judge was very drunk,—the drunkest that he had ever seen him; that he talked very indistinctly; that he could not control his under jaw; that he sat with his mouth partly open; that his face was stolid; that there was no expression in his eyes, and that he talked foolishly. Now, mind you, there were other men there,—Mr. Thompson, Mr. Somerville, Mr. Lind, and Mr. Blanchard,—who were present, and who were witnesses here, who were present at the time that jury brought in its verdict. Do you find any description of the Judge like the one Mr. Webber gives of him by any of those witnesses? They are perfectly silent upon the matter. They are perfectly silent, they give you no such description; and I say that sometimes silence speaks louder than words. If it had been the fact that those witnesses could have testified to that, do you not think the managers would have grabbed every word that could damage and crush this respondent. The managers who have drawn the evidence out of some of the witnesses as with a cork-screw,—do you think they would not have asked these witnesses those questions, and corroborated Mr. Webber? Has any one of those witnesses opened his mouth to corroborate Mr. Webber in regard to the Judge's condition that evening, as he describes him, sitting there almost as blind as an owl?

Now let us see what the witnesses for the defense say about this. Mr. Webber, as I say, is the only one on that point for the prosecution. We have Mr. Brownell there at the time; we have Mr. Robertson, an attorney who had just come into court, who had not seen the Judge in the afternoon, who came there in the evening, the first time he ever met the Judge; who had heard considerable of him, who had lived a considerable time in his district but had not been admitted, and had not seen the Judge at that time; who took particular interest in the Judge and the proceedings, who watched the Judge because of what he had heard about him. And these two men tell you what? As to whether the Judge talked indistinctly, Mr. Brownell says he can recollect nothing of the kind. Mr. Robertson says he talked very little anyhow, but he don't think there was any indistinctness in his voice at all. As to whether he had lost control of his under jaw and sat with his mouth partly open, Mr. Brownell tells you that he never sat that way in court when he was there, and he was there during the whole of that evening. Mr. Robertson tells you that his mouth was open when he talked, not otherwise. As to the stolidness of his face, that lack of expression in his eyes and

foolish talk, Mr. Brownell and Mr. Robertson both tell you that there was nothing of the kind.

Now, then, I claim that those two men have disposed of Mr. Webber, really corroborated, as they are, by the silence of the other witnesses for the prosecution. It is impossible that those witnesses could have sat there with anything of the kind going on unless they had noticed it. And Mr. Brownell is honest about what testimony he gives here before you. He tells you that at this time when the Judge went up there to receive that verdict he thought he was "a little happy." That he probably should not have thought so if he had not drank with the Judge himself; but Mr. Jones and he had one or two glasses with the Judge before they went up there, and from that he thought that the Judge felt a little happy when he went up there and when he received the verdict of the jury.

Now does it appear that there was anything wrong at this time? Does it appear that the Judge acted in any way wrong? That is the next question. This record shows that when the jury were called the Judge asked them if they found a verdict for the defendant. I asked the clerk when he produced the record whether or not he would swear that that was correct. He says, no, he would not; that there is a great mystery about that thing; that he don't remember whether there was a written verdict or not. That he don't remember whether the Judge had first asked them what their verdict was and then re-iterated it in this style, but that the records had undoubtedly been muddled up. We asked Mr. Brownell as to whether or not there was a written verdict,—and by the by, we asked Mr. Blanchard first as to whether or not it was not a common practice in Judge Cox's court, an invariable practice to have written verdicts, to allow the attorneys to write out the verdict upon both sides and for the jury to bring them in as they had been written out; he said that it was, but there were cases, probably, where they didn't have written verdicts. Now, we asked Mr. Brownell as to whether or not there was a written verdict. He tells you he cannot tell; he thinks there was a written verdict, but he is not certain. But he further says, there certainly was no such a question asked the jury unless the verdict had first been read to them, if there had been, he should have noticed it, because he was interested in the case, and was a lawyer of thirty years practice and ought to have noticed it, and he tells you that he would have so done. Mr. Robertson tells you that his recollection is that there was a written verdict.

Mr. Jones, the witness called by the prosecution in this case, tells you that there was a written verdict, and he tells you why he remembers it; he tells you, because he had written the verdict himself, and had written it only, "We, the jury, find for the defendant;" and the jury, when they had been out in their jury room, added to it, "No cause of action," and he remembers that the Judge said, when he had read the verdict, that jurors sometimes knew more about the law than the lawyers did. Now, certainly, under those circumstances, after the jury had fixed the verdict up in that shape, there was nothing in that remark to show drunkenness. That is the remark which Mr. Jones claims he made, and which brings it fresh to his recollection that there was a written verdict in that case.

Now then, we have shown, by the testimony upon the part of the prosecution and defense, that the record is incorrect in relation to that

matter; that there was something left out of it—probably in copying it and getting it recorded—that the written verdict was left out, and as there is nothing but this defective record to impeach the proceedings as to being proper and regular, I think we can with good right conclude that the Judge did not in any matter act wrong during this evening session.

Yes, Mr. Webber tells you that he gave notice that he wanted to have time to make up a case, to move for a new trial; and that the Judge told him to make his motion right off, that he could decide it in a minute; and that must, of course, be evidence of intoxication.

Well, I think it would be what any judge has a right to say. If it was a simple question of fact, a question of evidence that had to be decided upon, he could make that decision just as well then, while the evidence was fresh in his mind, as afterwards, and it would not be improper. The judge has a right to hear a motion for a new trial upon his minutes, and the counsel can afterwards make up a case. He has a right to have that motion made upon his minutes if he sees fit, and then the counsel can afterwards make up a case or bill of exceptions if they desire to go to the supreme court, so that there would be nothing improper in the Judge saying that. But Mr. Brownell tells you that that was not the fact; that it was not so; and it would be a remarkable fact that, if it was so,—the prosecution, when they called Mr. Jones upon the stand, if he disagreed with Mr. Brownell, did not contradict Mr. Mr. Brownell by Mr. Jones. As a matter of fact, it seems that he, by his stlence, shows that that is true, and that Mr. Brownell is right. He certainly does, by his silence, not being asked nor testifying anything in regard to it, as far as the next matter is concerned, namely, the testimony of Mr. Webber that Mr. Jones suggested to him that, considering the condition of the Judge, they would wait until the morning; it seems that in the morning they didn't do anything; they did not argue that motion then. It was simply agreed the next day that a stay of proceedings might be had, and that they would have the motion heard at some other time; Of course they could have done that just as well in the evening. Mr. Brownell tells you he sat right by Mr. Jones, and it was impossible for Mr. Jones to make such a remark and he not to have heard it; that Mr. Jones did not make it in his hearing. Mr. Jones was not asked, when on the stand, when he was up here apparently to impeach and contradict Mr. Brownell, anything upon that. That was not brought up, so that that, I say, stands virtually conceded by Mr. Jones' testimony, by his not testifying upon it, and by his silence.

Now I desire to call your attention to two facts in connection with this first day. In the first instance it will be apparent that when Mr. Jones gave his testimony upon the stand here he was called apparently to contradict Mr. Brownell, and the manager told you that when Mr. Brownell saw Mr. Jones come in, and when Mr. Jones went on the stand he crawled through a little mouse hole and got white in the face. I did not notice that, but I noticed that during the recess after Jones had left the stand he and Mr. Brownell went over and shook hands and talked over that their testimony didn't disagree very much, and Mr. Jones said, "No, it couldn't very well; we both told the truth." You take the direct and cross-examination of Mr. Brownell, and the testimony of Mr. Jones does not impeach Mr. Brownell in one material part. It is true that Mr. Jones says that Mr. Brownell made some remark when Mr.

Webber said the Judge was drunk, and Jones said he wasn't, to this effect: "But he has evidently been drinking some." It had probably skipped Mr. Brownell's memory. But it does not make any difference, he is called here to state whether the Judge was intoxicated or not, and he testifies upon that. It is true that Mr. Jones tells you that Mr. Brownell saw the Judge drunk in the evening after court, or at least under the influence of liquor. Well, Mr. Brownell tells you that the Judge was even happy when he was up *at court*, and Mr. Brownell was not asked as to whether he noticed the Judge's condition after court or whether he made any remark later in the evening in regard to it. So that really Mr. Jones does not contradict him.

I will call your attention further to the fact that Mr. Jones is not a witness who is friendly towards the defense. It appears from the testimony that when he was asked to state what Mr. Brownell said, and when we objected to his answering any questions not put to Mr. Brownell, and the managers could not go any farther, and when the Senator from Hennepin came to their rescue and took upon himself to ask the question which the managers could not ask, that Mr. Jones took it into his hands to go over and tell about the condition of the Judge—which he had no right to do upon rebuttal—and was very anxious to bring out what everybody said and what everybody else said, and what the Judge did and where he was, and all of that—showing that Mr. Jones, knowing the rules of law as he does, was desirous evidently to bring out all he could against this respondent. But in it all it didn't amount to anything. It amounted to an accusation upon the part of Mr. Webber that Judge Cox was drunk, and of a denial upon the part of Mr. Jones, that he was not drunk; and it amounted, further, to this, that the Judge was drunk in the evening after court, which he dragged in, without any right, and which, as a lawyer, he knew was not proper to drag in in rebuttal, but which he brings in under an excuse of the necessity of explaining and giving the whole facts and circumstances. Now, there in the evening the Judge had a right to be drunk, if he did not interfere with anybody's business. Now, I say that shows the animus of Mr. Jones. It shows his feelings in this case; it shows that he is not a witness that you can call a witness for the respondent in any way, shape or sense whatever. And it shows that when he tells you that the Judge was not drunk, and that in his opinion he was not drunk, either when he came or during any portion of that trial, that that should have weight, because it comes from the camp of the enemy.

Mr. President, can I have a recess for ten minutes?

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

AFTER RECESS.

Mr. ARCTANDER (resuming). Mr. President, I will now proceed to the second day of that term of court. Upon that day there are only two witnesses who testify to the condition of the Judge upon the part of the prosecution. They are Mr. Somerville and Mr. Thompson, lawyers who were engaged in the case that day. Mr. Webber claims he has no recollection as to that day and cannot swear as to his condition then. Mr. Lind swears he was only in once in the morning, and not at all in the afternoon. Mr. Blanchard does not testify in regard to that day. Now Mr. Somerville says he was not so bad the second day, and, on cross-ex-

amination, he admits that there was nothing in the Judge's rulings or in the charge to the jury in the Youngman against Lint case, which was tried that day, that showed he was not competent to transact business. Mr. Thompson says that he was fuller in the beginning of the case than when it ended. In cross-examination he says he don't remember anything out of the way in the rulings; that everything went on as usual, the charge, etc., and that nothing was wrong in that respect, either on the first or second day.

Now you will see that the testimony for the prosecution itself really don't amount to anything as far as that day is concerned. It is contradicted, however, as far as it goes, by Mr. Robertson, who was the foreman of the jury in that case, who sat there and listened to the Judge's charge and to his rulings, and who listened attentively at the time, who is a lawyer and a smart young man. He says he has no doubt but that the Judge was sober. The charge was clear, lucid and succinct. On cross-examination he shows the honesty of his purpose when he comes down here. He admits that in the evening after the session was through and after the court had adjourned, he saw the Judge down town and that he thought the Judge at that time was under the influence of liquor, but that he saw no signs of the influence of liquor upon him during the whole of that day in court.

Mr. Wright, another juror, tells you that he was there in court all the time during the second day of the term of court. That the Judge was perfectly sober, that he was just as always; and he also says he did not come down here to lie. He tells you upon cross-examination, that he thought in the evening down at the Merchant's hotel, the Judge was intoxicated, or rather that he was slightly under the influence of liquor. That is what he says; but he tells you at the same time that he was perfectly sober during the whole of the sessions of the court that day. I make short work of that second day because I think it is eminently and positively and in every way contradicted, besides the testimony introduced by the prosecution is so weak it hardly needs contradiction.

Now, as to the third day, we find no complaint against the Judge except in the afternoon when this Wildt matter was up, and that is claimed to be an indication of Judge Cox's intoxication that day. Mr. Webber says nothing about the forenoon of that day, at which it seems law questions came up, as Mr. Wright testifies, who was there, and who says that the Judge was perfectly sober during the forenoon.

Mr. Webber says that the Judge was drunk that afternoon during the Wildt matter. Mr. Blanchard comes in as a witness for the prosecution and he says: "I *considered* the Judge intoxicated that afternoon." That is as strong as Mr. Blanchard will go. They are the only witnesses on this day, for Mr. Somerville says before that the Judge was almost sober that day. Mr. Thompson and Mr. Lind were not there; Mr. Thompson was home at Tyler; wasn't at all there in court. Mr. Lind says he only came in there at the time this Subilia matter came up, and that he saw nothing out of the way with the Judge then. So there is only the testimony of Mr. Webber that he was drunk and the testimony of Mr. Blanchard that he *considered* him intoxicated that afternoon.

Now, those two witnesses are contradicted by Mr. Sturgis, by Mr. Robertson, by Mr. Peterson, by Mr. Subilia, by Mr. Wright and by Col. Baasen. By Mr. Sturgis, who tells you that he came into court that noon, before the noon adjournment; that he walked down from the

court house with the Judge and talked with him, and that he was then and there perfectly sober. By Mr. Peterson, who tells you that he has known the Judge for twelve years, that he went up to the court house and talked with him at the time he went up there to have this Wildt matter brought before him, and he says that he was then and there perfectly sober. By Mr. Robertson, who tells you that he was in court an hour in the afternoon, and that the Judge was sober then. By Mr. Wright, who says that he was in, a short time in the afternoon, and that the Judge was sober then; and further, by Mr. Subilia, of whom it is in evidence by Mr. Webber, that he was present in court and gave his evidence immediately after this Wildt matter was over; and Mr. Subilia tells you that he has known the Judge for twenty-two years, and that he was in there at court and testified, and that at that time he had no doubt but that the Judge was perfectly sober.

By Mr. Baasen, who tells you that he went right up to the court house at the time or about the time when this should have occurred. That he met the Judge going down, right after he had adjourned, only this Subilia matter, taking five or ten minutes, having intervened after the Wildt matter; that he had heard that the Judge was drunk and that he went up to see; that he met the Judge on the street, and that he walked down with him and talked with him, and that he went there for the purpose of seeing whether it was true that the Judge was intoxicated, and that he found he was sober. Here is a man whose particular attention was called to the condition of the Judge as to sobriety or inebriety, and a man who has known him for twenty-five years and has known him drunk and known him sober. And I apprehend that the testimony of those six witnesses outweighs the teatimony of Mr. Webber and the testimony and the guess-work and "consider"-ation of Mr. Blanchard.

Now, as to what actually took place in court there, as to whether there was anything in the Judge's conduct to show intoxication, Mr. Blanchard and Mr. Webber both have testified, and Mr. Blanchard has brought the record with him, to show what took place, and I say again, there is a flagrant contradiction and inconsistency in the testimony of the two. Mr. Webber tells you that when Mr. Wildt was brought up there, the Judge first fined him a hundred dollars, that when he, Mr. Webber objected, he raised the fine to two-hundred and fifty dollars, then to five-hundred dollars, then to a thousand dollars, and then to twelve-hundred and fifty. Mr. Blanchard tells you that all he understood there was of it was, that the Judge raised it from one hundred to twelve-hundred and fifty dollars, and that he heard nothing mentioned of these other fines, and that it is impossible, or at least improbable, that the Judge could have said anything about them and he not have heard it. Now, there they cyntradict each other.

Mr. Webber says that the Judge finally revoked all of these fines that he had made, and remitted the whole thing, and made another order that he should pay a certain sum within a certain time and that if he did not, he should be in contempt and pay a fine of five hundred dollars. Upon that Mr. Blanchard and the records both contradict him.

Now, in his cross-examination, Mr. Webber tells you that he would not say that the Judge used the words "revoke" or "remit;" he tells you that the Judge told the interpreter to tell Mr. Wildt that he fined him so and so much,—these different amounts; that no order was given

to the clerk, as he heard; he might have said he could or might fine him the amounts; he might have misunderstood him. Now, it will be clear to everyone that the Judge would not make an order for a fine unless he addressed himself to the clerk and ordered him to enter it. There could not be any other order of the court. Now, I suppose what is claimed here as an indication of the intoxication of the Judge is that he raised that fine from one hundred to twelve hundred and fifty dollars, or, as Mr. Webber would have it, all the way up, and that he then remitted the whole, and made another order. I suppose that is the point.

Now, we claim, upon our part, and our testimony shows, that the Judge never did fine him anything but by this final order of five hundred dollars if he did not pay within a certain time, and that he did not then fine him, but simply imposed it as a penalty, if he should not pay within that specified time. Now, I say that Mr. Webber admits that it might have been so. He tells you that he did not address himself to the clerk at all, but he told the interpreter to tell the man he fined him, and that he might have said I may or I can fine you. Mr. Blanchard tells you he understood him to say to the interpreter that he fined him a hundred dollars, and afterwards that he fined him twelve hundred and fifty. But he says, too, on cross-examination, that it might be that he said he might or could fine him so much; and he tells you,—by a remarkable fact, which shows conclusively to my mind, and I think to all of yours,—that the Judge did not have any intention of fining him anything else but the five hundred dollars; that when he made these statements about the one hundred dollars and the twelve hundred dollars that he did not dictate anything to the clerk; but when he came to make the final fine and order then he dictated it to the clerk; that he made the order that he should pay the sum within a certain time, and if he didn't he would stand in contempt. Then he turned around to the clerk and said, "Mr. Clerk, enter this order." As to the foregoing pretended orders there was nothing said to the clerk at all. Now, I say that that strengthens the theory of the defense and shows that the Judge did not fine that man at all,—that all there was, was a loose talk, by which he tried to make that man understand that he had broken the law and the power the court had, and tried to get him to pay over to his wife the alimony she was entitled to.

I say that is established beyond question, to be so, by the witnesses for the defense; besides, by the admissions upon the part of the witnesses for the prosecution. It is established to be so by the testimony of Mr. Peterson, who says the Judge told the interpreter to tell Wildt that he could fine him all the way from one hundred dollars to twelve hundred and fifty dollars, and that it was only after adjournment, after they had had the recess there, and the man had got his lawyer up, that he told the clerk to make an order for five hundred dollars fine; that there was no talk about any other amounts; that he did not hear anything said about one hundred, two hundred and fifty, five hundred, a thousand dollars or anything of the kind.

Mr. Sturgis, the deputy sheriff, who was present there, tells you the same thing. He tells you that the Judge had the interpreter tell Wildt that he could fine him from fifty to twelve hundred dollars, not that he would, but that he could; that the Judge was perfectly sober; that he didn't stay there until after the recess, and consequently didn' hear the final order. He tells you also that there was no order made by the

Judge fining him anything. All that there was of it was that he addressed himself to the interpreter and told him to tell Wildt what he could do with him.

Now, Mr. Manager Collins says that there is a discrepancy in the testimony of these witnesses. One says from one hundred to twelve hundred and fifty ; the other one says he told him he could fine him from fifty dollars to twelve hundred dollars.

I don't care anything at all about that discrepancy; I am glad of the discrepancy; it shows the honesty of these witnesses; it shows that they have not been molded in a mold, like some of the witnesses for the prosecution; it shows that they tell the truth as they remember it. It shows that one did not form his testimony after the others. It is not reasonable that any of them could get the amount exactly right. One of them gets it from fifty dollars to twelve hundred dollars; that is the way he understands and remembers it; the other gets it from one hundred to twelve hundred and fifty. That is the way he remembers it. This discrepancy is one of the ear-marks of the truthfulness of the witnesses for the defense. If they had said, both of them, from one hundred to twelve hundred and fifty, I should have thought that they had made up their story; that they had compared notes, and that they did not remember about it, but that they gleaned it from what somebody told them, or that they went from what one told the other. But you can not say that now. They come here, and there is just enough discrepancy to show the honesty of their purpose and the honesty of the witnesses. But there is not enough discrepancy to make it contradictory. They testify to materially the same thing. It is only the amount that they have not got correct.

Mr. Webber further tries to throw out the hint that there was great disorder there at the time,—which undoubtedly there was; that is, Mr. Wildt made a good deal of noise. But he tried to throw a part of the disorder upon the Judge; said that he was talking in the mouth of the others. Mr. Peterson and Mr. Sturgis both deny that, say that the Judge did not terrify the Dutchman or disturb the decorum of the court at all; that there was no disorder or confusion in the Judge's talk,—they deny it absolutely.

I take it, then, Mr. President, that this article has been thoroughly refuted, has been overwhelmingly refuted by the defense and that at least there is such contradiction of testimony all the way through that there cannot be any question about it, that there is enough and more than enough to raise a reasonable doubt as to the truth of the charge; that, as a matter of fact, we have the preponderance of testimony all the way through this charge. We have preponderance as to the first general fact,—five witnesses against their four; we have the same preponderance as to the first day, where there are, as a matter of fact only three witnesses to testify to anything that went on on the part of the prosecution, and where we have four witnesses both to the circumstances testified to by each of them and also to the condition of the Judge. As to the second day we have got two strong and definite witnesses against their *two* weak and feeble, two who admit upon cross-examination that everything went on all right and that there was nothing for them to blame. Upon the third day we have seven witnesses against their two as to the condition of the Judge and we have two witnesses against their Webber in regard to what transpired there in court in regard to the fine,

—Mr. Webber and Mr. Blanchard both being shaken up, and virtually, upon cross-examination admitting facts which are in full conformity with the theory of the defense but not at all in conformity with the theory of the prosecution in this case. I take it therefore that there is no necessity of wasting any more words upon this specification.

That finishes the specifications under article seventeen, gentlemen.

Now, I desire to make one point on that article, and that is that it is not sufficient, in order to find respondent guilty under that article, to find that he has been guilty of one of the charges contained in one of the specifications; and in order to find him guilty under that article it is necessary to find that he has been guilty of two or more of the charges contained in the different specifications.

Senator CROOKS. I suppose the counsel means to say that it would be necessary that he be found guilty upon two or more specifications under the charge of the article?

Mr. ARCTANDER. Yes that is what I mean.

I desire to call attention to the particular verbiage and language of the article,—article seventeen.

That E. St. Julien Cox, being a Judge of the district court of the State of Minnesota, in and for the Ninth Judicial district, unmindful of his duties as such Judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota *at divers and sundry other times and places in* the State of Minnesota, not enumerated in any of the foregoing articles, from the fourth day of January A. D. 1878, to the fifteenth day of October, A. D., 1881, acting as, and exercising the powers of such Judge, did enter upon the trial, etc.

The point is this: afterwards the managers were not allowed to introduce any testimony under this general sweeping article unless they filed specifications. Now, to prove one of those specifications would not be sufficient, because that would prove simply that Judge Cox had been intoxicated at one time, in one place; this article charges him not with that, but charges him with being intoxicated at "*divers and sundry times and places* in the State of Minnesota." So that it is absolutely necessary under this article, in order to find their article true—and you must find I suppose the article as it stands—that he has been drunk at more than two of these occasions at least, because you cannot make "divers and sundry times and places" unless you have more than two. So that even if the Judge had been proven drunk under one of these specifications, that don't prove the article; he must be proven and found guilty under more than one of those specifications before he can be found guilty under that article. I think that is a point well taken. It would certainly be so under the precedents in military law, in courts-martial, where the party has very often within the recollection of a great many Senators who are old soldiers, been found guilty of the specifications but not found guilty of the charge. I think there is instance after instance of that kind.

I come now, Mr. President to the

EIGHTEENTH ARTICLE.

Upon that I shall not spend much time. I consider that the charge is so ridiculous in itself—that it is so clearly a breach of the constitution of the State, that the statute under which they claim this is so fla-

grantly in violation of the constitution of the State, that I do not need to spend any time on it for that reason. I have already alluded to that in my opening argument.

I think also that the facts which have been shown here come very far from showing habitual drunkenness, that even if it was ground of impeachment, the managers have failed entirely upon the facts; I am so confident of this that I shall not go into and examine the charges under that article. I will simply call the attention of Senators to the fact that they will find, I think—I have counted them up very carefully—thirty-two alleged drunks, more or less, attempted to be proven by the prosecution under this article. You will find by examining the index that I made under the 18th article, that we have disproved—upon some of them with five or six witnesses—fourteen of those thirty-two alleged drunks. We will claim also by this time, that we have disproved every drunk upon the bench charged in any of the articles and specifications, so that they can get no benefit from any of those, and that will leave them eighteen times at which they prove without our contradicting it, that Judge Cox has been drunk during the last four years.

Now, dividing that up on the four years and you will find that it makes about four and one-half drunks a year. Now, if a man can be an habitual drunkard who has proven to be intoxicated four and one-half times a year, it is more than the books allow. It is more than even these books will allow upon a question in a divorce case, as to what is habitual drunkenness. Of course there has been a tendency in divorce cases to throw down the bars as much as possible to make the required amount of proof as light as possible. Certainly the same leniency would not apply at all to criminal cases. Now, I laid down during the early progress of this trial, the rule which I understand to be the true one even in divorce cases, that to make out that a man is an habitual drunkard you must prove that he has been under the influence of liquor at least a majority of the time of the hours allotted to business; that the majority of the time he most be drunk in order to make him an habitual drunkard.

I will limit myself,—I have a considerable number of authorities here,—but I will limit myself to read just a few of them upon that question to show to the Senate that when I laid this down as a rule it was no *ipse dixit* of my own, but that it was based upon the best authorities in the country. And that authorities in divorce cases that would be more lenient, as to what would be required to show to establish habitual drunkenness, than they ever could be in a criminal case.

I refer to Bishop on Marriage and Divorce, 1st vol., sec. 813.

"Habitual drunkenness" is the habit of getting drunk. One to be an habitual drunkard, within the divorce law, need not be constantly under the influence of too much drink, or be always disqualified for business; but he is such, if, for example, he becomes intoxicated whenever tempted by being in the vicinity where the liquors are sold The offense is a habit, and frequent recurring drunkenness proves it.

I will read now from the case of Golding against Golding, 6th vol. Missouri Appeal reports, page 602.

Where the ground upon which a divorce is prayed is habitual drunkenness, the question is as to the existence of drunkenness as a habit; and frequent and *regular* recurrence of excessive indulgence in intoxicating drinks constitutes the habit.

They hold that it is necessary to show "frequent and regular recurrence of excessive indulgence in intoxicating drinks."

In the case of Burns vs. Burns, 13 Florida, page 376, it is said:

> The charge of "habitual intemperance," in the language of the statute, evidently can only refer to a *persistent* habit of becoming intoxicated from the use of strong drinks, thus rendering his presence in the marital relation disgusting and intolerable.

It refers only to the *persistent habit* of getting intoxicated.

In the case that was cited by the State during the progress of this trial, the case of State against Pratt in 34 Vermont, 324-325, it is said:

> The fair definition of an habitual drunkard, as used in the statute, we suppose to be, "one who is in the habit of getting drunk," and we do not suppose it necessary to satisfy those terms that a man should be *constantly* or *universally* drunk * * * And saying that such a person did so at particular times would generally be understood as meaning that these times occur *about as often as he found an opportunity to do so.*

I come now to one of the cases, that has laid down this doctrine, as I claim it most decidedly; that is the case of Mahone vs. Mahone, in 19 Cal. reports, page 629, decided by one of the best and soundest courts on this continent. The court mischarged the jury. The supreme court says:

> "This charge was too stringent. The idea conveyed by it to the jury must have been that the habit of drinking to excess must be of such a character as to render a party at all times incapable of attending to business. This is not necessary if there is a fixed habit of drinking to excess to such a degree as to disqualify a person from attending to his business *during the principal portion of the time usually devoted to business*, it is habitual intemperance—although the person may *at intervals* be in a condition to attend to his business affairs."

Now, that lays down the doctrine just as I have contended for, that it is not necessary that he should be drunk all the time to make him an habitual drunkard. But that he must be during the principal portion of the time usually devoted to business in a state of intoxication.

The same doctrine I think about, is laid down in the case of Ludwick against The Commonwealth, 6 Harris, page 174–175. The court in this case says:

> "To constitute an habitual drunkard, it is not necessary that a man should be always drunk. It is impossible to lay down any fixed rule as to when a man shall be deemed an habitual drunkard. It must depend upon the decision of the jury, under the direction of the court. It may, however, be safely said, that to bring a man within the meaning of the act, it is not necessary he should be always drunk. *Occasional acts of drunkenness*, as the judge says, *do not make one an habitual drunkard.* Nor is it necessary he should be continually in an intoxicated state. A man may be an habitual drunkard, and yet be sober for days and weeks together. The only rule is, has he a fixed habit of drunkenness? Was he habituated to intemperance *whenever the opportunity offered?* We agree that a man who is intoxicated or drunk *one-half his time* is an habitual drunkard, and should be pronounced such."

That is the doctrine laid down by the learned supreme court of the State of Pennsylvania. That opinion was delivered by Judge Rogers in

1851, and I suppose with the concurrence of the Hon. Jeremiah S. Black, who was then chief justice.

I now call attention to the case of Magahay vs. Magahay, 35 Mich., 210, not because that case lays down what is the exact rule of habitual drunkenness, but as showing indirectly in the opinion of the court what they considered necessary to make habitual drunkenness, and going to show by implication what they do consider insufficient. The syllabus of the case is:

One who has the habit of indulging in intoxicating liquors so firmly fixed that he becomes intoxicated as often as the temptation is presented by his being in the vicinity where liquors are sold, is an habitual drunkard within the meaning of the divorce law.

The opinion was *per curiam* :

We think the evidence in this case shows that the defendant has the habit of indugling in intoxicaing liquors so firmly fixed that he becomes intoxicated as often as the temptation is presented by his being in the vicinity where liquors are sold. He either makes no vigorous effort to resist and overcome the habit, or his will has become so enfeebled by indulgence that resistence is impossible. We are, therefore, of the opinion that he is, within the meaning of the divorce laws, an habitual drunkard.

I think that goes farther than the California decision went, by implication.

I call your attention further to a late case in Iowa, the case of Wheeler against Wheeler, reported in the 5th Northwestern Reporter, page 721.

A man who has a fixed habit of drinking to excess to such a degree as to disqualify him from attending to his business during the principal portion of the time usually devoted to business, will be regarded as an habitual drunkard.

I call attention without reading it to the case of Commonwealth against Whitney, reported in 5 Gray, (Massachusetts,) page 85. Now, I call attention to this case in connection with the fact that all there remains not disproved as to habitual drunkenness, are eighteen occasions during four years, making, as I say, four and one-half drunks a year, in this case it was held :

A complaint does not sufficiently charge the offence of being a common drunkard by averring that the defendant "On divers days and time, not less than three times, within six months last past, was drunk by the voluntary use of intoxicating liquors, and so, on the day of making this complaint, was a common drunkard.

They held that was not sufficient; that is "Three times within six months." Now, here is 4½ times during a year. But I will not take up the time of the Senate to read any more upon this subject. I think that the sound common sense of this Senate will guide it more than law can do. I think that you will know that you cannot say a man is an habitual drunkard, who is in the habit of getting drunk 3 or 4 or 4½ times a year—that that don't make him an habitual drunkard. That you would not say that a man was an habitual smoker if he only smoked 3 or 4 or 5 times a year. If you would not say that he was an habitual smoker under those circumstances you could not say he was an habitual

drunkard, because there is an analogy between the two. The common sense view would be the safest one to take in such a matter, and I take it as I said, I need only to refer to the index that I made and to the names of the witnesses, and undoubtedly those Senators who have heard the testimony, when they see the names of the witnesses will recall their testimony and will remember that whenever we have offered testimony, we have refuted absolutely the charge of intoxication—refuted it beyond any question. I think, that if a motion had been made by the defense at the time the prosecution rested its case, to dismiss that article, as it stood then with its 32 unproved drunks, this Senate would have dismissed it and considered it not of sufficient importance to pass upon or to ask us to introduce testimony under. But we have thought that it was a matter of necessity to us to try and disprove some of those things, so as to throw a reasonable suspicion over other articles where we did not have the evidence, where, as I said in my opening, we might have been cornered by some of our enemies, by showing that on some other occasions which come under the 18th article, they have sworn falsely; and that is the only reason why we did not ask this Senate to dismiss that article, and that is the only reason why we did introduce any testimony under it, for we lawyers consider it as beyond dispute, that this article had not been proven, even if it charged an impeachable offense.

I now believe, Mr. President, that I have successfully traversed through the whole slough of destruction produced before us by the prosecution, every article and every specification. There is only one article upon which I have not yet touched, and that is the

FOURTH ARTICLE.

That was the occasion on which it has appeared in evidence that there was nobody present, or near, except the five men who have testified for the State. It is the article in relation to the settlement of the case of Brown against the Winona and St. Peter Railway Company, in the Nicollet House parlor. Upon this article, as I said, therefore, as a matter of necessity, we have got no direct proof on our side. When I say that I mean that there is no direct evidence upon our side disproving any of the matters alleged in that article; but I maintain and claim that with the inconsistencies in the testimony upon the part of the witnesses for the prosecution, and taking into consideration the further fact that almost every one of the witnesses that testify in that behalf have been shown upon every other article upon which they testify—yes, upon every other drunk upon which they have testified, to have told either a falsehood, or have been mistaken; that there is sufficient dimness thrown around that article, laying aside the consideration that there is great question whether that article has any business here at all.

The article of course was all right as it stood, but whether the proof which has been brought out under it has any bearing upon this case whatsoever, it appearing it was not in court, that it was not upon regular notice,—at least it not appearing that it was upon regular notice,—that it was not at chambers even, but that it was, you may say, some kind of an irregular and temporized sitting, where the parties came together and had a talk over the matter under consideration,—I say laying aside that (which I will come to hereafter) there are, I think, grave

doubts as to the truth of this charge, under the inconsistences that are produced here, under the fact that most of the witnesses under that article have been shown to be mistaken, or to have lied whenever they testified under circumstances where it was possible to get any but our sworn enemies around. and farther taking in consideration the fact that the only two witnesses who have not so been contradicted on other ch.rges are shown to be part and parcel of the movers in this business, are shown to be in the bread and butter of those, that are moving in this business and moving heaven and earth to have this respondent convicted and ousted. But we are not obliged to rely solely upon that. If we have no witnesses directly in point—directly contradicting what appears in that article, yet we have drawn from two of the witnesses their comparisons as to the condition of the Judge with what it was at other times when they claim he was intoxicated, and in that way we bring witness after witness, who upon such comparison show to you that Judge Cox could not have been intoxicated; witnesses, who indirectly dispose of that article.

I now call your attention to the fact that the witnesses for the prosecution under this article are first Webber, Thompson and Pierce. Now, Mr. Thompson has testified only at one occasion that is as to this specification 7 under article 17. On that occasion he has been contradicted by good men—his statements have been disproved. The statements that he makes as to the second day of that term have been disproved by Mr. Robertson and Mr. Wright. The statements that he makes as to the first day of the term have been disproved by Mr. Current, by Mr. Wright, by Mr. Peterson, by Mr. Baasen, by Mr. Brownell, and by Mr. Jones, besides others that I do not now remember. Mr. Webber has been contradicted upon every article where he has appeared, and where there was any possibility of getting witnesses at all.

Upon every article upon which he has testified he has been contradicted by hosts and hosts of witnesses, and not only upon every article, but upon every specification under the 17th article, where he testified, and not only upon that, but upon every charge that he lays at the door of this respondent under article 18. At the time of the Hawk trial he has been shown to have testified falsely by seven witnesses. At the time when he claims that the talk was had with the Rev. Mr. Bergholtz, that gentleman comes upon the stand and says Mr. Webber is mistaken, or testifies falsely in that regard—that the Judge was not intoxicated on that occasion. In short, on every article on which he testifies (and God knows their number is legion) he has been flatly contradicted—contradicted by different men on each different article, and by the best men in the country. I ask, then, is not this enough to throw a cloud over the testimony of that man? To throw a reasonable doubt in the minds of the Senators as to whether or not he may not be mistaken or lie here, when he has been shown at every other case on which he has testified, when there was witnesses that could disprove it, when there was somebody else present besides those that were our sworn enemies and traducers, to falsify? Should not that be sufficient to raise a doubt as to whether on this occasion, too, he might not falsify or be mistaken, to say the least?

Again, there is this man Pierce,—contradicted upon every article,—contradicted upon the third article by Mr. Blanchard and others; con-

tradicted as to the time when he claims he met Judge Cox at Sleepy Eye,—the last alleged drunk in the index,—when he says that Judge Cox was intoxicated at Sleepy Eye during the day he was there. We have shown you by two reputable citizens of Sleepy Eye, who saw him, —one of them at 10 o'clock and the other at 5 o'clock of that day,—that he was perfectly sober. Testifying as this Pierce did further, that he saw the Judge upon the train that evening, going to Redwood Falls, on his way to Beaver, and that he there was dead drunk, lying there and snoring first, and afterwards getting up and creating a general nuisance, he is contradicted in that by the man that was on the train, Mr. Ensign, the clerk of court, and a perfectly temperate man, contradicted further by Mr. McGowan, who met Judge Cox right after he came, and saw him all the evening, and who says he was perfectly sober; contradicted by Mr. Offerman, who drove him up. I say that that man has been so thoroughly impeached that there is no other man on the witness stand who has been so thoroughly used up.

Now the question is as to whether when these men have testified at other places and have been contradicted, you are going to place any credence on their testimony, here where they are not contradicted, from the simple fact that there was nobody present—nobody present but that crowd—nobody present but those men who have testified for the State, and who were the sworn enemies of the respondent, I think that over the other two witnesses who have testified on the same article, a similar cloud at least can be thrown.

Judge Wilson is one of them. Judge Wilson undoubtedly is an honorable man. They are all "honorable men," but we all know Judge Wilson, we all know what a man of strong prejudices he is; what a determined man he is when he wants something carried through, and wants it bad, and it has cropped out here and cropped out from his cross-examination, that he is one of the leading movers in this scheme to get Judge Cox off; it has cropped out that he was the one who introduced the impeachment petition in the House of Representatives, instead of leaving it to a member of that district. It has cropped out under his own admissions (and he had to admit it for it was an open and notorious fact,) that he drove this impeachment through; as a matter of fact I suppose that it is an acknowledged fact, that he did run that judiciary committee; that it is his fault that the respondent was not admitted when he knocked at the doors of that committee; that he was the one who would not allow him a hearing there which would have prevented a hearing undoubtedly before this tribunal; that it was he who drove this thing from the beginning, and was the life and soul of the committee and of the impeachment proceedings. He had to admit that he worked earnestly for it. He had to admit that he urged that article 19 should stand, when one of the managers was honorable and manly enough to get up and object to it; that he got up and made an exaggerated statement to influence that house to sustain the article in order to further prejudice this Senate against the respondent. It was done for no other purpose. For Judge Wilson is too good a lawyer not to know that there was no evidence there to sustain it, and if there had been, not to know that it was not an impeachable offense. The House committee had the same evidence before them that you had upon article 19. They had the testimony of the hack-driver, and the same evidence that came out here came out before that committee, and that was all the evidence they had.

They knew it, but yet Mr. Wilson drove that thing through for a purpose, and he tells you he got up and made an earnest appeal for it. When the manhood and honor of the Hon. James Smith, Jr. bade him raise, although a majority of the judiciary committee had reported the article and object to that article being adopted by the House, Mr. Wilson worked "tooth and toe nail" for the maintenance of that article and stated at the time (not truly, as he knew at the time, but to gain his object) that this offense had been committed by the Judge, right under the nose of the Legislature, after they were in session; that he came right down before their nose and offended the dignity of the great House of Represetatives of the State of Minnesota, and of course that great and virtuous House could not stand anything, but got on their ear at such a crying outrage.

At this occasion Judge Wilson urged before that house, and urged against his better judgment as a lawyer and a man, that that was one of the most important articles of them all, as we all will remember.

I will now return from my digression. This scene in the Nicollet House parlor was one of the occasions on which Judge Wilson was before Judge Cox in the interest of the Winona and St. Peter Railroad Company, of which he is the attorney. This was one of the occasions at which it seems that Judge Wilson was anxious to get into his brief, into his case, a point which rightfully did not belong there, a point that he was not entitled to. This was an occasion at which he tried to get in as a part of the charge of the court, something that the court had not charged. In other words, he tried to falsify the record so as to beat the poor settler in the Supreme Court. And it seems that he was thwarted in his attempt by this respondent, and that was probably the reason why he thought he was drunk, and why he swears now that he was drunk. It appears from the testimony of all these witnesses that Judge Wilson went to work and attempted to get into that case a charge which he claimed had been given at the request of the plaintiff in the case.

The attorneys for the plaintiff all disavowed and denied it. That was a charge, which, if it had been allowed to stand, would have been fatal to the verdict in that case. They all disavowed it, and when he saw he could not get it saddled onto them, he came to the conclusion that the Judge probably was intoxicated, and that he could saddle it onto him; and he tried to; but the Judge, if he was intoxicated, as Judge Wilson says he was, knew enough to guard the rights of suitors in his court, and to let no man, even if his name be Judge Wilson, come there and bulldoze him and smuggle into that record matters, that did not belong there. So I say the testimony, even upon the part of the prosecution, shows that Judge Cox was not in a state, even if he had been drinking some, which disqualified him from the discharge of his duties. It shows that he acted just as he should; that they could not fool him, and that Judge Wilson could not throw dust into his eyes. And that seems to be the main trouble in this matter,—that Judge Wilson did not succeed in getting the Judge to do as he wanted him to do, did not succeed in getting him away from the path of righteousness and justice. I say that knowing Judge Wilson as Senators undoubtedly know him, they will understand that he, at this time, felt thwarted in his schemes by Judge Cox; that he felt the necessity for having a Judge in his place in that district, the whole length of which his railroad runs through, where

there are cases at every term of every court, in every year; that he felt the necessity of having a man that was not like the respondent; that he felt the necessity of having a man whom he could carry in his pocket, and whom he can run and bulldoze just as he pleases,—and I say it with all due deference to the ability of Judge Wilson, that we all know that he is a thorough bulldozer; we all know that he desires to run the court wherever he is, and if you give him one finger he will take the whole hand of the court. He met in this respondent a man whom he could not handle, whom he could neither buy nor bulldoze; he met his equal in this respondent, and he didn't suit him.

He wants some other man that he can own, that he can have in his pocket, that he can do as he pleases with and before whom he can carry his cases for that railroad company with a high hand. And I say that with his strong desire to have this respondent out of the way, it is not at all supposable, that a man of his earnestness, whenever he undertakes anything to prejudice his judgment, should become, as we all know him to be, a very strong exaggerator. It is not wonderful, that it would make him exaggerate more even than what is common and natural with him. It seems to us if you take the evidence in this case, that you must find that he is exaggerating horribly, for just imagine, he tells you, that he cannot describe what the Judge said or did, or how he looked; oh, no! A man of his sagacity, a man of his intellect, can not tell you how the Judge looked, what he did, or said, or what his appearance was, or how his actions were; but he says, "he was terribly drunk; that is the long and short of it."

I will ask you to compare that with the testimony of Mr. Webber, who swears positively almost to every article, he has been sworn upon, and where he has been disproved; he didn't go any further under this charge than to say: "I *thought* the Judge was intoxicated;" he *thought* the Judge was intoxicated. He *thought* the Judge was intoxicated, while Mr. Wilson makes him terribly drunk and no question about it.

I will call your attention to the testimony of Mr. Pierce in connection with this. Why this man Mr. Pierce at another occasion pictures the Judge as "crazy drunk," as "terribly drunk," as "unconscious" as a man who "did not know what he said or did, sitting there as an unconscious being, interrupting steadily, mumbling, making orders and decisions,—evidently thinking he was trying the case when he was not." This same man Pierce, who on that occasion, describes the Judge as I have stated, was there shown by even the witnesses for the prosecution to have meanly and miserably exaggerated, and was certainly shown by the witness for the defense, notably by Mr. Blanchard, to tell a thorough lie,—that same man who described Judge Cox's condition in those words on that occasion.

What does he tell you here? He says "The Judge was certainly very much under the influence of liquor; so much so that his mind was more or less confused. Why, is this Mr. Pierce! Why, take that testimony and compare the description with his description in the Gezike case, which has been shown by all hands to be, to say the least, the most fearful exaggeration of the real facts. Take his description here and compare it with the description in that case, and in this case Judge Cox must certainly have been sober if he ever was in his life, from the view that Mr. Pierce takes of his appearance or of his intoxication. Why he comes down here and says "That he was under the in-

fluence of liquor only, he was not even drunk; "He was certainly very much under the influence of liquor." Why, so far from being "Crazy drunk," that he was not even drunk. And to what degree was he under the influence of liquor? "So much so that his mind was *more or less* confused." There was not even much of that. He gives you a wide latitude. And this same man, who tells you about the Judge at the other time when he has been proven to be sober, who at that time claimed the Judge to make orders and rulings which there was no sense in, and that he mumbled, and that they treated him like an insensible man, and that he in fact was playing havoc like a crazy man,—this man tells you that in this particular matter "He thought the Judge was correct and that his judgment was correct, and that his memory of facts was correct." Why, I am inclined to think that it cannot be the same Mr. Pierce. If it is the same Mr. Pierce certainly the testimony that he gives on this occasion compared with the testimony as given before, must show to you that Judge Cox impossibly could have been anything like what Judge Wilson tells him to be,—terribly drunk."

I will call your attention to the fact that Mr. Thompson, who says that he considers a man under the influence of liquor if he has drank one drop, says that he considered the Judge very much under the influence of liquor. That is as strong as he goes. I will call your attention to the fact that Mr. Lamberton, even, does not state positively that the Judge was intoxicated. He says, "I *judged* he was considerably under the influence of liquor." He gives in other words his opinion. Let it stand for what it is worth, he don't tell it as a fact.

Now, again, it appears (and I can just as well treat of it here as anywhere else) that at this time, when Judge Cox was together with those gentlemen, it was not in the court room; it was not in his office; it was an informal gathering in the Nicollet House parlor. Now, of course it looks a little uncourtlike to be in the parlor of a hotel and sit there and do business, when the court house is only half a block away, and Judge Wilson finds it is necessary to excuse that, and to show, mark you, that this was a court after all, and he tells you that they staid there in the parlor only becsuse it was more convenient—because there was a fire there in the parlor. This was on the 5th day of August, as I think I have already called your attention to. Now, I say it don't show anything, it is not a material point; but it shows how ridiculous men will be in their testimony, when actuated by violent motives, and it is one thing that I have noticed, gentlemen, that as a general thing lawyers are more ridiculous and more exaggerating when they give testimony than any other class of men. You would not think it would be so, but it is a fact which I have noticed, and noticed often and again. Evidently, when Judge Wilson gave that testimony he did not think that it was a falsehood upon the face of it, and evidently when he did say it, he said it for a purpose, and that purpose evidently was to make the Senate believe and understand that it was a court after all, by agreement; that, although it was out of the way, although it was out of the usual run, that yet the parties agreed to go there instead of going to the court house; that they were holding court and not holding it in the court house, and to make you believe that really they were holding court.

It is agreed upon all hands that this was an entirely informal gathering. This was no session of the court. This was no time upon which there was even any calling of court,—no calling of chamber business.

Why? Because it appears in the testimony of these other witnesses here that when they first came there to commence they did not even call the Judge in. I think it is Mr. Thompson who testifies to that. Mr. Thompson says, "We went into the parlor first to settle the case between us, as lawyers do. We found that we could not agree and then we called the Judge in." It shows that it was not even contemplated any more than a kind of a meeting. If they could agree, they would agree upon the whole thing, have the case engrossed, and then have the Judge sign it. It appears from the testimony that there was no intention to have the Judge there; that the Judge did not appear; that they acted there between themselves,—that the lawyers came together, as certainly the lawyers upon this floor know we do in settling a case in that way,—we will come together, have an informal talk, talk over this amendment and that amendment; "That is agreed to,"—"All right,"—"That is not agreed to,"—"That we will leave to the Judge." Now, that was all that was done there. The only difference was that they called him in and asked him to decide right then and there upon a certain point. They called him in, knowing his condition, that he was intoxicated. He had just come home, it seems, that day from a hunt. He had been out.

It does not appear that he knew anything about this thing coming up. He might have been around; he might have been on his hunt, and on his hunt have drank some. He might have drank some that morning on the road down; he might probably have done that; he did not expect anything of the kind. The prosecution in this case called upon us to produce a letter. Mr. Wilson having stated here upon the stand that he could not say for certain whether he sent any notice to the Judge, the prosecution gave us notice to produce a letter from Judge Wilson to Judge Cox, sending that notice. We did so. We gave it to them, but it happened to appear upon that letter, as upon all Judge Cox's letters, the date when he received it, and it appears that he received it the day after he came home, the 6th of August. Well, I suppose the prosecution did not want it any more then, for I have not seen anything of it since, nor is there any evidence before you that he had any notice at all, much less, as Mr. Collins stated in his argument, that we admit that the Judge had received notice. There is no such admission anywhere. There is no evidence that he received any notice at all.

Now, then there being no evidence of any notice to the Judge, he was not obliged to be there in any readiness for them. They come and find that he had drank a little; they call him in; they knew of his condition when they called him in; called him into their informal gathering and wanted him to take part in their discussions. And it seems that he came in there; he came in there and it seems that he could not give them any decision upon the point they were wrangling about, that is, a part of his charge, or what Mr. Wilson claimed was a part of his charge. He then told them, "Gentlemen, I will not decide that now; I cannot decide it; I cannot say whether I gave that or not, I want to examine my minutes before I decide it." Now, here comes the contradiction between the witnesses. Mr. Wilson says that a great many matters were settled before Judge Cox came in; that he won't say that anything was left but the charge for the Judge to settle. Mr. Webber testifies that Judge Cox had to settle a few amendments for them; that he settled several—"All that we could not agree upon." Mr. Thompson says that he don't think that the Judge settled *any* on that day. Mr. Lamberton says there was

nothing presented to the Judge except some papers relative to his charge and says that that was all there was before him. Now Mr. Wilson tells you that the Judge ruled in favor of Pierce upon this question in regard to that charge, and that Wilson then got mad. Of course he did. If he ruled against him he would certainly get mad. And that "I called them out and insisted upon not going on and that Pierce finally said, 'If you insist on it he isn't fit;'" and he further says that the Judge was willing enough to go on. That is what Mr. Wilson tells you,—that they objected and they continued the matter, but that the Judge was willing enough to go on.

Now, what does Mr. Webber say? "First, Mr. Wilson had it that this part of the charge was given at our request; we all denied it; then he turned around and said very well, it was given at the court's own motion then.

The Judge would not rule whether he gave it or not. He said that he didn't want to make himself ridiculous before the supreme court; he might have said so and he would examine his minutes." Mr. Wilson tells you that the Judge decided the matter, and decided it in favor of Pierce, and that then he got disgusted and called him out and said, "We won't go any farther." Mr. Thompson goes further than that. He says, "I remember that the Judge refused to proceed, and we consented to adjourn." Mr. Wilson says that there was no such thing. "The Judge did not refuse; he was willing enough to go on; it was us that refused to go on." Mr. Thompson tells you that he remembers the Judge refused to go on, and "we consented to adjourn;" and he tells you also that when they adjourned the Judge took all the papers, and Mr. Webber tells you that when they met again the Judge had found his minutes, which he said he wanted to examine,—found his minutes and had added something to the charge which made it correct, and all were satisfied with it; which shows that the Judge took it under consideration; that this continuance was not had by the attorneys; that it was not a fact that the Judge could not proceed, on account of his condition, but that the fact was that the Judge couldn't settle matters without examining his minutes; didn't know where they were, and took the matter under advisement until they should come up next time to argue the motion for a new trial, and would then decide the whole matter,—would have it ready, as he did. Mr. Lamberton says the same thing; that he did not decide the matter then. wouldn't admit that he had so charged, said he did not know; could not tell whether he had charged that or not. Mr. Pierce tells you that as to the Judge's judgment in that matter he thinks it was correct. That shows that the Judge could not have been very much intoxicated.

Judge Wilson wanted to have you believe that on account of the respondent's condition this adjournment was taken, and that he, on that account, had to make another trip up there, as well as the other attorneys; that he had made preparations and was ready to go on if the Judge had been all right; that he was ready to go on with his motion for the new trial as soon as the case was settled at that time, without any notice. It appears by Mr. Thompson's testimony that the first notice of a motion for a new trial, that was given at this time, was after they had left the Judge; when the Judge had taken the papers to settle them; then they gave a notice of a motion for a new trial to be had on the 12th, seven days thereafter. And it does appear by the testimony of

Mr. Webber that when Mr. Wilson said he was willing to go on there, and expected to go on and argue a motion for a new trial. It is not true, for Webber tells you that he didn't have a book along with him to use on a motion for a new trial; and that when the motion did come up he had about a cart load, which, of course, it would be necessary for him to have; and as a matter of fact they came up there only to settle that case. As a matter of fact the Judge had a right, as he did, to take the matter under advisement the same as the judges almost always do, and as this Judge, under the testimony of Thompson, used to do at that time in these matters. That is all they expected him to do at that time. They didn't expect to argue a motion for a new trial. So they made no more trips than was usual or necessary. So there was no damage done.

I have spoken of Mr. Lamberton; I desire to call your attention to him. We find in this case, of course, where the Winona and St. Peter Railroad Company is interested, he is around; he tells us that his brother is an employe of the Winona and St. Peter Railroad Company; that he is interested himself in all of their affairs; that every time they have a case he is around, and helping Mr. Wilson in behalf of the Winona and St. Peter Railroad Company.

The managers have taken the pains to tell you that this man is a friend of Judge Cox. Yes, he is a friend; I believe he claimed on the stand that he has been his friend. Yes, he is a friend, but he is a greater friend of the Winona and St. Peter Railroad Company; he is in their employ; he is working for them to secure the conviction and destruction of this respondent, and I ask you if you saw his actions here when he was down, if you noticed him going around and lobbying with Senators against this respondent, as he did in my hearing and in my presence, and within my sight, if you do not think he acts like a friend (?) of the respondent. God save the respondent from such friends!

We do not only rely on this article upon the contradictions of the witnesses the one with the other, or on their being contradicted upon other charges, or upon others being interested and having undue prejudices against this respondent. As Mr. Webber upon cross-examination told us that the Judge at this time was less intoxicated—that at the time when this matter was up—he was less intoxicated than he was during the trial of the Dingler case. You probably remember the evidence in regard to the trial of the Dingler case. It was the road case that was up at the term in Nicollet county at which Mr. Davis, the county attorney, who was present in court and argued the motion, and on which he came and told you that the Judge was perfectly sober; the trial at which Mr. Ware, the shorthand reporter, told you that he was present and that the Judge was perfectly sober; at which Mr. Hatcher, the sheriff, told you he was sober; at which four jurymen who were present in court tell you that the Judge was perfectly sober.

Now, I say by the comparative testimony of Mr. Webber, saying under his oath that the Judge was less intoxicated on this occasion than in the Dingler case; we have all the witnesses for the defense in that case in here, and they contradict the charge that the Judge was intoxicated at this time because they show that he was sober at the time when Mr. Webber claimed he was intoxicated—more intoxicated than he was on this occasion; and we are not left to that: Mr. Thompson tells you that the Judge was about the same as he was at the trial of the

Howard against Manderfeld case. Not as bad, less intoxicated, than he was at the time when the verdict came in, in the Howard against Manderfeld case. And we have the witnesses upon that; we have got as to the trial of the Howard against Manderfeld case Mr. Current, who says he was sober; Mr. Baasen, who says he was sober; Mr. Brownell, who says he was sober; Mr. Jones, who says he wasn't drunk; Mr. Peterson, who says he was sober; Mr. Wright, who says he was sober; and on the evening of the day of the trial of that case, when the verdict was received—when Mr. Thompson says he was more intoxicated than he was at this time, we have got Mr. Brownell and Mr. Robertson and Mr. Jones, who all claimed that the Judge wasn't intoxicated. Mr. Brownell says that he was probably "happy," for he had drank a couple of glasses of beer. Now, if he there was only "happy," what was he here, when he was less intoxicated? If he was not any more intoxicated than he was at the time of the trial of the Howard against Manderfeld case—where he has been shown and demonstrated by a great majority of the witnesses, by a great number of respectable witnesses, jurors, attorneys and parties attending on court, to have been sober—well, what was he here? And did not all these same witnesses virtually come in and swear and give their evidence against Mr. Webber, against Mr. Wilson, against Mr. Lamberton, upon this 4th article? Have they not really, by a great preponderence of testimony, established that the Judge was sober at this time—that the witnesses were mistaken when they claimed that he was intoxicated?

Senator ADAMS. I call for the regular order; it is now six o'clock.

The PRESIDENT *pro tem.* What is the desire of the Senate?

Senator JOHNSON, F. I. I would like to call attention—

Senator ADAMS. We have to take a recess now, according to the regular order.

Senator GILFILLAN, C. D. As it is a stormy night, we had better stay here an hour or an hour and a half and finish up the business. I move that counsel be allowed to proceed and finish the argument of his case at this time.

The PRESIDENT *pro tem.* Could you close the case now?

Mr. ARCTANDER. I do not know, Mr. President, I am very tired.

Senator ADAMS. Mr. President, I wish to say just one word, after Mr. Arctander is through, as far as analysis of the testimony is concerned, then he has got probably an hour and a half to collate and arrange all the facts which have occupied four or five days now. He cannot get through with that under two hours. I do not desire to remain here that length of time. I am willing that the order of business as introduced by Senator Hinds, should be followed out strictly,—that we take a recess until eight this evening, then meet and listen to the remainder of the argument of Mr. Arctander, have him close up to-night, so that the other counselor for the respondent may take the stand in the morning, and as he says he will be able to finish up in a single day, I think we will expedite business by doing that rather than remaining here now, because I will not remain.

Senator CAMPBELL. Mr. President, I see it is a stormy evening, and we have difficulty in getting a quorum on stormy evenings. I understand Mr. Brisbin says he can get through with his argument if he can have a whole day, and not otherwise. I feel if Mr. Arctander breaks into another day Mr. Brisbin will not get through to-morrow, and we

shall not be able to get through, and will have to come back here another week. I regret to say that Mr. Arctander's remarks have been much longer than I anticipated, and I feel very weary in sitting here. This is the fifth day. If the gentlemen will indicate that they will come here, it will be satisfactory.

Senator ADAMS. I move the regular order of business.

Senator CAMPBELL. I move that the roll be called, and that those who propose to be here signify their intention of being here, that we may have the personal pledge of every gentleman that he will be here.

The PRESIDENT *pro tem.* That will be considered as the sense of the Senate unless objection is made.

Senator POWERS. Mr. President, I am afraid we cannot get a quorum here to-night. But the question is, is it necessary for us to come here for ten minutes through this storm?

Senator CAMPBELL. It is not ten minutes, it is two hours.

The PRESIDENT *pro tem.* The Secretary will call the roll.

Mr. ARCTANDER. I would state, Mr. President, that I could not possibly get through before eight o'clock if I went on now, I do not think, because I have got something that I want to read and it will take some time. I can close between eight and ten. I shall undertake to close by ten o'clock.

Senator HINDS. Then let us have the evening session.

Senator ADAMS. Mr. President, I would be entirely willing to come without the roll being called. If you call the roll I shall vote no, most absolutely.

Senator CAMPBELL. I want a personal understanding with Senators that they will come here.

The PRESIDENT *pro tem.* The roll will be called.

Senator RICE. Mr. President, I would suggest that instead of doing that, if there is any Senator present that knows he will be absent this evening, that he would inform the Senate. If there is none such we will take it for granted that he will be here. I am afraid, if the roll is called, we shall find that we have not a quorum here now.

The Secretary then proceeded to call the roll.

Senator ADAMS, (when his name was called.) Mr. President—(cries of "regular order.")

Senator ADAMS. The Senator has no trouble about the regular order.

Senator CAMPBELL. This is a call of the Senate.

Senator ADAMS. That's right; this is a call on your motion?

Senator CAMPBELL. No, sir; I beg the Senator's pardon, it is a call of the Senate.

Senator ADAMS. Oh, I am *here* Aye. [Laughter.]

Senator Campbell, when his name was called voted "aye."

The SECRETARY. That means to be here to-night.

Senator ADAMS. I understood that the motion was withdrawn. If there is a motion before the Senate, I have my right to speak.

Aaker, Buck, D., Campbell, Case, Clement, Gilfillan, C. D., Hinds, Howard, Johnson, A. M., Johnson, F. I., McCormick, McCrea, McLaughlin, Mealey, Perkins, Powers, Rice, Shaller, Tiffany, Wheat, White, Wilson. Twenty-two pledge to be present.

Adams, Crooks, Johnson, R. B. Three do not pledge.

Senator ADAMS. Mr. President, I desire to change my vote, and in explanation of the change I desire to say this: If it is designed upon

the part of a majority of the Senators to bulldoze other Senators I object most solemnly. It can't be done with me; positively and absolutely I won't stand it. I understood that Senator Campbell had withdrawn his motion and that this was a call of the Senate, and hence I voted aye, because I was here, I am present. If the vote which is cast is an attempt to commit me to what I believe to be a deprivation of my private rights in this Senate, this Senate has no power to compel me, and I want it distinctly to go to the world that it has no such power. I vote no.

The SECRETARY. Senator Adams was recorded as voting no, because he had announced before that he would not pledge himself to be here.

Senator ADAMS. I voted aye, and I change my vote to no. I won't be bulldozed by anybody.

The PRESIDENT *pro tem.* There is a quorum who have voted aye. The Senate will stand on recess until 8 o'clock.

EVENING SESSION.

The Senate met at 8 o'clock P. M., and was called to order by the President *pro tem.*

Mr. Arctander then resumed his argument.

Mr. ARCTANDER. Mr. President, I have noticed that in giving an analysis of the discrepancies in the testimony under this article I failed to call attention to a portion of the testimony given by Mr. Wilson, which is contradicted by every witness that is called by the State. He was asked whether or not it was not a fact that there was considerable quarreling between him and Mr. Pierce at the time, and he denied it point blank. Mr. Webber tells us that there was more bad blood between Mr. Pierce and Mr. Wilson in that case, than he had ever seen in a case before in his life. Mr. Thompson tells you that Mr. Pierce and Mr. Wilson had considerably many sharp words, so that even the Judge had to reprimand them. Mr. Lamberton tells you that there was pretty rough talk between Mr. Pierce and Mr. Wilson; Mr. Pierce was as rough as could be, and Mr. Wilson was just as rough, with the edges taken off. Mr. Pierce himself has to admit that on account of their innate wickedness they were pretty ugly that day. I take the position that this being out of court, that this being not at chambers, nor in a court room, nor at a term of court, it was an occasion which, even if the Judge had been intoxicated, or slightly under the influence of liquor, was not one over which this Senate had any jurisdiction. I claim that whether or not that be so, at least the matter was one of such small importance—an informal gathering there—everything was done that was intended to be done—nobody's interest suffered—there was no scandal nor disgrace to the county nor anybody in that county—that is is too small to notice under all the circumstances. *De minimis lex non curat* is a maxim well known.

I raise the point (and I suppose it might as well be disposed of now as at any time) that the idea which has been advanced here by the managers, that because the statute says that the district court is always open, therefore a judge is a judge and cannot lay off his judicial robes at any time; that at any time he must be expected to be called upon and therefore at all times must keep himself in readiness, must keep himself in good health and sober,—is a fallacious idea; and I desire to

call attention to this statute and to show you why it was that it was enacted, what the history of that statute is, and what was intended by it, and I think you will come to the conclusion that that statute does not intend and cannot mean to make a judge a judge out of court when not actively discharging his duties. In other words that it did not intend to deprive a judge of his individuality, to make him an officer who could not at any time divest himself of his authority, who could never be anything else but an officer, and who could not at any time be a private citizen. It is clear to me, that there is no such intention in this statute. I begleave to call your attention to the statute as it is found upon page 745 of our statute books.

In addition to the general terms, the district court is always open for the transaction of all business; for the entry of judgments, of decrees, of orders of course, and all such other orders as have been granted by the court or judges, and for the hearing and determination of all matters brought before the court or judge, except the trial of issues of fact.

Now, the history of this statute, Mr. President, is this:—That in England, as well as in the early days of the jurisprudence of our country, courts were not considered open, no business could be transacted in court except at term time. There were certain times as we all know from the history of English jurisprudence, at which business was transacted, trials were had, and all things to be done by the judicial or ministerial officers of the court had to be done then and there.

No writs could issue except they were issued in term; nothing could be done in fact in court unless it was done in term. A default judgment could not be had unless it was heard in term. And it was to avoid the inconvenience of that rule that this statute was enacted enabling the clerks of court to enter judgments, to issue executions and to enter all necessary orders in his books, which he could not do if it were not for that statute. It appears clearly that that statute has reference to the court itself as a court, and not to the judge. Why? Because it says that, "It shall be always open for the transaction of all business, for the entry of judgments." The judge does not enter judgments. "For the entry of decrees." The judge does not enter decrees. "For the entry of orders of course, and all such other orders as have been granted by the court or judge," etc. Now, I say that, for instance, a writ of attachment is issued by the clerk, the judge cannot issue it, the clerk issues it, and he issues it upon the authority of the court commissioner, or of the judge; it issues out of that court, and it is for the transaction of such and similar business that court is always open.

Now, any other idea, any idea that this statute makes a judge always a judge, that he cannot divest himself of his official robes at any time, that when he goes to sleep and when he is awake he is a judge, that he is bound at the beck and call of any man that sees fit to call upon him to exercise the duties of his office, is a fallacy. I know from my own experience that some of the judges of this State have refused; I know the judge in my own district has refused to hear matters coming before him and interrupting him in his business while he is considering causes, has refused to hear default cases, to grant decrees or to hear motions; that he desires those things done at certain times and specified occasions, and outside of those times and occasions he will not listen to them. He has refused to do so. Is he impeached for it? It appears that this respondent here has adopted the same course, that he did not want mat-

ters brought before him except upon special term days which he had fixed. It is a matter of necessity for our judges to do so, and they have a right to do so, and if they did not do so they would be swamped with business and interrupted in their studies at the most inconvenient occasions. There is no sense in it.

Now, if the theory of the managers is correct, a judge of the district court could not leave home and go to Chicago without carrying the court with him in his pocket; he would be a judge of the district court when out of the state, while down in Chicago. Do you claim for a minute that the judge outside of the jurisdiction of this State could order writs to issue or could perform any other judicial function? None would maintain such a position for a moment. But if it be true, if this statute makes it so,—that because it says the court always shall be open, the judge should always be a judge, the result would be that wherever he is or wherever he goes, he carries his judicial office in his pocket along with him, and he cannot divest himself of it at all. Why, you will have to come to the conclusion, that when he is a judge and gets drunk, in his chamber, so as to make himself less disposed next morning, when probably business may come before him, he thereby is guilty of an impeachable offense; that he is not a private citizen but a judge all the time, and can be punished for all his private indecorums. You only need to carry this theory to the extreme to see the absurdity of it. If that be true, it would not make any difference how that indisposition was produced, whether by eating or by drinking. Now take the case of a judge who goes to a dinner party. He don't drink a drop, but he eats ice cream and several indigestible things, and in the morning is sick so that he cannot go to his office, where there may be some business for him to attend to. Would you say that because that judge ate too much the night before he was impeachable? The idea is ridiculous; but it is simply, as I say, carrying the matter to the extreme, and you need only to carry it to the extreme to see the absurdity of the idea.

I desire while considering this statute to call the attention to the fact that under it this Gezike case, under article number 3, was a case that was called up at that time entirely without authority of law, and that there was in law no judge sitting there; that Judge Cox, if he was there, was sitting there outside of the pale of the law, sitting there not as a judge of the district court, but simply to accommodate those men, and that under the statute that case could not be taken up during vacation. Why? Because it appears it was a trial of issues of fact, and this statute goes only so far in regard to holding court open for the hearing and determination of all matters brought before the court and judge, that it excepts the trials of issues of fact and that case was a trial upon issues of fact. This statute reads:

> The district court is always open for the transaction of all business. For the entry of judgments, of decrees, of orders of course, and all such other orders as have been granted by the court or judges and for the hearing and determination of all matters brought before the court or judge *except the trial of issues of fact.*

A judge cannot hear a trial of issues of fact in vacation or at chambers, or outside of either the regular or special terms. And it is in evidence here and uncontradicted and admitted by the managers that that case came up after the court had adjourned *sine die* the afternoon before; that when the Judge sat there the whole thing was an irregularity; it

was not the Judge who sat there, it was not the district court of that county, nor of that district that sat there and heard that case, it was E. St. Julien Cox, the private citizen, who sat there, and it amounted to nothing more or less than that these persons agreed upon a referee to take the testimony, and that man Goodnow was the referee. The Judge cannot be convicted upon that article whatever the testimony be, because he was not acting as a judge. He was not within the purview of the statute. He was not doing business that he was authorized by statute to do as a judge; whether he was pretending to do it or not, has nothing to do with the question. You can convict him for nothing except what he does as a judge; and when he sat there he did not act as a judge and had no authority to act as a judge, and it was no court, it was at no special term, no general term, and it was no chamber business, because a trial of issues of fact under this statute could not be had at chambers.

I am aware, Mr. President, that I have spent more time than probably I ought to have done upon this argument. I am aware that I have wearied this Senate; I am at least fully aware that I have wearied myself; but I had the object in view, as I said, when I started in, to bring this matter, if possible, fairly and squarely before this Senate, so that there should be no excuse to those members of this Senate who have seen fit to be absent during the giving of the testimony for a vote of guilty; that they should know or at least hear from the lips of counsel what the testimony was. I am sorry to say that I have observed that most of the Senators who have been absent and not heard the testimony, have just as faithfully been absent during the argument and have failed to hear my exposition upon the facts.

I think I dare say that whatever statements I have made as to the facts and the evidence in this case, both upon the part of the prosecution and upon the part of the respondent, have been made fairly and squarely; that I have made no misstatement of the evidence. If I have so done, it certainly has been done unwittingly. I think I have the reputation in the short time I have practiced, for never having been guilty of the offense of misstating evidence to the court, or to the jury; and I certainly did not intend to do it to this Senate. I have worked hard day and night to be able to bring this evidence in such a shape and to digest it in such a manner that I should be able to give this Senate the true state of facts upon every article; that I should be able to give a fair synopsis of the testimony for the State as well as for the defense. If I have failed it has been the fault of the head, not of the heart.

I desire before closing, Mr. President, to devote a few minutes to some general remarks that have naturally suggested themselves to me during this trial. I started in, I believe, with a reference to the fact that Senators had seen fit to be absent some, during the time when evidence was being introduced for the prosecution, some during the opening argument for the defense, others during a part or the whole of the evidence for the defense, and some, I am sorry to say, absent even now during these last days; and that they have not seen fit to hear what the respondent had to say to them through his counsel. I say that it strikes me as peculiar, and at the risk of offending Senators, at the risk of stepping, as one Senator, I believe, stated on the floor, outside of the bounds of propriety and outside of the privilege of counsel, in criticizing the

Judges, I cannot help but express a regret that such should have been the case.

I can understand how men, who have made up their minds upon the law, how members of this Senate who have made up their minds that there was no impeachable offense here, could absent themselves for all of that during the whole of the testimony and not hear it. I can understand that. It is pardonable because it is not necessary that they should be here and hear the testimony when they were satisfied that there was nothing *charged* which was sufficient *in law* to hold the respondent in any event. I can understand how Senators who have heard the testimony of the prosecution, and from that have determined in their own mind that there was no offense proven against the respondent, could absent themselves when the testimony was being given for the respondent, and when the arguments for the respondent were being made; but I cannot understand how Senators who intend, and who will vote this respondent guilty upon any or all of these charges, can do it with an approving conscience; how they can do it unless they have heard all of the testimony and the arguments brought forward by the respondent and his counsel. I cannot understand it, I say; and I ask leave to call the attention of this Senate, and of those Senators who have so acted, and so intend to act in their vote, to what was thought in our mother country of conduct of that kind. Because it is valuable sometimes when we are in the midst of heat and passion, and when we cannot see clearly, when we cannot see as we would see hereafter, probably, and judge our acts as we will judge them when we are cooler in our judgment, when our passions have subsided,—it is well for us, I say, to see how other people have judged in circumstances of the same kind and character.

I say that this is of so much the more bearing for the reason that in England I suppose the respect was never entertained for the individual,—that the respect was never held for the rights and privileges of the individual, which should be maintained in a free country and in a republic, and as I suppose it is in this country. I say that these remarks are so much more applicable because they show what even men of high standing, men of aristocratic and noble birth, men who are born, reared and educated in a monarchy,—what they think of such action; and if the words that were spoken by some noble lord in the House of Lords upon the trial of Queen Caroline should awaken the slumbering conscience of some Senator, who had intended, with a knowledge of the case that was insufficient, to adjudge this respondent guilty, you may say, almost unheard, I think that the time taken in reading them will not be wasted.

I read from the third volume of the trial of Queen Caroline, page 369.

The DUKE of NEWCASTLE stated, that although, from family circumstances, he had been unable to be present during the examination of witnesses, or speeches of counsel for defense, he had heard the case in support of the bill, and had read over the rest of the testimony with the greatest attention; so informed, he thought himself competent to give an opinion upon the present question. (No, no.) He thought the Queen clearly and indisputably guilty, not only of the adultery, but guilty of it in a manner the most degrading and disgraceful. When the time arrived, he should not only vote for the second reading, but for the infliction of the full penalties. Under the peculiar circumstances, it might be proper to insert a clause to prevent one of the high parties from marrying again.

The MARQUIS of LANSDOWN, who had risen at the same time with the Duke of Newcastle, was glad that he had given the noble Duke an opportunity of making

that explanation which he thought necessary, but which the House and the country would think very far indeed from satisfactory. (Hear, hear.) It appeared that the noble Duke had been present during the whole of the prosecution, but that he was prevented by considerations of his own private conscience from attending during the progress of the defense. It was admitted that he had neither heard the evidence of witnesses, nor the speeches of counsel for the Queen, yet, thus uninformed (thus misinformed might be almost said, as he had listened only to one side,) the noble Duke had asserted that he was prepared to vote, not only for the second reading of the bill, but for the infliction of the severest penalties it contained. (Loud and continued cheers.) The noble Duke, like other members, must of course decide for himself; it was not for him (the Marquis of Lansdown) to say that his conviction would not be consciencious; but how the noble Duke had arrived at that conviction was a mystery not yet solved, and to the solution of which the noble Duke had in no way contributed. (Hear, hear.)

Was the course the noble Duke had pursued anything like even-handed justice? Was the intelligence he had obtained anything like sufficient to enable a juror, a fair and impartial juror, to arrive at a fair and impartial verdict? (Hear.) If it were, the great safeguard of our constitution and liberties was worth nothing: The trial by jury, for which our holy sanctuaries of public justice were admired and reverenced, was a mockery, because its chief, if not its only good, was, that it compelled those who were to decide upon life, character, or property, to hear both sides. (Cheers.) Only a few minutes had elapsed since a noble lord on the cross bench (De Dunstanville) had stated that the public was incapable of judging on this important case. Why did he say so, but because the public could not have had the opportunity of hearing the witnesses examined, and watching their demeanor. What, then, would the noble lord think of one of his fellow jurors who affected to form an opinion, and to decide for the utmost extreme of punishment, when he had only heard what was advanced in accusation, and had not listened to a single syllable of the defense, whether proceeding from counsel or witnesses. (Hear.) If the public was disqualified because both sides reached it under equal disadvantages, was not the noble Duke still more disqualified, who had been so attentive to the proof of the charges, and had withdrawn himself from the house at the very moment when those charges were to be disproved? (Great cheering.) Did such conduct become one of the judges on this great and solemn trial? Or, if it did, did it become that judge to declare that he was not only ready to vote for the bill, but for its heaviest inflictions? He (the Marquis of Lansdown) spoke warmly, because it was impossible for any man not to feel warmly when he heard such sentiments; and, as a fellow juror, he should have retired unhappy from the house if he had not endeavored to show to what extremes the supporters of this measure were willing to go. (Hear.)

Lord Sheffield regretted that he had been absent during any part of the proceedings, but justified his voting on the ground that his absence had been caused by temporary illness.

The Earl of Caernarvon then addressed their lordships. The investigation in which they had been recently engaged was so important in its nature, and so momentns in its consequences, as to render it imperative upon all whose fate it was to decide upon it, to attend during every day, and even every hour, in which it was proceeding. He did not intend, however, to reflect severely upon those who had only absented themselves from the house for two or three days during its continuance, though their absence even for a single hour during an important part of the defense might have prevented the occurrence of a total change in the opinions which they have adopted; still he could not help saying that they ought to have considered the probability of such an occurrence, before they determined upon voting in favor of the bill. * * * *

Had he been the counsel for Her Majesty, which he thanked God that he was not, he should certainly have advised her to make no further appeal to their lordships' house, which he trusted that he might still call an august assembly, in spite of all that had been done and said within it. [Hear, hear.] Of all the national calamities which had grown out of this great national calamity, he considered the declarations made in that house on that day not to be the least. Those declarations, which went to assert a right to condemn the Queen without hearing the whole of the evidence, were calculated to induce their lordships to trample on the vital principles of justice; for if there was a vital principle by which justice, and justice as administered by the laws of Britain, was distinguished, it certainly was this—that no person should be found guilty except by oral evidence, or until he had been

heard fully by himself, or by counsel on his behalf. There were, however, some of their lordships who acted in defiance of that hitherto universally acknowledged principle; there were some among them who had condemned their Queen upon written testimony, without having heard the voice or seen the face of a single witness, without having read or attended to a single word of her defense—a proceeding which amounted to a complete denial of that justice to which the most degraded criminal in the country was by law entitled. And yet a noble Duke could come forward and say that, to deprive him of the power of giving his vote under such circumstances, would be to pass an *ex post facto* law of the most alarming and extraordinary nature—an assertion which came, by the by, with peculiar grace from a man who wanted to exercise his vote in condeming his Queen by an *ex post facto* law, which first created the crime and then punished it That the noble Duke, in the ardor by which a young and honorable mind, unaccustomed to the trammels of law, was sometimes distingushed, should in his anxiety to perform his duty, overlook the first principles of law, might be considered only natural; but it was with regret that he had heard a noble lord, in the evening of an useful and honorable life, declare that, though he had not been present during the whole trial, he would accord the severest possible measure of punishment to Her Majesty, thus degrading the house, by judging upon written evidence, into a court like Doctors' Commons. He would ask their lordships why had the noble Earl opposite moved, at the commencement of this proceeding, that the house should be called over, and that no peer should be allowed to vote by proxy? Was it not because no peer was entitled to vote who did not personally attend the investigation of the case? When the noble Duke claimed the right ofvoting without hearing the defense, he was, in fact, claiming to vote by proxy; it was to all intents and purposes the same thing. He remembered well the words of the noble Earl opposite (the Earl of Liverpool) when he moved the call of the house, he said, most emphatically, that he trusted no noble lord would presume to give a vote on the case who did not hear the whole of the evidence. [Hear.]

The noble lord on the woolsack, too, had assented to the principle, though he had somewhat qualified his application: He had said that, if he were to be two or three days absent from the proceedings, he should not consider himself justified in voting for the bill. (Hear, hear.) But did either of these noble lords ever contemplate that any noble peer who should be absent, not days, but weeks, who should not hear one word of the defense, should come down and say that he was not only ready to vote for the bill, but for the severest penalties which it contained? (Loud cheers.) He thought that considering everything, this was a case in which the house could not relax too much from any strict rules of practice in favor of the accused party.

Earl Grey spoke as follows:

But if it were meant to insinuate that the exceptions which Her Majesty had taken against the house were ill-founded and unjust, he must deny the truth of the insinuation. He thought the exceptions to be well founded and most just. (Hear): And especially with regard to those noble lords who had reconciled it to their conscience, and deemed it consistent with their honor, to give a vote upon the present question, after confessing that they had heard the whole case of the prosecution, and not a syllable of that of the defense. (Hear.) He had no right to find fault with those noble lords; they were the best judges of their own conduct, and had to answer to God and their consciences for the course which they had thought it proper to pursue. All he could say on this subject was, that it did appear to him a little extraordinary, when the house had declared its opinion upon a question of this nature—that it was improper for any peer to vote by proxy—that peers should be found acting contrary to that principle themselves by appearing as their own proxies, (Hear,) and voting upon a question, which they had not heard, and the not hearing of which would have been a reason for excluding proxies.

I now desire to call the attention of the court, in connection with the reading of these remarks, which shows not only the sentiments of noble lords upon the floor, but which shows the feeling of the House of Lords in the interruptions, that took place every time when one of those

lords offered to vote without hearing the whole of the evidence, and when any of the noble lords deprecating such a course spoke warm words dictated by an upright, honest and justheart.

Senator BUCK, D. Did they vote, Mr. Arctander?

Mr. ARCTANDER. I don't know whether they did or not; I think they did.

Senator BUCK, D. I would like to know whether they did or not.

Mr. ARCTANDER. It would take too long time, Senator, to ascertain that definitely. I don't care whether they voted or not Think they did. I suppose the house held, as it has always been held, that there was no one had a right to challenge a Senator; it was so held in the Page case, although Senator Clough from Mower county, as was shown, was elected upon that issue, although it was shown that he had expressed an opinion, (as in this case it has been reported that Senators upon this floor have stated that they were ready to vote guilty before they had heard a word of the evidence,) although that was shown, I say, in that case, the Senate refused to sustain the challenge to Senator Clough. It matters nothing and don't prove anything whether they voted or not; that only shows a slumbering conscience and a want of honesty in the individual lords, who thus trampled upon all the most sacred rights of the Queen. But the arguments made by the noble lords and the sentiments with which the House of Lords received them, shows what was the feeling of the noble and honest men of England upon the question, and that is of some importance to Senators. It matters not upon a question of morals, whether or not some licentious and depraved criminal, committed a deed of darkness, but it matters greatly, in deciding if this deed was wrong, whether all enlightened and honest men of the time approved of or deprecated the deed.

It is healthy also to take into consideration that while in England the House of Lords when it sits, sits upon its honor only. In this country and in our State every Senator is upon his oath to do justice according to law and the evidence; and I take it that we know of no other evidence in trials either by jury or impeachment, but the oral testimony of witnesses produced before the court.

It is none of my business, I have no right individually to find fault if Senators in their reckoning with their God and their consciences find that they can satisfy their oath by such action and such proceedings. It is none of my business that I know of; but I know this much and say it frankly, that although such proceedings may be countenanced by the people in a time of excitement and passion, the time will come, when the slumbering conscience of the people awakens, for there are times when the conscience of the people of a State and of a nation sleeps; when violent and virulent passions and prejudices, and excitements go like a whirlwind through the people. On such occasions the conscience of the people may sleep, and they may instigate their representatives, may instigate their tools to commit an injustice; but the day and the hour will come, when that slumbering conscience of the people awakens, and woe then to the tools who have done their bidding. Upon these tools the wrath of the people, lets itself loose, with the force of a waterspout.

The repentance of a people always takes the shape of revenge and punishment.

I think that we saw a fair illustration of it during the Page trial and after. A Senator came here sent by the people of Mower county themselves upon that particular issue, he was elected upon that issue,—was instigated by those men that sent him to the Legislature to do injustice, and he did it faithfully and voted guilty upon every article, upon most of them or at least some being the only one, who so voted. The same people who sent him here to do it, that people who did that while their conscience was slumbering, during a spell of excitement and prejudice, turned upon him, after he had done it, and spewed out the tool of their own hand-work, and it is in the nature of eternal justice that so should be done.

You have heard nothing from Senator Clough since, and I prophesy that you never will; that he will be a "dead man" as long as he resides in that county; for the people that were actuated by an unjust and improper motive at the time themselves, can forgive themselves, but they can never forgive the man that lent himself to carry out their unjust plans and actions, which were unjust in their nature. Their scorn turns upon the man when he has done it.

It was threatened by the learned manager who preceded me upon this floor that the Senators who are anti-temperance men will be followed up by the church people of the State, by the temperance element of the State, if they act according to their conscience in this matter, if they act according to what they consider the law and the evidence, and act right, if they do not act as the church people and as the temperance people of this State want them to, and that this same church and temperance people will turn upon them and put them out of office; the threat amounted to about that. It may be that they will. I have no doubt but that this is true of the church people, at least of a certain class of them, and of the temperance people, too—those who have forgotten that our Constitution gives equal rights to all, and that no one can interfere with the pursuit and enjoyment of happiness by others—if that enjoyment is had, if that pursuit of happiness is carried on so as not to interfere with the rights of others; I say I have no doubt that those men would rage if this respondent is acquitted. I have no doub that those same men are bigoted enough to tell their Senators, "I know nothing about what the evidence is, I know not what ought to be done under the evidence, you know it, perhaps, but if you don't do as I think you should I will follow you up and punish you and spend my vengeance and my hatred upon you." I have no doubt but that will be done.

Why, I have seen a fair illustration of it right in my own home. We have at my home an old presbyterian clergyman, who has been in the habit of coming down to my office for the last three months about every other day and borrowing one of my law books, and who says that he is going to study law. I went home for a short while when we were through with the prosecution in this case. That man had read nothing but the newspaper reports of the evidence for the prosecution, and he told me if he were a Senator he would not hear any evidence for the defense at all; he would just decide Judge Cox guilty upon that testimony and he was ready to do it. Well, I told the old man that I thought probably he would do for a minister, but that he certainly was too mean to ever be a lawyer, and therefore advised him to quit studying law. I say I have no doubt but that these people who are zealously excited upon a matter of this kind, those who claim to be good church people

and good temperance men, consider that here is a field for them now to show what the power of the good and of the moral can do. I have no doubt but that they in their zeal would go very far just now; I have no doubt that the threat of the manager would be liable to be fulfilled if elections were to be had right now. I have seen a little vestige of it myself; I could not help but notice and observe it when I have eyes and ears in my head. But I desire to say this much, that those men, when the time of passion has passed away, when the time of prejudice has passed away, when they get calm and quiet and they see and examine this evidence as it really is, see that the evidence is in such a shape that here is contradiction upon contradiction that the testimony is overwhelmingly in favor of the defense, as it is upon the majority of these articles, that those men then will feel that an injustice has been done to this respondent, and would be the first to discover, too late perhaps, that a spot of injustice has been left upon the shield and escutcheon of the State of Minnesota, and would be anxious to wipe it out when it was perchance too late.

I have seen other influences at work here than the church and of those who call themselves good christians. I have seen other influences at work in this Senate. I have seen how this case has not only been tried by the managers, but how it has been lobbied through this Senate. I have seen it and I have grieved at it. I have grieved at it for two reasons: one was, because I did not think that was a lawyer-like way to try a case upon the side of the prosecution, because I did consider it a disgrace to the dignity of the State, and for another reason, because I can not make up my mind to try a law suit in that way. I feel, certainly, my deficiency in that respect. I have been so afraid of anything that would *look* like it, that I have been even accused by friends on the floor of this Senate of not recognizing them, of not paying the proper attention to them. I have done it purposely, because I considered that if my associates and myself could not win this case by fair and honorable means, could not win it as lawyers, we did not want to win it at all. My feeling is, that I would rather see this respondent convicted than see him acquitted by dishonorable means. I would rather see, as far as he is concerned, that he should be convicted of the offense with which he is charged, than that he should be acquitted by lobbying and by unlawyer-like proceedings. We would rather be in his place, when so convicted by votes of Senators who have not heard the testimony, have not seen the witnesses produced either against or for him,—we would rather be in his place, accused as he is, and impeached by dishonorable Senators than to be in the place of the Senator who sits in judgment upon him and adjudges him guilty, not giving him even the benefit of the doubt that might have been created in his mind if he had been here and seen the witnesses and noticed the character of the testimony. We think that the position of the Judge is to be preferred, and I believe he thinks so himself.

I have heard it stated that certain parties know how every Senator upon this floor is going to vote. Why, I have heard it reported from the towns where the managers went after the close of the defense, to get up rebutting testimony, that they have been bragging of the fact that this respondent would not get over seven votes upon the floor of this Senate. I say I don't know how any Senator stands and I don't care to know. I want to preserve and cherish to the last the fond hope that

the Senate of the State of Minnesota is going to do justice to itself; that it is going to be true to its trust; that every individual Senator is going to decide this case as he took his oath upon the law and the evidence, and if that is done I do not fear the lobbying of the managers, or the lobbying of anybody else. I do not fear the brags, I do not fear the guesses, or the prophesies, I expect to see this respondent honorably acquitted, and to walk out of here an exonerated man, as he is entitled under the law and the evidence.

I have heard that arguments have been used that this Senate had to convict this respondent; that this Senate must do it; that the people demand it; that money has been spent and will be spent for nothing; and that the people are not going to stand it; and that there will be a fearful commotion in the State if the Senate does not do something, if it does not show the people value received for that money. Now, I think this a poor argument indeed.

How can the Senators help that the House sent an impeachment to them, that it had not properly investigated? Is it the fault of this Senate or any Senator here that this impeachment is here or that money is spent? The Senate has diligently attended to its duty; it has done what it could do and what it had to do under the law and the constitution. It has done nothing more. If any body is to blame it is the House; if any body is to blame it is this judiciary committee of the House which refused this respondent admission, which refused to hear his side, which concluded to hold a star-chamber performance there in the room of the clerk of the municipal court, in which they would prejudge this respondent. I think it is conceded on all hands, I have heard it conceded by the best lawyers of the House, that if the testimony that has come out here had come out before that House, there never would have been an impeachment voted against this respondent; and I think you can see, and that the people can see by this time, where the fault lies for this impeachment, where the fault lies for this money spent in vain. I do not think it will satisfy the people of the State of Minnesota; to see the fair escutcheon of the State clouded with a stain of blood that never can be wiped out, with a stain of injustice never to be repaired. And I say if the people would not so think, yet whatever they *should* think, whatever the constituents of honorable Senators might say or might expect, should weigh nothing here. A Senator sitting here is not responsible to his constituents for his action in this case. He is responsible to his God and to his conscience, and to nobody else. And I have no doubt that every Senator will have manhood enough to throw away all outside considerations, that he will judge this case as it ought to be judged, that nothing will weigh against the respondent in this matter, that ought not in law and in justice to influence your judgment.

Just imagine what would be the consequence of an unjust judgment, —what would be the consequences of a judgment adverse to this respondent. I cannot fully imagine or paint or picture before you what the consequences would be,—a man who has been useful as the respondent—useful as few, forever shut out from all usefulness in this world; forever shut out from serving his fellow-citizens, forever shut out from the free air of citizenship, forever shut out from all thoughts that make life dear to man, and left as it were solitary and alone bearing the mark of Cain upon his brow wandering among his fellow men.

Upon the western coast of Norway my native land, they have in a certain district a sickness that is known under and by the name of leprosy. The government provided, hundreds of years back, that no leper shall be allowed to remain in the settlement; that immediately, when the disease breaks out, he shall be carried to an island far out in the sea. There, on that island, lives a little colony of lepers. When I passed there on the steamer I think there was about twelve or fifteen of them. There, on that isolated island they had spent their whole lives from the day when that disease first broke out; with no communication with the land, the black sea dashing its waves about them, and parting them from home, country friends and relations. The sun, even, as I passed by there, did not seem to shine so bright and so brilliant upon those barren mountain cliffs as elsewhere. The rigor of death and loathsome disease hovered around the shores. Death and destruction seemed to surround it everywhere. Those men, spending their lives, their childhood, their manhood, their old age, there alone bereaved of friends and family. No child, no relative nor living wife to solace them in sickness and during the darkening hours of death,—no one to give them solace or comfort. Communication cannot reach them from the outer world; their fathers and mothers die, but they know nothing about it; their children starve over on the land perhaps, and they are compelled to stay there, helpless and unable to reach out a helping hand to save them.

Governments are made and unmade, but they are in ignorance of the fact. Votes are taken, men exercise the dear privilege of suffrage—exercise their rights and guard their privileges, but those men are shut out from that prerogative. To such a barren place your judgment will relegate this respondent. Wherever he would go—if he should stay in his beautiful little sunny home at St. Peter, he would live there, right among his friends and acquaintances, a moral leper, from society; excluded rom the sunshine of life; excluded from the privileges of a citizen. He might go upon the prairies of Dakota; he might work himself up a future there, but before he would reach it, your judgment would follow him and it would show the black spots of the leper all over his skin and his fellow citizens would shun him, and forever would be broken down and blasted and shattered his fondest hopes of again retrieving his fortune. He might go to the old countries, but the shame and the disgrace of your judgment would follow him; he could cross the oceans, climb the mountains, go anywhere, and still the foul spots of dishonor and disgrace would be upon him; the disease that you had imposed upon him would follow him, and every one would shun him; no one would put confidence in him—a dishonored man.

The question is, whether this man who had served his country, who has served his district in the manner that he has, deserves such a fate at your hands. It is a question well worthy of consideration. Not a breath of suspicion has hitherto ever touched his fair name or fame; not a breath of suspicion of dishonesty or corruption has ever reached him or polluted his garments with its poisonous influence. Nay, more than that, it is because he dares to be honest, it is because he dares to stand up for the rights of the people against the encroachments of strong and mighty corporations,—the danger and the coming destruction of the republic,—it is for this that he stands impeached before you to-day. There lies the secret—there is the reason of this prosecution.

I say, gentlemen, that under the testimony, as it has been introduced

before you, under the testimony as it stands, being as full of contradiction as it is, it is impossible for you to say otherwise than what a noble lord said when the matter of Queen Caroline was before the House of Lords. He says:

"My Lords, I supported the noble Earl in bringing in this bill, but in deciding upon it I think a man should be guided by himself. I have listened to the whole of the evidence; it is so extraordinary, it is so full of contradictions and falsehoods that I cannot convict any person upon it. I shall therefore vote against a second reading of the bill."

Now, I think that nothing could apply with stronger force, nothing that I could say could apply with stronger force to this case; it is as if it were written and spoken for it and to you, and it seems to me that no Senator can, that no Senator will, under the testimony here, vote to convict the respondent. I think you have heard of the old superstition that when a warrior unjustly or cowardly was slaughtered by enemies lying in ambush, that blood stains from his oozing wounds would be found upon his shield, and there, in spite of rubbing and washing and scrubbing, they would always remain. I think that the conviction of this respondent, unjust as it would be, unfair as it would be, unconscientious as it would be under this testimony—would be such a foul blot and blood stain upon the fair escutcheon of the State of Minnesota that all the waters of the ocean would never be able to efface it. A stain upon that escutcheon honorable judges should well guard against, because it has hitherto been fair and untarnished. The State should not degrade itself, its honor, its standing among its sister States of this glorious Union, by an act of injustice such as this would be.

Mr. President, I feel like I had considerable more to say; I feel that there are issues yet left that I wanted to meet and dispose of; I feel that I cannot with my feeble intellect do half justice to this case; I feel like I could talk for twenty days to come and yet not do my client justice, and yet not bring out all that ought to be said in his favor; but I suppose that the end must come somewhere, and I don't know but what it is better that I should say no more.

I thank this Senate, thank it most cordially, for the kindness which all through this case has been extended, as well to the respondent as to myself personally,—certainly unexpected kindness as far as I, myself, am concerned,—kindness that has been expensive to the State, I have no doubt, and has been rather incommodious to the Senators themselves. I can only thank you cordially for the attention you have given to my protracted argument,—that certainly has not had the attraction about it that it ought to have had,—that certainly has lasted considerably many days longer than it ought to have lasted, but I can only say, as I said before, the mistakes that I have made during the trial of this case—the mistakes that I have made during this argument—have been mistakes of the head, not of the heart. Senators I again thank you for your kind attention.

The PRESIDENT *pro tem.* What is the further pleasure of the Senate?

Senator AAKER. Mr. President, I move that the Senate adjourn.

Senator HINDS. Mr. President there is an omission in the journal; I think it is on the sixth day's proceedings of the Senate, that I think ought to be corrected. It is the third day of the journal on page 6, November 17th. This relates to the preliminary proceedings. Where the

correction ought to be made is nearly three-fourths of the way down the page, and I will read; the paragraph reads: "After which the articles of impeachment were exhibited and read by the secretary of the Senate." That is that the House of Representatives, through their managers appeared and presented articles of impeachment and they were read, but what those articles were nowhere appears, as the articles themselves are not set out in the journal Although it appears that articles were presented and read, yet there is nothing to show what the articles were; there is nothing to show that the articles that they presented, and which were read to the Senate, are the same as are set out further on in the summons that was issued to the respondent.

The President *pro tem.* Will you let me ask you, Senator, does not that refer to the time that the whole House appeared here and gave notice that articles would be presented.

Senator HINDS. It does not; it refers to them as it reads—"After which the articles of impeachment were exhibited and read by the secretary of the Senate." The articles themselves should have followed, but they did not. Now, I suggest an amendment, as the Senate will recollect the occurrence, showing that the managers presented the articles to the Senate; they were delivered to the secretary, and the secretary read them to the Senate. But it would appear, from the actual wording of this paragraph, that they were exhibited and read by the secretary; that is, the secretary exhibited as well as read them. Now, I suggest that this paragraph be amended so as to read: "After which the articles of impeachment were exhibited by the managers and read by the secretary of the Senate, as follows, to-wit," setting out the certified copy of the articles of impeachment, attested by the Speaker of the House and the chief clerk of the House, which is still in the possession of the Secretary of the Senate. I have drawn up an amendment in accordance with this suggestion, and would present it as an order.

Ordered, that the journal of this Senate, sitting as a court of impeachment of date November 17th, A. D. 1881, being the third day of the sitting of the court, be and the same is hereby corrected and amended by striking therefrom the words, "after which the articles of impeachment were exhibited and read by the Secretay of the Senate," on page 6 of said journal, and by inserting in the place and stead of the words so stricken out, the following, to-wit: "after which the articles of impeachment were exhibited by the managers and read by the Secretary of the Senate, as follows, to-wit,"—followed by the articles presented and authenticated by the Speaker and Chief Clerk of the House of Representatives.

I move, Mr. President, the adoption of this order; and the idea therein conveyed is that the correction be made in the permanent journal; that is, the permanent printed journal, in the proper place. Although sheets have been stricken off, it is very easy to insert this amendment, by repaging in that portion these articles. It would require, perhaps, the reprinting of a page, or the destruction of a page that is already printed, and the reprinting of it with this modification. I make this suggestion, that it be thus corrected, at the proper place in the third day,s proceedings, because that is the proper place that the articles which the House of Representatives transmitted to the Senate for trial should appear; and if it did not appear that this correction was made anywhere excepting on the present day's proceedings it would be lost sight of in the great bulk of the proceedings of the court.

Senator CAMPBELL. I would call the attention of the Senate to the fact that it would not make any difference about the paging, because there would have to be some paging anyhow.

Senator HINDS. The permanent journal is not paged according to this printed daily journal that we have, but from No. 1 consecutively through the whole series of volumes. The repaging can be done by saying, "Page 6 A, 6 B, 6 C," and so on, until it occupies the number of pages which would be necessary to contain these articles.

The PRESIDENT *pro tem.* The Senate has heard the order of the gentleman from Scott. What is the pleasure of the Senate? The motion for the adoption of the order being seconded, are you ready for the question? Those in favor of its adoption will vote aye. It is carried. What is the further pleasure of the Senate?

Senator HINDS. I have another order here that I would offer.

Ordered, that before the final adjournment of this court of impeachment the secretary of the court shall attach all the records of the proceedings of the court together (except the arguments made after the close of the evidence), either printed or written, or partly printed and partly written, and that the same be authenticated at the end thereof by the written certificate of the presiding officer and secretary of the court, to the effect that the same is the record proceedings of the Senate of the State of Minnesota, organized and sitting as a court of impeachment for the trial of the impeachment of E. St. Julien Cox, Judge of the Ninth Judicial District of the State of Minnesota, of crimes and misdemeanors, and of the determination of such trial and of the judgment of the court thereon, and that such record be deposited in the office of the Secretary of State for safe keeping.

Mr. President, I move the adoption of this order. The propriety of it will be seen from a brief statement. This court has no means of preserving its records, it is a temporary body. The printed journals probably would have no authenticity of themselves, showing, as a legal proposition, what has been accomplished. Whatever is done in regard to a record permanently recorded, as being the proceedings of this body, so that it would in the future be evidence must be done while this court is in session. After its adjournment, it has no officers; they can make up no record. Their term of office expires when the Senate, sitting as a court of impeachment adjourns. Now, the propriety and the absolute necessity of this would seem to me very obvious. It proposes that the secretary shall make up the record, and that at the end of the record of these proceedings it shall be authenticated by the certificate of the presiding officers, attested by the secretary; and that this record when thus made up shall be deposited for safe keeping in the office of the Secretary of State. It says, the record of all the proceedings, including the judgment.

Of course that involves the votes taken upon the various articles, and all the proceedings up to the final adjournment, the final act being the authenticity of the record of the proceedings. It includes all of the record of everything that has transpired here, with the exception of the addresses made in the arguments since the evidence was closed. That omission is suggested in this as a mere matter of necessity, as the remarks have not been transcribed fully and will not be, by the reporters, probably, before the final adjournment. They are not necessary as a record of the proceedings, and indeed the evidence would not be neces-

sary as a record of the final proceedings; but as the evidence has been printed all in due form, the record can be very easily made up, by attaching these printed sheets together in the form of a volume, and properly secured, with the certificate at the end of it by the presiding officer, attested by the Secretary of this Senate, and then being deposited with the Saeretary of State, it is in the form of a record of the proceedings, authenticating what has been done.

The PRESIDENT *pro tem.* Has the motion been seconded?

The motion was seconded.

The PRESIDENT *pro tem.* The Senate have heard the order; it is moved and seconded that it be adopted; are you ready for the question? As many as favor the adoption of the order will say aye; contrary, no; it is adopted.

The Senate then adjourned till 9 o'clock A. M., to-morrow.

FORTY-EIGHTH DAY.

ST. PAUL, MINN., Wednesday March 15th, 1882.

The Senate met at 9 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, Crooks, Gilfillan, C. D., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson R. B., McCormick, McCrea, McLaughlin, Mealey, Miller, Morrison, Perkins, Peterson, Pillsbury, Powers, Rice, Shalleen, Simmons, Tiffany, Wheat, White, 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, Jr., 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.* Are there any resolutions or motions this morning?

There being no other business before the Senate Mr. Brisbin, of counsel for the respondent, arose and addressed the Senate as follows:

Mr. BRISBIN. Mr. President and Senators: I congratulate you that we are out of the archipelago of details and have advanced upon the open sea of what I hope, and what from my experience during this protracted trial I believe will be the sphere of clean, fair and conscientious discussion of the great interests involved here. This court is the most dignified known under our plan of government. You are summoned here from your ordinary avocations, you are kept here for no trifling purpose; you are here committed to the performance of high behests and of important duties. You are here to make inquiry and adjudge upon alleged

high crimes, and to decide upon the guilt or innocence of an alleged high criminal.

It has been asserted by the public, by the press, even upon this floor, that this trial has been protracted to an unusual length I have participated in many trials where interests far less important than these have been at issue, and I have never seen during the course of a not brief professional life, more business transacted in a similar period of time than has been done during this session. If you are here, Senators, as I believe, intelligently conscious of the great duties you are to perform, intelligently comprehending the solemnity of the oath which you took, to do impartial justice, according to the law and evidence,—I have no apprehension; I have no apprehension but that justice will be done. If it should fall upon the respondent, it will be justice if you are properly conscious of your great responsibilities.

The length of the session, therefore, all the expensive paraphernalia and equipments of justice are of no consequence so that justice be vindicated,—either by the conviction of the respondent here, of these alleged high crimes, or by his acquittal. No sparrow falls to the ground without the notice of our Heavenly Father, no wrong is done, no right is infringed, but that public justice should make serious and dilligent question thereof.

I make these preliminary remarks, Senators, because it is a fact which has been more than intimated, that the respondent is embarrassed; embarrassed for the reason that it is notorious and has been made a vaunt of by the manager who opened for the prosecution, that the question as to the impeachability of the offenses with which the respondent is charged, is *res judicata*; that it has been decided; that it is therefore a mere question of evidence whether or not you shall find the respondent guilty. Now, gentlemen, with respect to that question, I find by refering to the journal of the 16th of December, that there were 29 members of this court present voting on our demurrer. I read from page 63 of the journal of December 16.

Those who voted in the affirmative were—Messers. Aaker, Buck C. F., Buck D., Campbell, Case, Hinds, Howard, Johnson A. M., Johnson F. I., Johnson R. B., McDonald, McCormick, McLaughlin, Miller, Morrison, Officer, Powers, Rice, Shalleen, Tiffany, Wheat, White and Wilson.

Those who voted in the negative were:

Messrs. Adams, Bonniwell, Castle, Crooks, Gilfillan C. D., and Mealey.

So there were 29 voters, 29 members out of 41 constituents of this court, who passed upon that question. I find that the absentees were Beman, (detained at home by a visitation of Providence,) Clement, J. B: Gilfillan, Langdon, Lawrence, McCrea, Perkins, Peterson, Pillsbury, Shaller, Simmons, and Wilkins. It is not therefore *res judicata*. The court was not here, the court has *never* been fully organized if the constituents of that vote were not every member of the tribunal. It is not a thing adjudicated because this is the court of first and last resort,—because in the ordinary courts of justice motions for new trials are made, granted and over-ruled every day. Therefore the vaunt of the gentleman who opened the closing argument for the State was, to say the least, unjustified.

I find also, Senators, that there has been from the beginning to the end of this trial a contrariety of rulings which have embarrassed both

the managers and counsel for the respondent. The reason for such inconsistencies was that the court has been made up of different components day after day. You have overruled yourselves on questions of evidence, on matters some times involving legal questions, to the great embarrassment of counsel.

I have also heard, and it is a matter of public notoriety that Senators who are not here present now who have not been in attendance upon the sessions of this tribunal, intend to vote, notwithstanding the oath which they have taken in the presence of the Almighty, that they will decide this case according to law and evidence. If I do injustice to any Senator who is not here by alluding to the report of the proceedings, I hope I shall be corrected; but it was stated by a distinguished gentleman on this floor,—a member of this court and a lawyer (as if this were a chancery case,) that he took his views of the testimony from the records. There are no authentic records accessible to the counsel or the court. We have had here the very respectable and distinguished reporter testifying before those of the court that were here that he could not verify his minutes as to the exact language of the witness. Every member of this court has had observation of the fact that the journals are often incorrect in the haste with which they are prepared. Depositions taken in chancery, to quote the language of the gentleman to whom I refer, are "verified;" they are read over to the witness, they are certified by the commissioner and they come with authority; therefore the gentleman might well and with safety consult those records. But this, Senators, is not a chancery case, this is a court of criminal judicature. Nor has there been a moment in the history of criminal trials in this country when a man accused of a crime has been denied the privilege of being confronted by the witnesses. It is a demand of the constitution, it is one of the precautions with which the common law of this country surrounds and enshields a man charged with high crimes,—even with petty crimes, should not by the court parity confront both the witnesses and the accused?

Depositions have been allowed in criminal cases in behalf of the criminal,—such was the fact in the celebrated case of McLeod, charged with the burning of the Caroline. Some of the States provide that the accused may have his testimony taken by deposition. It was allowed in an important case with which I was connected here in this State, allowed upon general principles; but no one ever *heard* of a deposition taken in behalf of the sovereign. Therefore I appeal to the gentleman's conscience and his very distinguished intelligence as a lawyer [Senator Gilfillan, J. B.,] and inquire if he is justified in referring to a secondary evidence to determine as to what the testimony has been upon this trial. Will any Senator pretend that Senator Beman (kept away by God's dispensation), or Senator Lawrence (as I am informed, kept away by a conscientious conviction that, holding another important office, it was not proper for him to be here), will any of these Senators say that if Senators Beman and Lawrence were here and proclaimed that they had read every word of these journals—from which these Senators derive their knowledge of this case—and voted at the determination of this great inquest, that it would not outrage, to say the least, your sense of propriety? Will then any gentleman say that men who have not been here during the pendency of this protracted investigation more than one-quarter of the time,—who have for reasons of business prob-

ably, absented themseves during the discussion of the evidence (a discussion of most consummate ability and intricacy by my associates),—made necessary to inform to some extent the absentees as to what had been taking place here,—can those gentlemen conscientiously vote upon this great judgment unless they have made up their minds that the offences charged are not impeachable offences? I apprehend gentlemen that it is impossible, with a proper regard for the solemnity of that oath which inducted you to membership of this distinguished court.

Another gentleman from the same bailiwick (*ie* Senator Pillsbury) protested that the witnesses spoke in such low tones that he could not hear them. Senators, an ear constructed as sensitive as that of Dionysius, the tyrant of Syracuse, could not have heard ten miles away; that gentleman could not have heard the testimony except by telephone. Those of us who are lawyers known that were there are controverted facts it is necessary to see the men from whom the allegations of fact come. There are controverted facts in every step of our progress. There is impeaching testimony. How can these gentlemen judge of the credibility of witnesses? The witness stand, the presence of a witness to the just judge, or just juror, is the spear of Ithuriel which detects the falsehood and uncovers and proclaims the truth.

Senators, in approaching the vestibule of this case on its merits I feel a peculiar and an oppressive embarrassment. Judge Cox, the respondent, and I, are almost cotemporaries here in Minnesota. He has been my friend throughout his career. He is yet, and I am in some sense a volunteer. We have climbed the hill together; I, at least, am beginning to yellow for the final harvest. It is a matter of very deep interest to me, therefore, exciting a deeply vivid hope, that my friend go down the hill and sleep with me at its foot, in an undishonored grave; that he leave to those who come after him an unattained name. I am, therefore, I repeat it, embarrassed by the importance of these issues as affecting my friend; I am embarrassed, in some sense, as a public man, interested in the administration of justice, interested in the conviction of criminals, and in the acquittal of men unjustly accused of crime.

This, gentlemen, is an extraordinary prosecution. It is animated, I think it is fair for me to state, by peculiar and exceptional motives. In the trial of Judge Page, which is still fresh in the minds of most of you, there was a large and respectable constituency behind the prosecution; whether right or wrong (to use a vulgar expression), the prosecution in that case had a strong backing. It has always been the case, so far as my observation has shown that questions involving, as this does not merely a bailiwick, not merely a county but the whole commonwealth, inquiry was at least demanded by a respectable representation from the commonwealth injured. It was so in the case of Edmonds, of Hubbell: it has always been so, that the "august apparatus" of justice such as is here convened, was never invoked at the behest of individuals, but of masses of men. What have we here? A peripatetic preacher, of the Baptist persuasion—I mean no reflection upon the Baptists—and a man with a grievance, Mr. Tyler. A petition was presented and urged before the lower house by the paid attorney—one of the corpusculae of the anaconda which is coiling its slimy length around this commonwealth. I say around this commonwealth—around the United States—because it is understood that the United States is bounded on the north by Villard, on the east by Vanderbilt, on the south by Gould,

and on the west by sundown; and the connection will be made, the boundary will be completed.

When I heard the counsel who opened the close or this case state that there seemed to be with the respondent's attorneys something terrible in a minister or preacher, I had in my eye two Presbyters in the next block to where I stand, the annointed men of God. Every time that either of us see these men, particularly the elder of those gentlemen on the street, we are reminded of the beautiful lines of Goldsmith:

> "And, as a bird each fond inducement tries,
> To tempt its new-fledged offspring to the skies,
> He tries each art, reproves each dull delay,
> Allures to brighter worlds and leads the way."

I have in my mind others of different denominations—I am cosmopolitan in my religion—too much so, perhaps—I have in my mind other gentlemen of all the denominations who go about doing their Master's work, who go about doing good. I *will* speak of the saintly (?) Rodgers and the pious (?) Liscomb—*arcades ambo*. That kind of clergymen, Senators, are not to my worldly sense a benefit to *any* society. No men, whose hearts have never stirred with the pulsations of noblest manhood, no men who are unacquainted with the rough seas upon which tempestuous life is tossed, where manhood gives battle to the elements, can correctly judge of men. They are fleshless skeletons, criticizing with microscopic eye the frailties—perhaps I should use a stronger word than frailties—the crimes against society of nobler men; they know not what they have not tried; they are not virtuous or Godly because they love Godliness; they have not even the manly movings of malice; they have not the grandeur which sometimes leads manly revenge to visit itself upon its object: they are Pharisees, they claim to be moral censors, because, forsooth, the little vicinage in which they are called, or located, will say, "He has a horror of these vices;" they are self-laudatory, "in grief and grogram clad," these "oily men of God;" they are even hypocrites to themselves; they grow to believe, by gradation, that they are holier than we are. When I think of such men I am reminded of that great observer, that great seer into the hearts and minds of men, because he had greatly suffered. I can refer to no other man than Robert Burns. Of his advice I was reminded when the saintly (?) Rodgers was on the stand.

> O, ye who are sae guid yoursel',
> Sae pious and sae holy,
> Ye've nought to do but mark and tell
> Your neebor's fau'ts and folly:
>
> * * * * *
>
> Think, when your castigated pulse
> Gies now and then a wallop;
> What ragings must his veins convulse,
> That still eternal gallop.
>
> * * * * *

Then gently scan your brother man,
Still gentler sister woman;
Though they may gang a kennin' wrang,
To step aside is human.

* * * * *

Who made the heart, 'tis He alone
Decidedly can try us;
He knows each chord,—its various tone,
Each string—its various bias:
Then at the balance let's be mute,
We never can adjust it;
What's done we partly may compute,
But know not what's resisted.

I have spoken, gentlemen, alluding to the animus and constituency of this prosecution. It does not altogether come from Mr. Rodgers and Mr. Tyler. It has the motive of self-interest back of it; it has motives of ambition,—nobler motives, I confess, if properly conducted or leading to proper conduct and with the view to proper and legitimate results, than those which inspired Mr. Rodgers or Mr. Tyler. It deserves authenticity and back-bone from three aspirants for the judicial place of the respondent. They are waiting for the *post obit*, until Judge Cox is dead and buried; and I apprehend, after this prosecution is ended, you will hear from them the refrain, "I've waited long, am waiting still."

I am reminded, gentlemen, of a true story that is told of Oliver Wendell Holmes, the man who never dared to be "as funny as he could." Mr. Choate had been appointed to deliver one of the University addresses at Dartmouth College, with Mr. Holmes as alternate. Mr. Choate's engagements prevented him from fulfilling, and Mr. Holmes was on his route to Hanover. He is physically a small man. Some gentleman asked him if he was going up to fill Mr. Choate's place, he replied, "No; I am going up to wiggle in it a spell!" Well, that I apprehend this would be the way that Judge Cox's place would be filled by all of these three single gentlemen rolled into one.

Where do we see, whence do we derive the premises for the deduction that the ambition of these men is inspiring this prosecution? It is notorious that here in this building, during the last session of the Legislature, a bill was introduced for an act to abolish the Ninth Judicial District. That bill never was put upon its final passage. Why? Why, because the object would not be accomplished. The office abolished, the hopes of "young ambition" would be abated by the swoop. Messrs. Wallin, Webber, and,—what is the name of that other gentleman who was on the stand a short time? Oh! Ladd,—*Sumner* Ladd,—a very respectable prefix,—Sumner. That would leave them out in the cold as well as Judge Cox, and they would all go shivering around out of office, —"*inops officio*."

A statute has been invoked here, of which I shall have something to say hereafter, which would give, if it amounted to anything—and these managers seem to claim that it does—I refer to page 167 of Young's Statutes, providing that any man holding an office of trust in this State shall be subject to removal in the manner provided by law for habitual drunkenness. If that statute amounts to anything, why not remove Judge Cox "in the manner provided by law?" That would have ac-

complished the end for which our friends so eloquently and ably declaimed; it would have abated what is called in indecent language, but undoubtedly used in the fervidity of speech, a nuisance; but that would have failed to accomplish the end so ardently coveted. That would have left some more of the "babes in the woods" out in the cold, without the "blanket" that Manager Dunn and Judge Cox slept under in the early day. Therefore, this expensive "apparatus of justice" is invoked; therefore, you are called from your business to attend upon this protracted "inquest."

There is, gentlemen, malice at the bottom of it, too. I hold in my hand a paper which no decent gentleman would permit into his family —if composed in part of children—the New York *Police Gazette*. I find here the picture of Judge Cox. It is a paper which perhaps all of us have read and looked at. I have, because there is, as the great expounder of the human heart says, "some soul of goodness in things evil, "if we but knowingly distil it out;" our bad neighbor makes us early risers." We can make a moral of the devil himself." I find under the picture of Judge Cox—which, by the way, is a very good picture of a very good-looking gentleman—"Cold Lead for Cocktails;" I find, "Gallery of Sporting Men;" I find, "Muldoon and Whistler;" then I find in another place where they are preparing for the varieties, and white women are whitewashing their legs! Possibly the President has never seen it; I will hand it over to you, Mr. President, when I get through. [Loud laughter.] No disrespect, Mr. President. [Renewed laughter." You don't know what it is till you have tried it.

I read a morceau from this precious sheet:

"Charges have been preferred against Judge E. St. Julien Cox, of the Minnesota Supreme Court. The Judge is to be immediately impeached and placed on trial; drunkenness is the primary trouble with him, and while intoxicated he indulges in such freaks as fining lawyers heavily for contempt, going on sprees with criminals who are to be tried before him, and making a broad farce of justice. Strange scenes have taken place in his court: A lawyer who had been fined $1,200 for telling the Judge he was too drunk to understand the legal point, asked blandly if His Honor's unpaid whisky bills would be received in payment; "because, if they are," he added, "I can raise the fine for about $10." Another lawyer, disgusted by an absurd decision, remarked that the Court ought to sit when sober at least one day every week in order to revise his drunken rulings of the other five days. Being fined for this language, he refused to pay and defied the Judge to commit him to prison. One of Cox's most flagrant acts was to force the acquittal of a handsome and unquestionably guilty woman, and afterwards to take board in her house."

This article was called to my attention by a paper published in his district. I saw it. It was copied in one of our local papers here. It was sent *marked* to all the newspapers in the district:

"Vipers who crawl, where man disdains to climb,
Hang, hissing at the nobler things below."

Not only this, gentlemen, but your eyes have been insulted here by the presentation, day after day, of calumnious articles issued under the authority of one of the ablest papers in the United States—the *Pioneer Press* of this city; I shall not read the articles. That sheet has gone so far with the purpose and intention of perverting and diverting from its

legitimate channels this court of great justice as to attack one of my co-adjutors, Mr. Arctander, who has given the lie and put to blush before every member of this Senate, the loathsome animus which dictated those articles.

After judgment has been rendered then let them void their malice if they see fit. The same flower yields honey to the bee and poison to the snake. I was reminded this morning, while thinking of the embarrassments surrounding the respondent here, of the protection with which the law enshields him from such missiles. "The shafts fall hurtless from the thick bosses of his buckler." I was reminded of a scene in the great drama of Richelieu. Julie, the ward of the great Cardinal, who was then in declining health and failing power, was approached with the quest of unhallowed love by Louis XV. Drawing her to his breast he exclaims, "Come hither, Julie," then pointing the Ambassador of Sovereign lust to where she rested—

> "Mark where she stands, around her form
> I throw the awful circle of the solemn church;
> Whoe'er sets foot within that holy ground,
> Upon his head, yea, though it wear a crown,
> I launch the curse of Rome."

I say, then, to the newspaper press, the public men who dare invade the sacred circle within which this respondent is entrenched, I launch upon you the awful curses of the law.

I find, reading from Bohn's standard cyclopedia, among indictable misdemeanors, this: "Publishing statements, pending suits or prosecutions, with intent to excite prejudice for or against any party to such suits or prosecutions." I commend that to those gentlemen who are undertaking to degrade justice and to bring about unjust judgments. They are invading this sacred circle with unsandalled feet. I launch upon them the curses of the common law.

But, gentlemen, this prosecution has taken on other and peculiar features. Precedents, "Thick as leaves in Val Ombrosia," in trials of this character, have been ignored. The examination before the judiciary committee of the House was an *ex parte* one. Has any member of this body a doubt but that if a full and impartial investigation had been had before the judiciary committee all of this expense about which people declaim, would have been avoided?

In the case of Judge Page, notwithstanding the animosity, unjustifiable in my judgment, and unjustified as the judgment of the Senate determined, notwithstanding such motives of malice, he was allowed to be present. It was not an *ex parte* inquest. In the case of Judge Peck, to which reference has been so frequently made throughout this trial, one of the ablest arguments that contained, between pages 7 and 42, of the published report, was made by the judge himself before the committee. It was so in the case of Mr. Edmonds, in the neighboring State of Michigan. He was invited to be present. And here was Judge Cox, notoriously knocking at the door of this judiciary committee, unheard. And yet some of these affectionate managers were on that judiciary committee. If I am not misinformed, the gentleman who will follow me, and who, in his opening of this case, proclaimed that he was a friend of Judge Cox; he said, to use his classic phrase, that he had "slept under

a blanket" with the Judge, and "began to climb young ambition's ladder with him," was a member of the committee. But he is at the foot to-day, and Judge Cox is at the top. Perhaps there is jealousy there. And then he felt "Such a deep interest." Oh! such a gushing interest. I thought then, *et tu quoque fili*,—and you my boy. And when the venerable gentleman who was placed on this commission for ornament,—a very much respected man, and I say it with great carefulness of the elder manager, Mr. Smith,—who "Had known him socially and politically so long," when he sounded "The loud timbrel o'er Egypt's dark sea," I thought *et tu quoque pater*, were you not also of this "star chamber," this brood of *ex parte* investigators? Now, why did not these gentlemen, if they were on the judiciary committee, exhibit some of the friendship of which they so gushingly vaunt, and give Judge Cox the same opportunities which others have had, before a tribunal, to some extent, composed of the same individuals? Are these men obliged to come here as managers and "shock and lacerate" their tender bosoms by this prosecution. [Laughter.]

To illustrate, the difference between managers in other cases and this, refer to page 289, of the Peck trial, and it is a great pleasure not only to lawyers, but to laymen, to read the opinions of the great men who not merely made the law, but who laid the substructure of this government. Judge Spencer, (Senator Hinds and others will remember, as one of that great family of Spencers which has glorified at once the bar and the bench of New York, one of the managers in that trial,) Judge Spencer says, in opening the case for the State:

> The duty assigned me by the House of Representatives, is a painful one. I am about to urge the conviction of the respondent, for a high judicial misdemeanor; and he has much at stake. The consequences of his conviction have been eloquently and even pathetically described, by his learned advocate; and I felt the full force of the appeal he made to the sensibilities of his auditors. My duty is stern and inflexible, which no consideration or feelings of sympathy can influence. * * * Could I believe that that baleful spirit had mingled itself with and predominated in that vote,—

That is the vote which the House of Representatives had taken in preferring articles of impeachment,—

> no earthly consideration could have prevailed upon me to appear here as one of the prosecutors of this impeachment I have not language to express the abhorrence of my soul, at the indulgence of such unhallowed feelings, on such a solumn procedure.

I refer also, an illustrative and by way of impressing the remarks with which I have prefaced, to page 427 of the same book, remarks by James Buchanan, who, whatever criticisms may be passed upon his public conduct, criticisms with which I do not agree, is admitted to have been one of the great lawyers and statesmen of the country. He was one of the managers. Mr. Spencer had alluded to the voting of the articles of impeachment against Judge Peck with unaniminity, but he afterwards revoked or apoligozed, for Mr. Buchanan says:

> But, as the subject has been introduced, I shall take this occasion to remark, that in my opinion the voting of an impeachment in the House of Representatives should never be a mere *ex parte* proceeding there, though it ought always to be considered so here. The power of impeachment is too important; the expense

to the nation, both in time and in money, is too great to justify the House in proceeding upon the mere *ex parte* testimony, presented by a private accuser. Neither the investigating committee nor the House should rest satisfied with such evidence alone. They ought to go beyond this rule, and examine so much testimony as to create a rational belief that the accused is guilty.

Those, gentlemen, are the feelings with which great and conscientious men approach the performance of important public duties. I suppose that no man, conscious of his responsibility to a higher power, ever entered upon the discharge of an interesting, not to say important duty, without invoking help from above, even if his petition did not voice itself in vocular prayer. Those are the feelings, I apprehend, which animate every gentleman here,—however frivilous some of us may be,—in coming to this great inquest. That is the assistance which we all involuntarily invoke, and those are the feelings which inspire and control us to-day.

To approach, gentlemen, more nearly to the business of this discussion, I shall devote some little time to a question which would be superogatory if this court was composed of lawyers. I believe, I will say, I know that one of the lawyers of this court is committed upon this question. I refer to Senator Hinds,—Manager Hinds in the Page impeachment case, whose argument I have read, not only with pleasure but with instruction.

Although I dissent from some of its conclusions, it is, nevertheless, logic stripped to the skin. That question is, "Is this a court?" My ing has informed me that perhaps the first time the doubt was seriously raised was in the trial of Judge Chase. Perhaps it might have been before. The manager who is now *vis a vie* to me—I refer to Manager Gould—in his argument during the opening of the case, proclaimed and asseverated that they should stand upon the proposition that this was a mere inquest of office. It was urged and argued with all the tremendous but triculent power of Benjamin F. Butler, in the trial of Andrew Johnson—a trial which, now, after the ground has covered the respondent, is pilloried in everlasting infamy,—it was argued in the same language used here, that it was not a court but an inquest of office. You are called a court by the constitution. This investigation is called a trial. A trial is the judicial examination of facts with reference to a judgment upon those facts. You call yourselves a court, and a high court at that.

You are sworn not as Senators, you have abdicated all public political functions, you are sworn as members of a court to do impartial justice according to law and the evidence.

Upon this subject—and I know it will appear, perhaps, to many of you unnecessary, but another distinguished lawyer here, an old acquaintance of mine, and a justly respected man,—I have him in my mind and under my vision now—has proclaimed in substance—copying exactly the verbiage of Mr. Butler—that "We are a law unto ourselves." That this is a hybrid organization.

We read in the Odyssey of the one-eyed Cyclops named "Ontis," *i. e.* nobody. The Roman poet thus describes the same monster: "*Monstrum injens, horrendum cui lumen ademptum*"—a huge, horrid monster with his eye put out.

The court, then, is a judicial Ontis. Observing at this moment the distinguished Senator from Hennepin entering the chamber, whose vis-

its here have been so angelically infrequent, I am reminded of another Greek word which I cannot summon from my classical vocabulary—it means *no where*.

Senator BUCK, D. I would like to know who the gentleman refers to?

Mr. BRISBIN. I refer to the gentleman who just came in, Senator J. B. Gilfillan.

Senator BUCK, D. I mean with reference to the court being a law unto itself.

Mr. BRISBIN. I refer to you in that connection, to yourself. I quote your language—that, "We are a law unto ourselves."

Senator BUCK D. Whoever represents it in any way, shape, or manner, that I ever said it, states what is not so. I have taken just the opposite position. The man who puts it in circulation puts in circulation what is not true.

Mr. BRISBIN. I put it in circulation myself.

Senator BUCK, D. There never was such a sentiment uttered by me.

Mr. BRISBIN. I withdraw it then, my. "withers are unwrung."

Senator BUCK, D. I do not allow any man to misrepresent me either.

Mr. BRISBIN. Mr. Senator, it was the farthest from my intention. If I am incorrect I withdraw it and do not reiterate the remark. If I made an incorrect assertion of that kind I am ashamed of it, and on the knees of my mind I beg the Senator's pardon. If I am incorrect I will stand corrected; if I am correct I will be indorsed by the recollection of this court. I hope the Senator will not indulge in feeling, because it is most distant from my wish to misrepresent him. I am not a natural and gifted fool, not a nincompoop, to use a sesquipedalian word. I can prove it right here by you.

Senator GILFILLAN, J. B. Mr. President, there was an allusion made here by the speaker to the fact of an absent member coming into this court room. I would like to know the meaning of it.

Mr. BRISBIN. The allusion, sir, was a jocular one. I will consult my Greek dictionary and get the word for which I was looking. It is a Greek word—meaning nowhere. I now recall it; it is *oudemon*.

The PRESIDENT *pro tem*. Gentlemen should not interrupt the counsel.

Senator BUCK, D. Mr. President, I shall interrupt him when he misrepresents me. I was entirely in consonance with the Speaker upon that point. It is an outrage upon me to make such an assertion. I do not mean upon the part of the Speaker, but whoever put it in circulation.

Mr. BRISBIN. I claim to have put it in circulation myself, right here. I do not say I have talked about it, but I have made the statement and I stand corrected by the gentleman. I commend the Senator respectfully to the husbandry of his temper.

I assume, then, gentlemen that one of the Senators is with me; that this is a court and that it will act like a court, judge like a court, decide like a court. I am glad that we have one vote.

I read upon the subject,—and I shall read considerably for the benefit of the members of the court who are laymen—not for the benefit of the gentleman, (Senator Buck), who was convicted in advance upon the subject, from page 275, vol. 2, of the trial of Andrew Johnson.

And now, this brings me, Mr. Chief Justice and Senators, to an inquiry asked very early in this case with emphasis, and discussed with force, with learning and with persistance, and that is, is this a court? I must confess that I have heard de-

fendants arguing that they were *coram non judice* before somebody that was not a judge, but I never heard till now of a plaintiff or a prosecutor coming in and arguing that there was not any court, and that his case was *coram non judice*. Nobody is wiser than the intrepid manager who assumed the first assault upon this court, and he knew the only way he could prevent his cause from being turned out of court, was to turn the court out of his cause, and if the expedient succeeeds his wisdom will be justified by the result, and yet it would be a novelty. It is said there is no word in the constitution which gives the slightest coloring to the idea that this is a court, except that in this particular case the Chief Justice must preside.

So that the Chief Justice's gown is the only shred or patch of justice that there is within these halls, and it is only accidentally that that is here, owing to the peculiar character of the inculpated defendant

This is a Senate to hold an inquest of office upon Andrew Johnson, and I suppose, therefore, to find a verdict of "office found." Certainly it is sought for I have not observed in your rule that each Senator is to rise in his place and say, "office found," or "office not found." Probably everySenator does not expect to find it.

Your rules, your constitution, your habit, your etiquette call it a court, assume that there is some procedure here of a judicial nature; and he found out finally on our side of this controversy, that it was so much of a court, at least, that we could not put a leading question in it; and that is about the extreme exercise of the authority of a court in regard to the conduct of procedure that we lawyers habitually discover.

Then farther on, on page 277, he quotes from Lord Thurlow:

My lords, with respect to the laws and usage of parliament, I utterly disclaim all knowledge of such laws. It has no existance. True it is, in times of despotism and popular fury, when, to impeach an individual was to crush him by the strong hand of power, of tumult, or of violence, the laws and usage of Parliament were quoted in order to justify the most iniquitous or atrocious acts. But, in these days of light and constitutional government, I trust that no man will be tried except by the laws of the land, a system admirably calculated to protect innocence and to punish crime.

Again he quotes from Lord Thurlow:

I trust your lordships will not depart from recognized, established laws of the land. The Commons may impeach, your lordships are to try the cause; and the same rules of evidence, the same legal forms which obtain in the courts below, will, I am confident, be observed in this assembly.

I read also—and this reading, of course, is much more interesting than anything I could say,—I read also upon this subject (what, *consensus omnium*, of all the great names in the jurisprudence of this country is the law, except as the contrary has been asserted by persons in the fervidity of their partizanship.) From the 2d vol. of the Life and Writings of Benjamin R. Curtis, *Clarum et venerabile nomen*, pages 411,—414; and I read from the arguments of such men as Judge Curtis, because they have judicial weight. On the mountain ranges of the law, so far as it has been administered in this country, there is no nobler name.

He is now
"Above the reach of clouds and storms,
Playmate of the blessed ones up yonder."

Lord Ashburton, the glory of the Englsh bar, once said, "Let us be silent when these illustrious men speak by the codes, which are their monuments, and their unblemished lives."

Still, the learned manager says, that this is not a court, and whatever may be the character of this body it is bound by no law. Very different was the understanding of the fathers of the constitution on this subject.

Mr. Manager Butler. Will you state where it was I said it was bound by no law?

Interrupted, it appears by a question; it was a manager, however, that made the interruption.

Mr. Stanbery. A law unto itself."

Mr. Manager Butler. "No common or statute law," was my language.

Mr. Curtis. I desire to refer to the sixty-fourth number of the "Federalist," which is found in Dawson's edition, on page 453.

The remaining powers which the plan of the convention allots to the Senate, in a distinct capacity, are comprised in their participation with the executive in the appointment to offices, and, in their judicial character as a court for the trial of impeachments, as in the business of appointments the executive will be the principal agent, the provisions relating to it will most properly be discussed in the examination of that department. We will therefore conclude this head with a view of the judicial character of the Senate.

And then it is discussed. The next position to which I desire the attention of the Senate is that there is enough written in the constitution to prove that this is a court in which a judicial trial is now being carried on. "The Senate of the United States shall have sole power to try all impeachments." "When the President is tried, the Chief Justice shall preside." "The trial of all crimes, except in case of impeachment, shall be by jury." This, then, is the trial of a crime. You are triers, presided over by the Chief Justice of the United States in this particular case, and that on the express words of the constitution. There is also, according to its express words, to be an acquittal or a conviction on this trial for a crime.

The verbiage is the same as that which authorizes the organization of this court, even for a crime.

"No person shall be convicted without a concurence of two-thirds of the members present." There is also to be a judgment in case there shall be a conviction. Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under the United States. Here, then, there is a trial of a crime, a trial by a tribunal designated by the constitution in place of court and jury; a conviction if guilt is proved; a judgment on that conviction; a punishment inflicted by the judgment for a crime, and no law by which the act is to be judged. The honorable manager interrupted me to say that he qualified that expression of no law. His expression was "No common or statute law." Well, when you get out of that field, you are in a limbo, a vacuum so far as law is concerned, to the best of my knowledge and belief. I say then that it is impossible not to come to the conclusion that the constitution of the United States has designated impeachable offenses as offences against the United States; that it has provided for the trial of those offenses; that it has established a tribunal for the purpose of trying them; that it has directed the tribunal, in case of conviction, to pronounce a judgment upon the conviction and inflict a punishment. All this being provided for, can it be maintained that this is not a court, or that it is bound by no law? But the argument does not rest mainly, I think, upon, the provisions of the constitution concerning impeachment. It is, at any rate, vastly strengthened, by the direct prohibitions of the constitution. "Congress shall pass no bill of attainder or *ex post facto* law."

This same verbiage is found in nearly if not all of the constitutions of the States—to which fact I shall refer hereafter.

According to that prohibition of the constitution if every member of this body, sitting in its legislative capacity, and every member of the other body sitting in its legislative capacity, should unite in passing a law to punish an act after the act was done, that law would be a mere nullity. Yet what is claimed by the honorable

managers in behalf of members of this body? As a congress you cannot create a law to puuish these acts if no law existed at the time they were done; but sitting here as judges, not only after the fact, but while the case is on trial, you may individually, each one of you, create a law by himself to govern the case. According to this assumption, the same constitution which has made it a bill of rights of the American citizen. not only as against congress, but as against the legislature of every State in the Union, that no *ex post facto* law shall be past,—this same constitution has erected you into a body and empowered every one of you to say *aut inveniam aut faciam*,—"If I cannot find a law I will make one."

The same view is stronglyput by the argu- ment of manager Hinds in the Page impeachment case. "We take the law as we find it, we cannot make the law." That is substantially the language of Senator Hinds while acting as manager in that impeachment trial.

And more than that, when each one of you, before he took his place here, called God to witness that he would administer impartial justice in this case according to the constitution and the laws, he did not mean such laws as he might make as he went along. The constitution, which had prohibited anybody from making such laws, he swore to observe; did he also swear to be governed by his own will: his own individual will was that the law which he thus swore to observe: and this special provision of the constitution, that when the Senate sits in this capacity to try an impeachment, the Senator shall be on oath, means merely that they shall swear to follow their own individual wills!

This is judicial talk, gentlemen; it is sanctified by the man who delivered it.

I respectfully submit this view cannot consistently and properly be taken of the character of this body, or of the duties and powers incumbent upon it.

I will not read the whole. The argument is elaborately made, and it's adverse had been strongly and with very impressive emphasis used in by chief Manager Butler, and was reiterated during the course of that great trial.

I shall read a few more authorities upon this same subject, although it is superogatory to the lawyers in this body; but as I have already remarked, it is interesting to hold converse with such men. Just to illustrate, in connection with this case, taking up and commenting upon the views of Judge Curtis, suppose, for example, that a judge upon the bench, the respondent, for instance, was a Unitarian, and did not believe in the redemption made upon Calvary; suppose those sentiments were proclaimed in public places; suppose (and it is a supposable case—similar things have occurred in the history of the jurisprudence of the world)—suppose that a question arose involving those great truths as to the divinity of the Son of God, and the judge upon the bench conscientiously (because among the noblest of men we find those who disclaim the divinity of Christ, although the most civilized nations of the world put themselves under the protection of that great shield, and will claim the efficacy of the atonement when they come before the last tribunal)—imagine, then, if you please, that Judge Cox from the bench, being a Unitarian—I know not what his religious belief is, I know and I have reason to know, that whatever his frailties may be, that men of his temperament always feel the necessity of a higher power, and always like to have themselves enshielded by the divine beneficence—I say, suppose that he declared his belief, then the Trinitarian would say that is a judicial misdemeanor, "I believe in the Trinity." *Vice versa*,

things being changed, Judge Cox proclaims the Trinity from the bench. The Unitarian would say, "That is heresy, according to my judgment, and every man is entitled," as some of our orthodox people say, "to his private judgment; that is misdemeanor in office; that is a judicial misdemeanor." Suppose that malicious libeler of everything holy, who is only tolerated because of the laxity of public morals (I refer to Robert G. Ingersoll) should proclaim that there was no God, that is a judicial misdemeanor, that is an impeachable offense. If everyone is entitled to his private judgment, and is not governed by the landmarks which the law has laid down, within which we are all intrenched, where are we safe—unless you can find what the Greek philosopher could not, "a place to stand on"—you are upon an untraveled sea.

I refer next to page 248, third volume of Benton's abridgement, in the trial of Judge Chase.

Mr. LEE. [Arguendo.] May it please this honorable court: We are now arrived Mr. President, in the course of the defense, to the fifth article of impeachment. I have, sir, been led to believe, that the present prosecution is brought before this honorable court as a court of criminal jurisdiction, and that this high court is bound by the same rules of evidence, the same legal ideas of crime, and the same principles of decision which are observed in the ordinary tribunals of criminal jurisdiction The articles themselves seem to have been drawn in conformity to this opinion, for they all, except the fifth, charge, in express terms, some criminal intention upon the respondent. This doctrine in reference to impeachment is laid down in 4 Black. 259, and in 2 Woodeson, 611. "As to the trial itself, it must of course, vary in external ceremony, but differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevail. For impeachments are not framed to alter the law, but to carry it into more effectual execution, where it might be obstructed by the influence of too powerful delinquents, or not easily discerned in the ordinary course of jurisdiction, by reason of the peculiar quality of the alleged crimes. The judgment, therefore, is to be such as is warranted by legal principles and precedents." The constitution of the United States appears to consider the subject in the same light. By the third section of the third article, "The trial of all crimes, except in cases of impeachment, shall be by jury."

Permit me to refer, parenthetically, to the case of Mr. Belknap. In that impeachment, Manager Hoar and Judge Black, who was for the defense, each made the statement, which will be borne out by the investigation we will give some of the constitutions hereafter, that the constitution of the United States and of all the states are so nearly alike that the construction of one is the construction of the other.

And by the fourth section of the second article, the nature an extent of the punishment in cases of impeachment is denied. Hence it may be inferred that a person is only impeachable for some criminal offense. With this view, I have examined and re-examined the fifth article of impeachment, etc.

Then upon the same topic, I read from page 262 of the same volume, from the argument of Mr. Nicholson, manager upon the trial of that case.

We were also told by the honorable counsel for the accused, that when we found the accusation shrunk from the testimony, and that the case could no longer be supported; we resorted to the forlorn hope of contending that an impeachment was not a criminal prosecution but a mere inquest of office. For myself I am free to declare, that I heard no such position taken. If declarations of this kind have been made, in the name of the managers, I here disclaim them. We do contend

that this is a criminal prosecution, for offenses committed in the discharge of high official duties, and we now support it, not merely for the purpose of removing an individual from office, but in order that the punishment inflicted on him may deter others from pursuing the baneful example which has been set them.

A recess of a few minutes will oblige me.

A recess was then taken for ten minutes.

AFTER RECESS.

Mr. BRISBIN, (resuming.) Mr. President and Senators, my attention has been called to the language of Senator Buck, which, I find, was different from what I supposed, and I desire to make my apology more explicit. The statement was, as I then thought, correctly made; I have undoubtedly confounded Senator Buck with some other member of the court. My attention has been called, by a member of the court, to page 41 of the Journal of the 8th day of the session. The remark,—I am informed by a Senator who called my attention to this,—was made by another Senator. That possibly was the foundation of the statement which I made,—it is this :

This idea about this being a criminal prosecution,—we want to get rid of that nonsense as soon as possible This is not a criminal prosecution; it has none of the elements of a criminal prosecution from beginning to end: and I say, that the sooner we get rid of such nonsense as that the better we will understand our position here.

Senator BUCK, D. Will the speaker allow me just one moment in this connection?

Mr. BRISBIN. Yes, sir.

Senator BUCK, D. I desire to call the attention of the Senate to the 8th day, on page 50, and will read what I did say; it will take but a moment.

Mr. BRISBIN. Very good, I am very much gratified.

Senator Buck, D. This is what I said:

I do not know who has said that we are a law unto ourselves; that we are supreme, that we can act in this matter as we please. I have heard no such speech here from any member of this court; and I do not believe that it has been uttered here. If it has been spoken, it was said without my knowledge, and not within my hearing, and I, for one, desire to say that I repudiate entirely any such doctrine. I say here, that we are not a law unto ourselves: that is, outside of the law itself. I say we have no right to impeach a man except for an impeachable offense. In my opinion, if we were to attempt to do so, the person charged would not be ousted from his office.

I think that is a full explanation.

Mr. BRISBIN. I did not hear those remarks, Senator; I have not been very continuously in attendance.

Senator BUCK, C. F. Mr. President, I desire to say that if there has been any such idea advanced at all, such as has been attributed to Senator Buck, it was advanced by one of the managers who is not in the case now,—Mr. James Smith, Jr.,—who did say; that if there was no precedent for this prosecution we ought to make one.

Mr. BRISBIN. I think the substance of that remark was made also by Manager Gould. I will not charge it, however, as I find myself so un-

terly at variance with the facts in the case of Senator Buck. I am very sorry, but I am very glad the correction has been made, and I am very much obliged for the argument which the gentleman made upon that occasion, and I desire it to be embraced within my own.

Before the recess, Senators, I endeavored to establish what ought to be regarded as a postulate, namely, that this is a court; and, as the Senate is already aware, I have been reinforced in that position by one at least of the lawyers of this body. I have also sought to establish the proposition that this was a crime, and that this was a criminal prosecution. And I invite particular attention to the arguments which have been referred to by the great men whose views have been presented. I will conclude my observations upon this topic of discourse with an abstract from a constitutional argument of Rufus Choate, the magical writer and lawyer, before a committee of the Massachusetts Legislature upon the tenure of the office of justice of the peace; and against the removal by address, of James G. Carlin, Esq., a justice of the peace:

"The forms of impeachment are better for the respondent than those of the address. No forms are safer than those of impeachment. After a hearing by a committee, when the impeachment has been voted for by one branch of the Legislature is instantly, may, I not say it? *elevated* to a court of law; another branch of the Legislature immediately divests itself of its legislative character and erects itself into a court of impeachment. The judicial oath is taken, rules of practice, rules of evidence, a code of laws are emerged and surround the party—a terror to evil-doers, a protection to honest men. Counsel are retained on one side and the other. The elaborate discussions of the bar take place. Grave deliberations are held. And in the language of Burke, 'That which is irreversible is made to be slow.'"

Now I proceed, gentlemen, to consider what, under the constitution of this State, are impeachable offenses. You are all familiar with the articles; each one of them charges the respondent with being guilty of crimes and misdemeanors and misbehavior in office. The language of the constitution appeared not to be comprehensive enough, and, therefore, the managers have invoked two statutes, one found upon page 167 of the Revised Statutes, and the other upon page 879.

The lion's hide being too small, the prosecution ekes out with the fox's tail. Now, Senators, if I am not able to demonstrate to any unbiased mind the impossibility of misbehavior in office being an impeachable offense, and that misbehavior in office is not and cannot be, by any rule of construction comprehended in the meaning of the words "crimes and misdemeanors," as used in the constitution, I shall fail of the object which I have directly before me.

Section 1, of article 13, which has, I believe been read frequently during the progress of this trial, reads as follows:

Sec. 1. **The governor, secretary of state, treasurer, auditor, attorney general and the judges of the Supreme and District Courts, may be impeached for corrupt conduct in office. or for crimes and misdemeanors, but judgments in such cases shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, in this State. The party convicted thereof shall, nevertheless, be liable and subject to endictment, trial, judgment and punishment according to law.**

Section 1 of this article provides for the punishment of officers of high rank who are found guilty of high offenses. Section 2 of the same article entitled "removal from office," says:

The legislature of the State may provide for the removal of inferior officrs from office, for malfeasance or nonfeasance in the performance of their duties.

Sec. 3. *Disability pending impeachment.* No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

Sec. 4. *Trial of the governor.* On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court.

Section 5 provides for the service of the articles. I now refer to page 167, section 13, chapter 9, entitled "resignations, vacancies and removals.

Sec. 13. The habitual drunkenness of any person holding office under the constitution or laws of this State, shall be good cause for removal from office by the authority and in the manner provided by law.

I now refer to chapter 91, section 8, found on page 879, Young's Statutes.

Sec. 8. *Wilful neglect to perform official duty.* Where any duty is enjoined by law upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to perform such duty, and every misbehavior in office, where no special provision is made for the punishment of such delinquency or malfeasance, is a misdemeanor punishable by fine and imprisonment.

Referring now; more particularly to page167 and the section of the constitution which has been read, it is a canon of interpretation that aws *in pari materia*, shall be construed together. Although it appears superogatory to a lawyer to cite axiomatic rules of interpretation, I will refer in support of that position to Sedgwick on Statutory and Constitutional law,—a standard work with the legal profession, page 247.

Statutes in pari materia, to be taken together It is well settled that in construing a doubtful statute, and for the purpose of arriving at the legislative intent, all acts on the same subject matter are to he taken together and examined, in order to arrive at the true result. "All acts *in pari materia*," said Lord Mansfield, "are to be taken together, as if they were one law." "Where" he said, on another occassion, "there are different statutes *in pari materia*, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other."

This is supported by reference in the notes to authorities which it is unnecessary to quote.

I am, perhaps, more dilatory than is agreeable to the Senate; but this is a very oppressive room to speak in, and I find I am considerably laboring on account of the heat and a distressing affliction of the throat.

The title to chapter nine, referred to, reads as follows: Resignations, vacancies and removals. Now, with reference to the power of removal, I refer to section 3, page 165:

SEC. 3. The governor may remove from office any clerk of the supreme and district court, judge of probate, court commissioner, sheriff, coroner, auditor, register of deeds, county attorney or county commissioner, any collector or receiver of public money, appointed by the Legislature, or by the govornor by and with the

consent of the Senate, or of both branches of the Legislature, whenever it appears to him by competent evidence that either of such officers have been guilty of malfeasance or non-feasance—

Mark the words, malfeasance or bad behavior; it is a Norman French word, *malfaisance;* bad conduct, misconduct, misbehavior—

In the performance of his official duties, first giving to such officer a copy of the charges against him, and an opportunity to be heard in his defense.

That section was amended in 1868. Section 13, to which reference has been made, was enacted in 1878. Now, we have ascertained, and it will not be controverted that acts *in pari materia*,—that is, upon the same subject,—are to be considered together. In the language quoted and adopted by the text-writer, from Lord Mansfield, whether passed at the same time or not, they are to be construed as one act, as a system of acts, upon the same subject. We find that this section 13, which has been relied upon and invoked, I suppose in support of article 13, is congeneric with that relating to removals provided for in the preceding portion ot fhe chapter. It is of the same origin on the same subject-matter,—that is, resignations, vacancies, and removals. It provides for the removal of certain inferior officers, the names of which have been given in the section read. Section 13 provides for the removal of officers high and low: "The habitual drunkenness of any person holding office under the constitution or laws of this State shall be good cause for removal from office by the authority and *in the manner provided by law.*" The manner provided by law has been given in section 3, which has been read in your hearing. It may be done by the governor, certain conditions precedent being required to the removal. The object of section 13 is obvious,—to comprehend a larger class of officers, and officers of a higher grade. That statute is completely nugatory, as any one will tell you, until the Legislature shall enact some law by which the provisions of this act can be carried out and effectuated, because all the provisions made by the law are with reference to officers of an inferior grade.

Now, it is another maxim in the construction of statutes, that, *expressio unius, exclusio alterius*, the expression of one thing is the exclusion of another. When this statute was enacted there was no provision, as I have already stated, by which these officers could be included, and it is nugatory. It is, therefore, declared by the Legislature that habitual drunkenness is not an impeachable offense under the constitution. Why provide for removal if there were already a provision in the constitution which made that misbehavior or misconduct? Now, as to the rules of construction, they are laid down by Mr. Sedgwick very briefly upon page 198. The author says, quoting from Lord Coke:

Four things in the construction of statutes, be they penal or beneficial, restrictive or enlarging of the common law, four things are to be discussed and considered: First, what was the common law before the making of the act? Second, what was the mischief and defect for which the common law did not provide? Third, what remedy the parliament hath resolved and appointed to cure the disease of the commonwealth? Fourth, the true reason of the remedy.

Now I say, from the considerations already advanced, that the Legislature has declared that this is not an impeachable offense, and to remedy the evil, in accordance with the principles to which I have called

attention, they have enacted this law which I have read, and which, when made effective by other legislation, possibly will answer the purpose. I was about to refer to some further authorities as to the principles of construction, but these are canons of construction and I deem them sufficient. I should say farther, in this connection, that this law could not enlarge the constitution. By no means; if the constitution did not declare that this was an impeachable offense then the Legislature cannot usurp the power to enlarge the constitution. For that reason it does not affect the section of the constitution for which it was provided.

Now, farther, in regard to the section referred to, upon page 879, by reference to the statute of 1852 it will be seen, and I presume it will be admitted, that this section of the statute to which I have referred is a copy *totidem verbis* of the act of 1852, enacted by the Territorial Legislature, in the same words.

Mr. ARCTANDER. You mean the statute relating to misbehavior?

Mr. BRISBIN. I mean the statute referring to misbehavior. It is an exact copy of the statute of 1852. That law, *ex necessitate*, could not refer to officers of the grade of Judges of the District Court, as originally passed. Why? Because, at that time, we had not, so to speak, assumed Statehood. All of the officers of that rank, as we know, were appointed by the President, by and with the consent of the Senate. Officers of the rank of the respondent were at that time appointed by the President, and they were removable by the President, their original term of office being four years. So that, that statute, when enacted referred to inferior officers elected by the State, under the authority of the United States, and can by no means be elevated to unseat officers of the grade of this respondent. The Governor, the Secretary of State, Treasurer, Marshal and the Judges were of the grade which could not be reached by this enactment. It referred only to municipal officers, whose election, appointment or instalment in office was within the municipal jurisdiction, so to speak, of the Territory. Then in the constitution adopted in 1858 it is provided in the schedule that all laws in existence shall be continued. Therefore this law has found and maintained its place in our statutes until this day.

We have seen to what it referred to. The law was continued, I say, not re-enacted, only in that manner, and not enlarged in its scope, not comprehending within its provisions any different classes of officers than those to which was applied by the original statute. Therefore the inference is that by no possibility can it be strained to extend to a higher class of officers than those referred to in the original enactment. But suppose, for the once, that it did. The makers of the constitution found this word in that statute. We will admit, for the sake of this argument, that it did comprehend officers of a higher grade. The framers of our constitution builded with reference to laws as they existed. That is the presumption, and the interpretation which lawyers and law expounders give to statutes. Then the deduction is inevitable that they ignored the word misbehavior as an impeachable crime. Having the law there they constructed the organic law of the State with reference to existing laws. They provided, in the section referred to, that certain officers, in certain cases not otherwise provided for, might be indicted for misbehavior in office. They left things then as they were. Those offenses which the law denominates moral misbehaviors (which is not a *legal* word) were ignored as not being impeachable; they were not elevated to the grade

of impeachable offenses which summon you, the select men of this commonwealth, and which from time to time surround you with the regalia of justice, which we see about us; they were not so regarded. One set of officers is excluded *ex industria* by the framers of the constitution. Misbehavior in office,—what is it? I am unable to tell you. What might be regarded, as I have already urged, by one man conscientiously as a misbehavior in office, by another would not be so regarded. This great and dangerous auxiliary of justice, impeachment, was not created for petty offenders,—for moral or social delinquents.

Mr. Jefferson in his notes upon the trial of Blount, found in State trials, page 272, says:

> I see nothing in the mode of proceedings by impeachment but the most formidable weapon for the purpose of dominant faction that ever was contrived. It would be the most effectual one of getting rid of any man whom they consider as dangerous to their views and I do not know that we could count on one-third in an emergency.

Thomas Jefferson, the inspired seer into the future, declares himself thus with reference to impeachment. I may, if my time permits, before I get through, refer to the anxious debates which were held by those great and conscientious men, who builded our organic law, showing that the words "malfeasance," corrupt feasance," "corrupt conduct," "malversations," and words and phrases cognate to these were regarded by Mr. Madison, Mr. Mason, and others, as too latitudinarian; that they builded on technical, well-known, legal words; and I shall advert, as I have said, in commenting more particularly upon the general topic as to the meaning of these words in our constitution, to the great debates participated in by those immortal men.

We have taken the position that none but indictable misdemeanors are impeachable. It does not follow that *all* indictable offenses are impeachable. Now it is not maintained here that the respondent has been guilty of corrupt conduct in office. I assert another proposition: That where, in legal documents, technical words, are used, they are used in their artistic and technical and not their popular sense. The reason of that is obvious, and it is more particularly obvious when it applies as in this case, to criminal offenses because the law understands, and the world is bound to understand these words; all mankind know or ought to know, what an *ex post facto* law is. When law-makers use any term to convey the idea of a law made after the occurrence of a fact, they say an *ex post facto* law,—because that is a technical term which all men know, or are bound to know. I say then that when the framers of our constitution used the words crimes and misdemeanors they used them in their legal sense.

Now as to the construction of statutes in this respect I refer to the second edition of Sedgewick on Statutory and Constitutional Construction, page 221:

> *Technical words.*—When technical words occur in a statute, they are to be taken in a technical sense, unless it appears that they were intended to be applied differently from their ordinary or legal acceptation.
>
> So, when legislating upon subjects relating to courts and legal process, we are to consider the legislature as speaking technically, unless from the statute itself it appears that they made use of the terms in a more popular sense. Thus, where a statute directed that the coroner should serve process where the sheriff was "*a*

party," it was held that he must be technically a party, and that being interested in the suit was not sufficient. So, where a Massachusetts statute in regard to flowing lands declared that a judgment should be "*final*," it was held that this phrase was to be taken in its technical sense. Where a Massachusetts act declared that no license to an administrator to *sell* the real estate of his intestate for the payment of debts, should be in force for a longer time than one year, it was said "That, though the popular sense may be the true one, where the act of the legislature does not relate to a technical subject, yet it being the object to limit the time of sales and prevent estates from being kept open longer than is necessary, the legal sense seems the proper one;" "And it was held that, there being in a legal sense no sale till the deed was delivered, the deed must be delivered within the year.

So with regard to robbery. I may also refer, (but I will not take time to read it), to the opinion of Chief Justice Marshall in the Burr trial, where the same rule is adopted,—it is axiomatic.

Common and Technical Terms; Interpretation of Particular Terms.—Technical legal terms, as a general rule, and in the absence of any countervailing intent which displaces the rule, are to be taken in their established common-law signification; thus, a statute giving dower in lands of which the husband was seized, does not include a contingent remainder; but this rule, although very general, may be overcome by other considerations, and even without any express statement of a contrary intent; *e. g.*, in a statute using the phrase, "In an action of debt," there was no express statement of a meaning other than the common-law one, but as there was no such technical action known to the procedure of the State, and as a technical interpretation would have destroyed the plain design of the statute, it was held that the phrase was not used in its legal sense, but meant any action to recover money for the breach of a contract. In another case, the word "heirs" was held to mean those inheriting according to the existing laws of the State, and not those inheriting at the common-law. This decision is not in conflict with the general rule just stated, for the technical legal sense spoken of means such sense according to the law of the State in which this statute is passed, and, in the absence of other rules, that sense is a common-law one; but if the original common-law signification of the phrase, or term had been previously changed in the particular State by legislation or by judicial decision, of course the legal meaning *thus* determined is to be taken as the one which the legislature intended and adopted in the statute. A term in use in English law, employed in a statute without any definition, is to be construed as it is understood in the English law.

Words in common use, when found in a statute, are to be taken in their ordinary sense, and technical words in their technical sense, unless as respects either a contrary intent plainly appears; but the real, obvious intent is to prevail over any mere literal sense; thus, "House of another," in a statute against breaking and entering, was held to mean only the mansion and the houses so connected therewith, so as to form in law part and parcel thereof.

I refer also, although it may seem even indecently superfluous to prove what is canonical, having reference to construction of statutes, to sections 59 and 60 of Cooley's constitutional limitations. Mr. Cooley says:

But it must not be forgotten in construing our constitution, that in many particulars they are but the legitimate successors of the great charters of English liberty, whose provisions declaratory of the rights of the subject have acquired a well understood meaning, which the people must be supposed to have had in view in adopting them. We cannot understand these provisions unless we understand their history: and when we find them expressed in technical words, and words of art, we must suppose these words to be employed in their technical sense. When the constitution speaks of an *ex post facto* law, it means a law technically known by that designation; the meaning of the phrase having become defined in the history of constitutional law, and being so familiar to the people that it is not necessary to employ language of a more popular character to designate it. The technical sense in these cases is the sense fixed upon the words in legal and constitu

tional history where they have been employed for the protection of popular rights.

Now the words crimes and misdemeanors, have a technical sense, and were in that sense, and no other, used by the framers of our organic law. It is not necessary for me to read even to laymen the definitions which I believe have been referred to frequently during the progress of this trial.

I read from the first volume of Bouvier's law dictionary. A crime is "An act committed or omitted in violation of a public law forbidding or commanding it." A misdemeanor, "a term used to express any offense inferior to felony, punishable by indictment. The word is generally used in contradistinction to felony, misdemeanors comprehending all indictable offenses which do not amount to felony." Those are the definitions which, as Judge Cooley says, were handed down to us by the English law. Those are definitions which prevail to-day; those are definitions to which reference is made in the text-writers to which you have been referred. The reason of it is given by Judge Cooley,—because those are the words best understood by the people. When crime and misdemeanor are juxtaposed as they are in this constitution, they mean one indictable felony, and the other an indictable crime,—of a lower grade.

Now, gentlemen, let us see further whether or not these words (because this is important,) are technical words. Let us trace back the etymology of the law, not to its original recorded sources, but to the sources with which we are best acquainted. As to the etymology of the word law and equivalent words, I refer to the third volume of Bohn's standard library cyclopedia, pages 173–7.

Etymology of law, and the equivalent words in other languages. In the Greek language the most ancient word for law is *themis*, which contains the same root as *tithemi*, meaning 'that which is established or laid down.' In Homer *themis* signifies a rule established by custom, as well as by a civil government. It also signifies a judicial decision or decree, a legal right, and a legal duty.

A law, in the strict sense of the word, is a general command of an intelligent being to another intelligent being. Laws established by the sovereign government of an independent civil society are styled *positive*, as existing by *positio*. When law is spoken of simply and absolutely, *positive* law is always understood. Thus in such phrases as "a lawyer" "a student of law," "legal," "legality," "legislation," "legislator," &c., positive law is meant. Positive law is the subject-matter of the science of jurisprudence.

The positive laws of any country, considered as a system, may be divided with reference to their *sources* (or the modes by which they become laws) into *written* and *unwritten*. This division of laws is of great antiquity; the expression unwritten laws occurs in Xenophon's Memorabilia in a conversation attributed to Socrates, in the 'Antigone' of Sophocles

Origin and end of positive law.—It has been above stated that all positive laws are commands, direct or indirect, of the person or persons exercising supreme political power in an independent society. Consequently the notion that positive laws are derived from a compact between sovereign and subjects (styled the original or social contract) is a delusion.

The proper end of positive law is the promotion of the temporal happiness or well being of the community over which the law extends. Thus Aristotles, in his 'Politics' says that "political society was formed in order to enable men to live, and it continues to exist in order that they may live happily." * * * Mr. Bentham, in his well known formula, [says] that the end of political government is "the greatest happiness of the greatest number."

The classification of criminal law in the English law is the same as in this country.

Crimes according to the English law are divisible into two great classes, which depend on the mode of proceeding peculiar to each, viz., into

First. Such as are punishable on indictment or information (the common law methods of proceedings.)

Secondly. Such as are punishable on summary conviction before a justice or justices of the peace or other authorized persons, without the intervention of a jury (a mode of proceeding derived entirely from special statutory enactments.)

Then Mr. Bohn goes on and gives a list of felonies under the English law, made so by statute and by the common law. I shall not occupy your time by reading them. The references are from page 189 to 203 inclusive of this book. And some thousand cases, I should judge, are given which are regarded as felonies by the common law of England. Then a list of misdemeanors is given in the same work, running from pages 203 to 219, containing all the indictable misdemeanors; and I refer for example to indictable offences under the English common law connected with judicial proceedings found on page 210. These are referred to merely as exemplary of the general character of the offenses which are regarded as misdemeanors under the English law.

Section 53. The willful omission by judicial officers to do their duty.
54. Oppression by judicial officers.
55. Judicial officers taking bribes.
56. Bribing or otherwise corruptly influencing judicial officers.
57. Persons procuring themselves to be returned as jurors with intent to obtain a verdict or any undue advantage for any person interested in a trial.
58. Unlawfully preventing persons from serving as jurors.
59. Jurors determining their verdict by any mode of chance.
60. Witnesses refusing to be sworn, or to give evidence in judicial proceedings
61 Unlawfully preventing witnesses from giving evidence in judicial proceedings.
62. Endeavoring to procure the commission of perjury.
63. Publishing statements, pending suits or prosecutions with intent to excite prejudice for or against any party to such suits or prosecutions
64 Fabricating false evidence.

Now I have examined this entire list, gentlemen, and there is only one case (and that is a case where it is made an indictable offense by statute,) where drunkenness is regarded as indictable in England; that is in the case of a railroad employe. I refer to page 214 of the same work; subdivision three upon this page: "Drunkenness or other misconduct of servants of railway companies" is made by statute an indictable offense, and the reasons for it are obvious. In the note it is said:

This offense may be punished on summary conviction, with imprisonment not exceeding two calendar months, or fine not exceeding ten pounds, if the justice before whom the complaint is made shall think fit to decide upon it, instead of sending the offender for trial to the Quarter Sessions.

To give authenticity to this work, I will read the conclusion on page 219:

The whole of the law, written as well as unwritten, relating to the definition and punishment of the above offenses, that is, the whole Criminal Law of England as regards indictable crimes and their punishments, has been collected and reduced

into one body by the Criminal Law Commissioners (see their seventh report), and is thus for the first time rendered accessible to the public at large. Before this reduction the Criminal Law had to be sought for in an immense mass of statutes, reported decisions, records, ancient and modern, and text-books; and, on that account, could be known but to the few, and those principally engaged in the practice and administration of the law. The digest so prepared by the commissioners, and called by them "the Act of Crimes and Punishments," is comprised in twenty-four chapters, under the following heads:

Which I will not read.

Mr. ALLIS. When was the statute making drunkenness in a railroad employe enacted?

Mr. BRISBIN. Under the reign of Victoria.

Mr. ALLIS. That statute was not imported into this country then as a part of our law.

Mr. BRISBIN. As suggested by my associate, that statute having been enacted under the reign of Queen Victoria, is not a part of our law; that is, this statute with reference to the offense of drunkenness, because it is subsequent to the formation of the Constitution of the United States.

Reference has already been made, during the argument of the demurrer, to the fact that there are no forms of indictments given by Mr. Chitty (whose treatise on the subject of criminal practice is very voluminous and explicit), and the inference, therefore, would be that there was no such thing known to that great digester as an indictment for the offense of drunkenness. And I will say here, although episodic to the course of my remarks, that the references made by counsel to the *nisi prius* decisions which have already been commented upon by my predecessors in this argument are not the common law of this State; they are not authority. This State takes the body of the law as made by the expounders of the law; not the common law of Wisconsin, not the common law of Iowa, but the body of the law as collected and digested, and therefore if there are isolated cases which comprehend the whole mass which oppose the great current of the common law on this subject, they are entitled to no force. Who ever heard of an indictment for drunkenness in this State? The argument may be negative, but it is a pregnant negative.

Gentlemen, let us go back a little further and, tracing the history of the common law, see how uniform it is, and why it should bind our consciences; why it should constrain us, to paraphrase the language of Montesquien in his Spirit of the Laws, why it should constrain us to will to do what we ought to do, and restrain us from doing what we ought not to will to do.

The Thesaurus of written and unwritten Law is found in the Pentateuch, recorded on the tables given to Moses directly from the sacred mountain, and the exposition of the laws by Moses and his successors, the Judges of Israel. The Pentateuch has been for all the following ages the fundamental basic stratum upon which the most solid governments of mankind have been built; a luminant and radiating center from which the wisest political maxims have emanated to the world. Moses, with the self-conscious appreciation which belongs to all great men, knew and properly valued his work. "And what nation is there so great that hath statutes and judgments so righteous as all this law which I set before you this day?" Deut. iv., 8. "Keep, therefore, and do them, for this is your wisdom and your understanding in the sight

of the nations which shall hear all these statutes and say, surely, this great nation is a wise and understanding people." Deut. iv., 6.

The geographical situation of the country of the Hebrews gave to it peculiar adaptation as an eminent point for the illumination of surrounding nations, and the philosophic historian detects the impress of the Mosaic writings in the earlier times upon the Egyptians, the Cananites, Phœnicians, and in later times upon the Assyrians, Persians, Greeks and Romans, who successively domineered the known universe. Commerce and war dispersed the Jews throughout the great nations of the world, and wherever they went they carried the maxims and laws of Moses, conquering the conquerors. The conquering Alexander gave them the country of Samaria free of tribute; Ptolemy Soter entrusted the fortunes of Egypt to the Jews; Ptolemy Philometer and his Queen Cleopatra gave them charge of the entire kingdom, by giving command of the armies to two of their leaders. Prominent Jews became prime advisers of the Asiatic sovereigns. Daniel, chief minister of Darius the Mede; Nehemiah, the confidential adviser of the Persian Artaxerxes; Esther, the Jewess, was promoted to the Persian throne, with the primacy bestowed upon her kinsman, Mordecai. Allow me briefly to trace in historic connection and detail the direct influence of the Mosaic writings upon the religion, law and literature of the Asiatic nations, and through them to what is now the civilized world. It is marked as distinctly as the course of the Nile.

The Jewish republic was the first true republic, and from it have sprung the main and best constituents of the republican forms of government throughout the ages, down to our own. The Jews, under this system, enjoyed in the largest and best sense, intellectual, intelligent and restrained liberty. No other consideration affords so consummate demonstration of the inspired authenticity of the Scriptures of the Old Testament, as the undisputed fact that the laws given to Moses and expounded by him, and his successors, the Judges of Israel to the Jews, formed not merely in general principles but in remote and almost infinitesimal details, the substructure of the law to-day among the civilized nations of the earth. Nor can there be found so conclusive a demonstration of the stability, safety and beneficence, and hence the incontestable utility of the law as it has been given and expounded, than is furnished by this historic fact.

The laws of Moses were strictly statutes delivered to him by the Almighty. They were uniformly submitted to the people in their mass assemblies, and, ratified by them, became the laws of the Jewish republic. This mode of enacting laws was adopted by the states of Greece, more especially Athens.

To illustrate the minutiæ of the Mosaic jurisprudence it is not inapposite to the case we are considering,—to say that bribery and corruption in the judicial office, (which terms are, of course, used in an enlarged sense,) were specifications of crime.

"Thou shalt not wrest judgment; thou shalt not respect persons; neither take gifts, for a gift doth blind the eyes of the wise, and pervert the words of the righteous."

The first impeachment trial reported is found in 1st Samuel, viii. 1, 3, 4, and 5, and was of the sons of Samuel, who were judges, and was upon a charge of bribery.

"1. And it came to pass, when Samuel was old, that he made his sons judges over Israel."

"3. And his sons walked not in his ways, but turned aside after lucre, and took bribes, and perverted judgment."

"4. Then all the Elders of Israel gathered themselves together and came to Samuel unto Ramah."

"5. And said unto him, 'Behold, thou art old and thy sons walk not in thy ways; now make us a king and judge us like all the nations.'"

Under the Hebrew polity every town and every city had its senate of princes or elders, as well as a more popular assembly. Joel and Abiah, the sons of Samuel, were impeached by the senate of Israel, removed, and Saul was anointed king. Cox impeached, the Ninth district should have a trium virate Wallin, Webber, and Ladd. Bribery has ever since been so regarded, it is so pilloried in the constitution of the United States, and by those of all the States; some times with modified terms, as "corrupt conduct in office," is so characterized and chastised in our constitution. The principles of the Hebrew laws were incorporated with the body of law of the Greek republics. Jurisprudence was, however, never cultivated as a science by the Greeks before the loss of their independence. "When conquered Greece brought in her captive arts," Rome gave more than adequate consideration; she gave them a scientific scheme of law. All-conquering and aggrandizing Rome, after the Jewish conquest, took captive the laws of the Hebrews, engrafting them into her own system of judicature even to the adoption of many of the mere formulas of practice. For the first scientific collection of law the world is indebted to the Romans. Cicero, in De Oratore, volume 1, page 44, writes: "How far our ancestors excelled other nations in wisdom will be easily perceived on comparing our laws with the works of the Greek Lycurgus, Draco, and Solon. For it is incredible how rude and almost ridiculous every system of law is except that of Rome."

The Roman legions under Cæsar carried the Roman jurisprudence into Gaul and Britain, there they took root in congenial soil, and there they grew up into a system which as it is administered to-day in England is the grandest system of jurisprudence which the civilized world has ever seen. The colonists brought these laws here; and they are constituents of the organic law of the United States to-day. These remarks are made and historical reminiscences recalled to illustrate the essential stability of the law as well as the felt and acknowledged necessity as testified by the ages, that the law should be as near as the frailties of human nature will permit, "without variableness or shadow of turning." It has been, is, and let us all believe, will be, "till the last syllable of recorded time." Creeds may change, theological systems multiply, vary, mutate and militate, but not the fundamental dogmas of the law. It is the noblest of all human systems reaching its roots into the grounds of every science and spreading its branches over every object of human concern.

The process of impeachment, strictly, originated in England, and was originally designed to reach offenses and punish offenders beyond the reach or full capacity of the common-law; born in crude ages and continued to times better instructed, but more slavish to the passions of politics it degenerated into an instrument of oppression. The law Lords, with the Chancellor at their head as president, always ruled on questions of law, and this conservative element stood when the Chan-

cellor was worthy of his high place, and not the mere automaton of power, as a wall against imperial usurpation. To reach consequences impermissible in a court presided over by a Chancellor and restrained by the common-law, resort was taken to the ultimate and desperate refuge, (or rather subterfuge) by punishing by legal enactment; i. e., bills of attainder, of pains and penalties, and *ex post facto* laws; cogeneric. The framers of our constitution builded wisely in view of and warned by precedents. The path of English history was covered with sacrificial holocausts of patriots to the thirst of blood and the lust of power. Thus while the spirit of *magna charta* inspires that great instrument, the errors of British law, or rather of British laws, as administered, were avoided, and it was engrafted on that instrument that no bills of attainder or *ex post facto* laws, &c. should be enacted. They found that the law of impeachment had been perverted and strained to cover almost any act which the needs of power, or the behests of passion might seek to punish. Here again premonished by the examples of history, our fathers set up the pillars of Hercules against invasions of individual rights. "Here shall thy proud waves be stayed." After long and anxious deliberations, participated in and concluded by the greatest civil leaders and lawyers of that world-remembered body, the attempts to make malversation, or misconduct in office, impeachable, were rejected as opening the door to let in the very evils against which they were not merely to be closed, but foreclosed. The subject was anxiously discussed, especially by Madison, Mason, Morris, Pinckney, Williamson and Sherman.

If it is near the hour of adjournment, as I am about to make some references under this head, I would prefer to wait until after recess.

Senator CROOKS. We have a quarter of an hour yet.

Mr. BRISBIN. I would prefer to meet a quarter of an hour earlier if the Senate would indulge me.

Senator CAMPBELL. I move we take a recess now until the usual hour.

The PRESIDENT *pro tem.* As many as favor the motion will say aye. The ayes have it.

The Senate then took a recess until 2;30 P. M.

AFTERNOON SESSION.

The Senate met at 2:30 P. M., and was called to order by the President *pro tem.*

Mr. Brisbin then resumed his argument as follows:

Mr. President and Senators: At the time at which the court allowed me a recess a little in advance of the usual hour, upon leaving the court room it occurred to me that one of the most important considerations reviewed and deliberated upon with reference to the relation of section thirteen, I think it is, (found upon page 879 of the Revised Statutes,) which makes misbehavior in office, of a certain character, an indictable offense, that I had omitted perhaps what occurs to me as the most important consideration in treating the relations of that statute to section thirteen of the constitution. With your permission therefore, gentlemen, for a moment I will retrograde in my argument. I had, as I

laim, demonstrated that the words "misbehavior in office" were industriously excluded by the framers of the constitution; that they found he word there, and that they ignored it. I omitted, however, to pursue a line of argument which appears to me absolutely conclusive, and nore so than the considerations which I presented this forenoon.

Section one provides, as we are all aware, for the impeachment of certain officers of high grade,—the highest grade of officers known to the onstitution,—for "crimes and misdemeanors." Those words, we have een, have a technical and legal signification. If anything further was equired to reinforce that argument, it appears to me it is found in the ame article of the constitution, and in the subsequent section relating o removals from office; "The Legislature of this State may provide for emoval of inferior officers from office, for malfeasance or non-feasance n the performance of their duties." Malfe sance, as we are all of us ware, is a synonym for misbehavior in office and misconduct in office. Then, if it was the design of the men who builded this constitution, to nake misbehavior in office, or anything less than what is technically nown as a crime or misdemeanor, why explicitly create the power or uthorize its operation by the Legislature to punish inferior officers by he infliction of inferior penalties?

Now, I say that an exclusion of that word in the section referred to, nd the presence of the words malfeasance and nonfeasance in office, in he same section occurring, must lead us irresistibly to the result that hey intended only that misbehavior in office,—that malfeasance (to se the word of the constitution) and nonfeasance, applied not only to nferior officers, but to an inferior rank of crime. It appears to me, herefore, that this suggestion which I now make is of conclusive and f irresistible importance in considering the meaning of the language of he constitution. I shall dwell with no more particularity upon that han I have already done. It appears to me that the mere suggestion o men understanding how statutes are construed, not merely lawyers, ut men of sense, such as are listening to me upon this occasion, is ufficient.

The course of my argument before the recess had arrived at the point here I was discussing or urging the fact that the framers of the constiution acted with reference to existing laws, in the manner already referred to. Now, at the time of the formation of the United States constitution, nine of the States had framed their constitutions. Many, as a eference to the constituents of the body which framed the organic law f the United States will show, were men who had builded the State onstitutions. They were, then, acting not merely with reference to the omponents of those constitutions, but they were some of them among he most distinguished men of the States, and the actors in the creation f those constitutions. The constitutions I refer to, and the references make, are from Ben. Perley Poore's work entitled "Charters and Constitutions of the United States and of the States," to be found in the tate Library.

The constitution of Delaware was adopted the 20th of September, 776. The words used, defining impeachable offenses are these: "Maldministration, corruption, or other means by which the safety of the ommonwealth may be endangered."

The constitution of Massachusetts was adopted March 2nd, 1780—the ords used were "Misconduct, or maladministration,"

The constitution of New York, (which, by the way, my predecessor, Mr. Allis, in his argument heretofere, has informed you by reference to contemporary history, was, to a great extent, the model upon which the constitution of the United States was framed,) was drawn by Mr. Jay of New York, the first chief justice of the United States. The constitution of New York was adopted April 20th, 1777. The words used there were: "Mal and corrupt conduct.

"Mal" we all know means bad—corrupt conduct. The same words in substance were incorporated into our original law.

The constitution of New Jersey was adopted July 7th, 1776. The word there used is "Misbehavior."

The constitution of Pennsylvania was adopted July 15th, 1776. The word used there is "Maladministration," meaning bad administration.

The constitution of Virginia was adopted July 5th, 1776. The words used are "Maladministration, corruption, or other means whereby the safety of the people may be endangered.

The constitution of North Carolina was adopted December 18th, 1776. The words used are "Maladministration or corruption."

The Constitution of South Carolina was adopted March 19th, 1778. The words used are "Mal. and corrupt conduct." The same are used in the Constitution of the State of New York.

These constitutions, then (to repeat, perhaps, what I have already said), were in the minds, in the consideration of that great deliberative body of men who have handed down to us the constitutional model upon which I am now commenting. They are presumed to have acted with reference to them, and by consultation of the debates to which I shall refer in a few moments, it will be seen that they acted specifically with reference to them. In construing a law, or interpreting a constitution (which is a legal enactment), if we are in doubt about the meaning of words, or the meaning of sections in the enactment, we appeal to cotemporaneous discussions. They are the foot lights which show us the substantive matter of the instrument. It will appear, when I refer, as I shall, to portions of the debates, that the words used here were regarded as too latitudinarian, and that they were therefore excluded. The language used was "Treason, bribery, and other high crimes and misdemeanors," the word "High," as will be conceded, and as has been stated by Mr. Christianson in his work on the subject, referred to by manager Butler, in the first volume of the Johnson impeachment trial, has no signification. It was only adopted for the purpose of giving more solemn emphasis to the character of crimes which should be considered and punished before tribunals of as august a character as this body. I will refer, in support of this position, to the argument of Judge Groesbeck in the trial of President Johnson, and to the collation of references which he has made upon this subject to the debates in the constitutional convention. I refer to these because they are authentic, and because I have not access to original sources. And I may say, in premising, that the argument of Judge Groesbeck, in my judgment, is the most massive logic, garnished with the most glorious rhetoric of any similar production which has ever fallen under myobservation. It is literally a Doric column surmounted by a Corinthian capital. I read from pages 190-2 of volume two in the trial of President Johnson. Mr. Grosbeck says:

It was with much doubt and hesitation that the jurisdiction to try impeach-

ments at all was entrusted to the Senate of the United States. The grant of this power to this body was deferred to the last moment of time. Nor was your jurisdiction overlooked. Allow me to call your attention very briefly to the proceedings of the Federal convention upon this subject as recorded in the journal of that body. In the first report that was presented it was proposed to allow impeachments for "malpractice or neglect of duty."

Copying almost literally the verbiage to which I have called your attention contained in the constitutions of some of the states which were extant at the time:

It will be observed that this was very English-like and very broad in the jurisdiction proposed to be conferred. There is not necessarily any crime in the jurisdiction here proposed to be conferred.

That is by the words "malpractice or neglect of duty." "There is not necessarily any crime," Mr. Groesbeck says, "in the jurisdiction here proposed to be conferred."

In the next report that was presented it was proposed to allow the tribunal jurisdiction for "treason, bribery and corruption." It will be observed that they began to get away from the English precedents, and to approach the final results at which they arrived. The jurisdiction here proposed was partly criminal and partly broad and open, not necessarily involving penal liability. In the next report it was proposed that impeachment be allowed for "treason or bribery,"—nothing else.

These words are quoted from the reports to which reference is made more particularly hereafter.

It will be observed that here was nothing but gross flagrant crime.

That is, in the words "Treason or bribery."

This jurisdiction was considered too limited, and was opened, and that gives us the jurisdiction we have in the present constitution, "Treason, bribery, or other high crimes and misdemeanors"—no malpractice, no neglect of duty, nothing that left the jurisdiction open.

The jurisdiction was *shut*.

The jurisdiction is shut.

I have anticipated a word of Judge Groesbeck's.

The jurisdiction is shut and limited by any fair construction of this language; and it was intended to be shut It is impossible to observe the progress of the deliberations of the convention upon this single question, beginning with the broadest and most open jurisdiction, and ending in a jurisdiction defined in these technical terms of law, without coming to the conclusion that it was their determination that the jurisdiction should be circumscribed and limited.

I refer now, in this connection, to a collation, not of the entire debates, but of the debates upon this subject-matter, as made by Mr. Nelson, one of the counsel for President Johnson; found on page 131-2 of the trial of President Johnson second volume. Some of the verbiage, introducing extracts, will be incorporated or adopted as my own. Mr Nelson says:

You remember that Colonel Hamilton introduced what was called a plan of government. and in the ninth section of that it was provided that—

Governors, Senators, and all officers of the United States, to be liable to impeachment for mal and corrupt conduct, and upon conviction to be removed from office and disqualified from holding any place of trust or profit; all impeachments to be tried by the court.

Then again another citation:

All impeachments to be tried by a court to consist of the chief or senior judge of the superior court of law in each State: provided, that such judge hold his place during good behavior and have a permanent salary.

Then there are some references to discussions that were had as to who should constitute the members of the court.

Mr. Hamilton, in the Federalist, No. 65, says:

Would it have been an improvement of the plan to have united the Supreme Court with the Senate in the formation of the *court of impeachments?* This union would certainly have been attended with several advantages; but would they not have been overbalanced by the signal disadvantage already stated, arising from the agency of the same judges in the double prosecution to which the offender would be liable? To a certain extent the benefits of that union will be obtained from making the Chief Justice of the Supreme Court of impeachments, as is proposed to be done in the plan of the convention; while the inconveniences of an entire incorporation of the former into the latter will be substantially avoided. This was, perhaps, the prudent means.

I merely refer to that citation in my argument, as showing the extreme consideration which was had by this great body of men upon the creation of this important tribunal.

Messrs. Madison, Mason, Morris, Pinckney, Williamson and Sherman discuss the impeachment question, and in lieu of the words "bribery and maladministration," Colonel Mason substituted the words "Other high crimes and misdemeanors against the State," as is shown in 5 Elliot's Debates, and Madison papers, 528, 529. On the same day a committee of style and arrangement was appointed, consisting of Messrs. Johnson, Hamilton, Morris and King. On Wednesday the 12th of September, 1787. Dr. Johnson reported a digest of the plan. On Monday, the 17th of September, 1787, the engrossed constitution was read and signed, as will be seen in 5 Madison Papers, page 553.

I also refer to a similar but somewhat more enlarged digest of debates made by the late Senator Carpenter, who was counsel for the respondent in the Belknap trial, pages 122 and following, and in this connection I shall use the language of Senator Carpenter. I shall first refer to the debates and proceedings of the constitutional convention, which will be seen to shed a flood of light upon this question. Senator Carpenter is discussing the question as to whether a man can be removed by impeachment or can be impeached after he is out of office. He says:

I shall first refer to the debates and proceedings of the constitutional convention, which will be seen to shed a flood of light upon this question. After several plans had been submitted and discussed in committee of the whole, the committee, on the 13th day of June, 1787, reported to the convention a general scheme of the constitution, in the form of resolutions, nineteen in all. Two of these resolutions touched the subject of impeachment. The ninth resolution relates to the executive—how he should be elected, what his powers should be, to be ineligible a second time, "and to be removable on impeachment and conviction of malpractice or neglect of duty.

One of these resolutions reported was almost a synonym for the word misbehavior, as we have seen and as we all understand—"malpractice"—that means misbehavior.

The thirteenth resolution was in regard to the judiciary, and proposed "that the jurisdiction of the national judiciary shall extend to all cases which respect the collection of a national revenue, impeachments of any national officers, and questions which involve the national peace and harmony." [2 Curtis' Constitution, pp. 86, 87.]

Here, manifestly, impeachment is regarditd as a proceeding for the removal of a public officer. The ninth resolution declares that the president shall be removable on impeachment; and the thirteenth, which relates to the exercise of the power to try impeachments, is confined to "impeachments of any national officers."

Again, the ninth resolution proposes the removal of the president "on impeachment and conviction of malpractice or neglect of duty." * * * On the 20th of July the ninth resolution was considered by the convention and the subject of impeachment was discussed at length.

This is the language of Mr. Carpenter.

Mr. Pinckney and Mr. Morris moved to strike out the clause subjecting the president to removal by impeachment. Mr. Pinckney observed he ought not to be impeached while in office.

Mr. Davie. If he be not impeachable while in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behavior of the executive.

Dr. Franklin was for retaining the clause as favorable to the executive, upon the ground that, if not removable by impeachment, recourse would be had to assassination, by which he would not only be deprived of his life, but all opportunity to vindicate his character.

* * * * * * * *

Dr. Franklin cited the bad conduct of the Dutch Stadtholder and the evil which resulted from his not being impeachable.

Mr. King remarked that the case of the Stadtholder was not applicable. He held his place for life, and was not periodically elected. In the former case impeachments are proper to secure good behavior; in the latter they are unnecessary.

It might be remarked here that these impeachments originated in this country when judicial offices at least were held during good behavior.

Near the close of the debate Mr. Morris said his views had been changed by the discussion, and he expressed his opinion to the effect that "the executive ought to be impeached. He should be punished not as a man, but as an officer; and punished only by degredation from his office."

This citation applies (and I remark this parenthetically,) to much of the testimony here which seeks to impeach the respondent for acts committed out of office,—not official acts.

And on the question, "Shall the executive be removable on impeachment," the vote by states was—yea, 8; nay, 2.

This was the principle debate in the convention upon this subject and shows conclusively that no member of the convention entertained the idea that impeachment should be employed against any but public officers. On the 6th of August the committee on detail reported their first draft of the constitution. It provided, (article 4, section 6:) "The House of Representatives shall have the sole power of impeachments." Article 10, section 2, provided: "He [the president]

shall be removed from his office on impeachment by the House of Representatives, and conviction, in the Supreme Court of treason, bribery or corruption.

* * * * * * *

On the 8th of September the report was considered, and the provisions as to impeachment of the president was amended, on motion of Colonel Mason, by adding after the word, "Bribery" the words "Other high crimes and misdemeanors against the State," and for the word "State" "The United States" were substituted to avoid ambiguity.

Colonel Mason's first motion was to insert after the word "Bribery" the words "or mal-administration." Mr. Madison objected to this term, which he said was so vague that the President's tenure would be during the pleasure of the Senate.

So it may be remarked here: unless there are some land-marks, some well-understood and definite words, it is too vague to impose upon a man arraigned, the awful penalties of impeachment, of not merely removal but the added and aggravated penalty of disqualification to pursue those generous competitions which are the heritage of all citizens of this republic.

Mr. Morris [says]: It will not be put in force, and can do no harm. An election of every four years will prevent mal-administration.

Colonel Mason then withdrew "Mal-administration," and substituted, "Other high crimes and misdemeanors."

Mr. Carpenter says:

It is evident from this that the term "High crimes and misdemeanors," was used in the sense of *officini misconduct* amounting to crime or misdemeanor.

So, gentlemen, it seems to me not only by a logical deduction from the principles which I have attempted to lay down, but by the express language of these debates that all of these words here used were discarded by those great men as too latitudinarian, as placing the definition of crime within the bosom, if you please, of every constituent member of the impeaching tribunal. What might be to my friend, Senator Hinds, to my friend Senator Gilfillan, or Senator Crooks, or Senator Adams, or other gentlemen of this court, what might be regarded as mal-administration by one of them, might not be so regarded by the other. What might be defined as misconduct by one of you, might not be so defined by the other. It would place the citizen, the high official, the trusted man, the man endowed with great public trusts at the mercy of the private judgment of every member of the court. Therefore these high officers were hedged in and these offences defined by legal words,—words which "the wayfaring man, though a fool," could understand.

Now, gentlemen, is not this conclusive on the subject, and, as has been before remarked, without reference to the authority, it will be discovered in this very volume from which I have been reading, that so far as the construction of these terms, there is no sufficient difference between the constitutions of most of the States and the constitution of the United States, to alter the rule of construction.

We have seen that nine of the constitutions of the States were adopted before the federal constitution was. We have necessarily arrived, I hope, at the conclusion that all of this language was carefully studied and conscientiously deliberated upon by the fathers of the instrument. Now, those who framed the constitution of the State of Minnesota had before them all of these lights and all of these authorities, and I propose for

the purpose of more emphatically impressing upon the minds of the Senators this proposition, to read from the constitutions of all of the States for the purpose of showing that where latitudinarian words, popular words, such as misbehavior in office, misconduct, malpractice, malversation in office, have been intended by the framers of those instruments to be used, they are used. The managers certainly have admitted that the phrase "crimes and misdemeanors" does not cover misbehavior in office, because if it did, why not leave it "crimes and misdemeanors and corrupt conduct in office?" Why not leave it where the constitution left it? No; section 13 of the statute is invoked to enlarge the lion's skin, to make the constitution comprehend other and inferior offenses. I shall now read, so far as the language on the subject of impeachment is referred to, from the constitutions of all of the States. They are found in Mr. Poore's work, to which I have already alluded.

I have not arranged them precisely in alphabetical order. The constitution of the State of Alabama was adopted in 1819. The words used were "misdemeanor in office;" that is, official misdemeanor; not the private conduct of the officer outside of his office,—not extra-judicial. In 1857 the constitution of Alabama was amended. These words were retained in the constitution substantially as they were—these words were re-incorporated in the organic law. (See article 4 section 23.) And the other words added "any misdemeanor in office." The original words were simply "misdemeanor in office." Section 20 declares as a disqualification to hold office, "bribery, forgery, or other high crimes or misdemeanors which may be by law declared to disqualify." In 1875, (see article 7 section one), the words used are "wilful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude while in office or committed under color thereof, or connected therewith.

Now the managers here would invoke all the specifications of article seven section one, of the constitution of Alabama of 1875. They are specific words; they are framed, presumptively by the great men of that not unimportant State, with reference to the new condition, with reference to the incapacity of the words "crimes and misdemeanors," to be so enlarged as to cover misbehavior in office, or other words of synonymous signification.

The constitution of Arkansas was adopted in 1836. In article 4, section 24, the words used are "malpractice or misdemeanor in office." Malpractice was regarded there as necessary, misdemeanor as not sufficient.

In 1868 the constitution of Arkansas was amended; the words used were: "Any misconduct or maladministration of their respective offices." (See article 7, section 62.) In 1874 the constitution of Arkansas was again amended. The language used (article 15, section 1,) was: "high crimes and misdemeanors and gross misconduct in office." By a comparison of the constitution of 1836 we have the provision, "malpractice or misdemeanor in office," changed by the constitution of 1868 and 1874 to "high crimes and misdemeanors and gross misconduct in office."

The constitution of California was adopted in 1849. In article 5, section 19, the words adopted are, "any misdemeanor in office." Those words stand there to-day; the constitution has not been amended. There has been an attempt to amend it, but it has not prevailed.

The constitution of Colorado was adopted in 1876. In article 13, section 2, the words used are, "high crimes or misdemeanors, or malfeasance in office."

The constitution of Connecticut was adopted in 1818. (See pages 262, 265–8 of the work cited. Ben Perley Poore's collection of the Charters and Constitutions of the United States.) Now, here, Senators, mark. There are in the constitution of Connecticut, to this day, no specific impeachable crimes. It is left to the common law, not otherwise.

That constitution you will find creates the court the tribunal to find and exhibit articles of impeachment, yet it makes the higher house of assembly the court or tribunal to try the articles of impeachment and specifies no offenses. Why? Then how do we arrive at the offenses? Why, from the common-law, and nowhere else. That constitution was in part framed by one of the greatest lawyers of Connecticut, Roger Sherman. The common law then, says Mr. Sherman, in so many words is the framer of that organic act, defines what are impeachable offenses. We have taken it from the British common-law on the subject.

The constitution of Delaware was framed in 1792. In article five the language used is "Treason bribery or, any high crime or misdemeanor in office." This language is almost *ipsissima verba* with the language of the constitution of the United States, with the exception that the language used there is "Other high crimes and misdemeanors." In 1831 the constitution of Delaware was amended. The same words are used as above (see article five section 2). In 1875 the constitution of Delaware was again amended, (see article 23) (the language used to meet altered conditions, the necessity being pressing) that these words "Treason, bribery, or any high crime or misdemeanor" meant certain things and did not cover what was regarded in the wisdom of that body, did not cover sufficiently the crimes which ought to demand impeachment, the language used then I say, in 1875 was, "Maladministration, corruption or other things by which the safety of the commonwealth is endangered.".

The first constitution of Florida was adopted in 1838. I find here no express definition of impeachable offenses. In 1865 the Florida constitution was amended (see article 6 section 18) and the language is "Any misdemeanor in office." It would seem then that upon reconsideration after the lapse of nearly 30 years, (the language used in the constitution prior in date was regarded as too latitudinarian), the language which I have just read was adopted. Section 9 of the same article provides for exclusion from office of any person "convicted of bribery, perjury, forgery, or other high crime or misdemeanor." "*Exclusion* from office"—not removal, but it provides substantially that no man shall be eligible for office thereafter who has been convicted of these crimes, bribery, perjury, forgery or other high crime or misdemeanor; disqualifying certain convicts from holding office.

The first constitution of Georgia was adopted in 1798. In this constitution also, and in at least four or five of them there are no specifications of what shall be regarded as official offenses, thus leaving that to be determined, safely as we say, upon the basis of the common law. Article 1, section 10, confers the power to impeach all who may have held or may hold office, without specifying, as I have stated, any ground.

The first constitution of Illinois was adopted in 1818. In article 2, section 23, the words used are, "any misdemeanor in office." In 1848 the constitution was amended, and the same words are adopted. In 1870 the power to impeach is granted by article 5, section 24, in substantially the same language.

The constitution of Indiana was first adopted in 1816. In article 3, section 24, the language used is, "treason, bribery, or other high crimes and misdemeanors," the same language as used in the organic law of the United States.

The constitution of Iowa, the first constitution, was adopted in 1846 (see article 3, section 20). The words used are "any misdemeanor or malfeasance in office." Now, mark you, all of these constitutions antedate our own, which was adopted in 1858, were before and were acted upon, considered and adjudged upon, by the members of our constitutional convention. In Iowa the constitutional provision in relation to impeachment was "any misdemeanor or malfeasance in office." All the framers of our organic law regarded that law as too latitudinarian, although malfeasance is a legal word; but neither misbehavior nor misconduct are legal words or have any signification whatever in the law. In 1857 the constitution of Iowa was amended, and the same words are used, and contained in the same article and section.

The constitution of Kansas was adopted in 1858. The words used in article four, section 23 are "any misdemeanor in office." In 1859 the constitution was amended, and the same words were used.

The first constitution of the State of Kentucky was adopted in 1792, shortly after the adoption of the federal constitution. The words used there are (see article four) "any misdemeanor in office."

In 1799 (see article five, amended constitution) the same words were used. And again the constitution of Kentucky was amended in 1850 and the same words were adopted.

The constitution of Louisiana was adopted in 1812. In article five, section 3, the words are "any misdemeanor in office," not any misbehavior. In 1845 the constitution was amended and I find no general specifications. See however title five, articles four, five, six, seven and eight. The general provisions of law exclude from holding office and from exercising the right of suffrage all persons who may *hereafter* be "convicted of bribery, perjury, forgery or other high crimes and misdemeanors." It is an exclusion, a disqualification. In the constitutions of 1852, 1864 and 1868 the same general features prevail.

The constitution of Maine was adopted in 1820, (see article nine section 5), and the language used was "For misdemeanor in office," here again it is not misconduct, not misdemeanor out of office, but in office, official conduct as used in our constitution, not on the street.

The constitution of Minnesota some of us know all about; we have heard of it.

The constitution of Michigan was adopted in 1835. In article eight section 1, the words used are "corrupt conduct in office or for crimes and misdemeanors." precisely the language of ours—adopted anterior to and therefore to be considered in the construction of the same language where it is used in section 13. Then, further, section 3 of the same article provides somewhat similarly to ours, and to some extent interpreting the provisions of that instrument so far as relates to non-impeachable offences, for which summary and inexpensive methods are

prescribed. Section 3 provides as follows: For "any reasonable cause which shall not be sufficient ground for the impeachment of any of the judges of any of the courts, the Governor shall remove on the address of two-thirds of each branch of the legislature, but the cause or causes for which such removal may be required shall be stated at length in the address." The difference between this article and ours is that article 13 provides punishment by removal for inferior offices only, but the framers of our organic law had in view, undoubtedly, the constitutional enactment of the State of Michigan, which provides that even judges may be removed where there is an offense not of sufficiently grave character to authorize an impeachment.

Now, Senators, here is a construction by the framers of the constitution of the State of Michigan of just the language of our constitution. Referring to section 3, to which I have made allusion, we find "corrupt conduct in office, or for crimes and misdemeanors," which is the provision contained in our constitution precisely. Then immediately following the framers of that constitution construe those words not to mean and not to cover impeachable offenses less than corrupt conduct in office, or crimes and misdemeanors. else why use them?

Although it is a diversion from the line of my argument, as I have referred to the constitution of the State of Michigan, I will here allude, in passing, to the Edmonds trial, which you are aware took place in Michigan. It was referred to by Manager Collins in his final argument, as was also done in the opening. There is a law in Michigan similar to our statute of 1878. I refer to it as I have suggested episodically, and not for the purpose of calling your attention to it again expressly. In Michigan they have a law, which will be found in the compiled statutes of that State for 1871, which was enacted in that year, entitled, "An act to subject all persons holding office under the government of the State of Michigan to removal from office for drunkenness; approved April 5th, 1871." We find that the constitutional words authorizing impeachment in the constitution of Michigan, as already cited, are "corrupt conduct in office, or for crimes and misdemeanors."

Mr. Edmonds, a land officer of the State of Michigan, was impeached, or, rather, articles of impeachment were exhibited against him by the House of that State. Article 10 reads as follows:

> That said Charles A. Edmonds, Commissioner of the State Land Office, unmindful of the dignity of his office, and the requirements of the laws of this State, at divers times during his official term as such commissioner, since the 5th day of July, 1871, at the city of Lansing, and in other places within this State, has been drunk, or so affected by his drinking of intoxicating liquors as to disgrace his office and unfit him for the discharge of his official duties; and the said Charles A. Edmonds, Commissioner of the State Land Office. did thus and then and there show good cause for his removal from office, under the provisions of an act entitled "An act to subject all persons holding office under the government of the State of Michigan to removal from office for drunkenness," approved April 5, 1871.

Manager Collins interrupted Mr. Sanborn in his final argument upon the demurrer, and alleged (of course without examination) that this article ten which I have read was abandoned. That was a mistake, if I read correctly from the record of the trial which I have before me. The trial was conducted with most wonderful ability by Mr. Shipman, a man notoriously and creditably distinguished in that State as a lawyer, and as a man, and Mr. McGowan. The managers were gentlemen by the

names of Huston, (with whose name I am not familiar); but the leading manager, and the principal argument made in the case was by Manager I. R. Grosvenor and by reference to the speeches, (which are very instructive upon this subject), it will be seen that the burthen of Mr. Shipman's very laborious and uncommonly exhaustive argument was devoted to these subjects, although in passing he argued that the testimony was slight. It will be seen that Mr. Grosvenor was, during the trial, or about the time of the argument, afflicted by illness, so that he filed an argument. I shall not read it, but I will read from page 852, the following of the argument of Hon. Ira R. Grosvenor, in support of the articles of impeachment.

I have taken the liberty to present this view of the law in support of the articles, and also in a reply to that portion of the argument of the learned counsel for the respondent in which he claims that the charges contained in the eighth, ninth, tenth and eleventh articles are mere crimes, official crimes, and not impeachable offenses, and shall leave for the present that branch of the subject.

It will be observed that the paragraph which I have read is preceded by 10 or 15 pages of very close and acute reasoning upon that subject. I find further, in answer to the statement that this was abandoned, that the following was the vote upon article 10: Guilty, none; not guilty, twenty-seven.

Another article, similar in its purport, was an article which charged Mr. Edmonds with having committed the crime of adultery. That was article 11, to which Mr. Grosvenor said he had devoted a large portion, as appears, of his argument in answering the position taken by the respondent that that was not an impeachable offense. Article 11, then, charging adultery, was not abandoned. I find the vote upon that article to be guilty, one,—a gentleman named Begole. Not guilty, twenty-six.

The testimony in that case was that the land commissioner, Mr. Edmonds,—a very prominent gentleman, and connected with one of the leading lawyers of that State, was found on various occasions within the very purview of his official residence drunk repeatedly, and had to be put to bed. It is no more than frank that I should say in that connection that Mr. Grosvenor says that the testimony on that point was not as full as they had hoped and anticipated to make it. On article 11, which stands upon the same legal ground the testimony was in brief that Mr. Edmonds was seen to enter a room in some hotel in Lansing with a woman of bad character from Saginaw, and to leave in the morning. That article, then, was not abandoned, and could have been voted upon, not upon the failure or defect in testimony, but upon no other ground than that the offense was not impeachable; that it was beneath the high jurisdiction before which it had been presented. That is an authority and the only authority which can be found on this subject, it appears to me, because the case of Pickering, which has been fully commented upon, is no authority and no precedent. I beg pardon of the Senate for this diversion, but it appeared to me to be a briefer way of disposing of that feature of the case.

The first constitution of the State of Maryland was adopted in 1851. The ante-revolutionary charter served as a constitution until 1851. Article 3, section 33, simply contemplates exclusion from office for "perjury, bribery or other felony,"—disqualification from holding office and nothing further. In 1864 the constitution was amended and also again

in 1867, and the general power over the subject is given, but on no specific ground. The whole topic is therefore left to be administered upon by the common law. It is also provided in that constitution that the governor may remove the judges of any court upon the address of two-thirds of the members of the Legislature. I find that I have misstated the date of the adoption of the first constitution of Maryland. It must have been prior to 1851.

The constitution of Massachusetts was adopted in 1780. The words used there (see chapter 1, article 8, section 2): "Misconduct and malfeasance in office." Amendments to the constitution have since been made, but the same language respecting impeachable offenses has been retained.

The Constitution of New Hampshire was adopted in 1784, under title of General Court. The words are, "Misconduct or maladministration" in office. You see here the Constitution of the State of New Hampshire places this branch of judicature under the head of the General Court. The words used are "misconduct, or maladministration in office." In 1792 the constitution was amended, and under the same title as above, the terms used to define impeachable offenses are, "Bribery, corruption, malpractice, or maladministration in office."

The first Constitution of New Jersey was adopted in 1844. Provision is made in the colonial charter for impeaching officers. In this constitution, as in that of other States, the court is created but no definitions of the grounds are given, leaving the subject of definition to the common law.

The first Constitution of New York was adopted in 1777. Section 32 establishes the court, section 33 defines the causes of impeachment to be "Mal. and corrupt conduct" in the offices named. "Mal. and corrupt conduct"—words which were excluded as we have seen *ex industria* from the Constitution of the United States—the words which have been excluded from our constitutions for the further reasons which have already been urged. The Constitution of New York was amended in 1821. The language there used is "Mal. or corrupt conduct, in office and for high crimes and misdemeanors" (Article 5, section 2.) The constitution was again amended in 1846. The same language is used substantially.

The first Constitution of North Carolina was adopted in 1776. (Section 23.) The article I have omitted from my digest. It provides (the language is quoted correctly, or aimed to be): "The Governor and other officers (named) offending against the State by violating any part of this constitution, maladministration or corruption, may be prosecuted by impeachment, or presentment by a grand jury." In 1868 this constitution was amended, and declares that the enumerated officers may be impeached for "Corruption or other misconduct in his official capacity; habitual drunkenness, intoxication when engaged in the duties of his office, drunkenness in any public place, mental or physical incompetency to discharge the duties of his office, the conviction of any criminal matter which would tend to bring his office into public contempt." Now there, gentlemen managers, there is a constitution for you that covers the case just as completely as did the bull's-hide of Queen Dido cover the site of Carthage. That covers it without section thirteen; that is a tremendous constitution; but it is there, and made an impeachable

office. It was regarded by the authors of this constitution as necessary to make all these specifications.

The present constitution of Georgia was adopted in 1865, and the words are, "high crimes and misdemeanors in office."

The constitution of Mississippi was adopted in 1817; I find no specific ground of impeachment in that instrument. Article 5 relates to the general subject. Section 9 of this article declares that for "willful neglect of duty or other reasonable cause, not constituting sufficient grounds of impeachment," certain official incumbents may be removed, on an address carried by two-thirds of each house of the legislature. Mark you how they distinguish in some of these constitutions between offenses which are regarded in the law as crimes and misdemeanors and offenses which are not of sufficient gravity to be impeachable. The constitution of 1832 has the same general provisions. The constitution of 1868 (article 4, section 28) the words are, "treason, bribery, or any high crime or misdemeanor in office." And the same verbiage is used in that constitution with reference to offenses which are not of sufficient gravity to be impeachable. It is "treason, bribery or any high crime or misdemeanor" only which is regarded as impeachable.

The constitution of Missouri was adopted in 1820. In article three section 29 the language used is "Any misdemeanor in office." That constitution was again amended in 1865 (article seven) and the same words were adopted. In article seven of the constitution as amended in 1875 the language used is "High crimes and misdemeanors and for misconduct, habits of drunkenness, or oppression in office." Where they mean to make such acts impeachable it is nominated in the constitution. Here we have enumerated "Misconduct, habits of drunkenness in office.'

The constitution of Nebraska was adopted in 1865-7. Article two section 29 uses the words "Any misdemeanor in office."

The first constitution of Nevada was adopted in 1864. In article seven section 2 the words used are "Misdemeanor or malpractice."

The constitution of South Carolina was adopted in 1778. The language used is, "Mal and corrupt conduct in office." Malconduct means misconduct. Malconduct, perhaps, strictly, might be defined as a wrong-doing of any act wrong to do. That, I believe, is the definition given in a very valuable work which I have consulted in connection with the preparation for this discussion, but I haven't it here. It is the most philosophical work on synonyms that I have ever read. In 1790 the constitution as then amended uses "Any misdemeanor in office." Now, I say, upon the face of it, it would appear that the language used in the constitution of 1778 was too latitudinarian; therefore the words "Any misdemeanor in office,' were substituted for the words "Mal and corrupt conduct in office;"—coming right back, I reiterate it, within the fence of the common law. In 1865 the constitution of South Carolina was again amended, and here they have retrograded. The words used are "High crimes and misdemeanors, for any misbehavior in office, for any corruption in procuring office, or any act which shall degrade the official character." Gentlemen, managers, here is your *heavy* word—in South Carolina. More than half of the population of that State I believe, are the colored gentlemen, are they not? "Misbehavior in office" is here used, "Corruption in procuring office, or for any act which shall degrade the official character." That language is

broad enough, and covers the case. Then there is another provision in that constitution,, adopted in 1868. in which the words used are, "For any wilful neglect or other reasonable cause, which may not be sufficient ground of impeachment."

The first constitution of Tennessee was adopted in 1796, (see article four), and the words used are "any misdemeanor in office." That Constitution was again amended in 1834, (see article five.) The words used are singular,—"whenever they may (that is, certain officers), in the opinion of the House of Representatives commit any crime in their official capacity which may require disqualification." [Senator Buck, D. here took the chair to act as President *pro tem.*] In 1780 the constitution was again amended, and the same verbiage was incorporated.

In Texas the organic act of the Republic and the several constitutions of the State of Texas, give the power to impeach, provide for the tribunal, and the manner of trying. Though I find no specific grounds of impeachment, that is in the constitution of the Republic of Texas. I merely advert to it as an historical fact. The constitutions of 1876 and 1877 of this State, (see article fifteen, section 6 of each), provide that the "Supreme Court may remove District Court Judges in cases of official misconduct, unfit habits or neglect of official duties." That is all it gives on the subject of removal from office.

The constitution of Vermont was adopted in 1793, (see chapter two section 24), the word used is "maladministration,"—meaning bad administration.

The constitution of Virginia was adopted in 1776. Officers in or out of office were impeachable "for offending against the State." This constitution is peculiar because it authorized the impeachment of an officer, a man who had been an incumbent of office, after he had left the office; and in one or two of the other States similar provisions are made. The impeachable acts are "for offending against the State, by either maladministration, corruption, or other means by which the safety of the State may be endangered." Impeachable by the House of Delegates. In 1830 the constitution was amended. (See article three section 13). The words used are "maladministration, corruption, neglect of duty, or any other high crime or misdemeanor." In 1864, and also in 1870, the same words are used.

The constitution of West Virginia was adopted in 1861, and my recollection with reference to that, (my digest is not perfect here), is that the constitution was proposed to the people of West Virginia in 1861, and was not adopted until 1862. That is the inference I take from my minutes. But the language used in article three section 10, (of the constitution, we will say, of 1863), is, "maladministration, corruption, incompetence, neglect of duty, or any high crime or misdemeanor."

The only constitution to the provisions of which I have not made reference here, (it has *lapsed* from my minutes) is the constitution of the State of Oregon. I will state, however, that the substantial provisions of that constitution are very peculiar, and it seems to me very wise. Oregon stands alone in the constitutions of the States; no offenses are impeachable in Oregon, but for certain official crimes, the offending officer is subject to indictment, and he is tried like any other criminal who is indictable, and the verdict of the jury fixes the punishment for the crime, which does not exceed removal and disqualification.

Senator CAMPBELL. Would the counsellor like a recess for a few minutes?

Mr. BRISBIN. It would be agreeable.

Senator CAMPBELL. I move it.

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

AFTER RECESS.

Mr. BRISBIN (resuming). When the court extended to me the courtesy of a recess, for which I hope I am properly grateful, I had recapitulated with more particularity and tediousness, perhaps, than was consistent with the proprieties, the constitutional provisions of the various States. I had done it,—as has been already intimated, with the view of calling your attention to those provisions, and with the purpose of making or presenting what appeared to me to be the inevitable deductions, that the words "crimes and misdemeanors," were used by the framers of our constitution with a purpose in view of the lights before them, that latitudinarian words, popular words, were excluded therefrom *ex industria*. I have also introduced, for the purpose of saving any lengthy deductions before you, as much interlocutory remark as would indicate on the spot the reason why my mind was irresistibly led to the conclusion which I had reached, and why I suppose that the minds, at least of all the lawyers of this body, should join with me in the conclusions which I derive and express.

The makers of our constitution, I have said, builded that instrument with reference to these precedents with express reference, as I have endeavoured to urge to such constitutions as antedate that of Minnesota. It will not do, gentlemen, for those of us who were the cotemporaries of some of the great men who co-operated in the construction of that instrument, to say that it was the haphazard production of ignorant, or unscientific lawyers and men. I instance, for example, for the purpose of enforcing the position that that constitution was built by wise men, and therefore built well, two of the great names,—known well to the presiding officer and to Senator Hinds, and possibly other gentlemen,—as specimens of the fabricators of that constitution. Moses Sherburne—who was a giant anywhere and a *man* everywhere; Michael E. Ames, who was one of the most astute and scientific lawyers, and, in some respects, the ablest advocate that ever addressed the courts in this State,—perhaps without exception, unless I except a cotemporary, William Hollingshead, who was not a member of the convention. They have gone

"To that high Capitol where kingly Death holds his pale court in beauty and decay."

But it would be insulting the memory of those great men to say that our constitution was not built under the effulgence of the very best lights attainable.

I have now, gentlemen, proceeded to a point where I propose mainly by references, to enforce the position upon which we stand with reference to the general law of this subject,—the subject of impeachable crimes. I have traced briefly,—too briefly to make the subject interesting to myself even;—(for I could not under any circumstances make it interesting or captivating to you)' the history of the common law to

its original recorded sources. I have traced its crystal current from the very mount of God,—generally,—too cursorily to be interesting. We have found that it is marked as perfectly upon the governments and even the minor societies of the world as the track of the Mississippi, which rests its cool head upon the northern lakes and bathes its warm feet in the tepid waters of the Gulf of Mexico. It is a pure and marked current, and therefore we recognize it, therefore we lawyers are proud to speak of it. In viewing, to speak in a figure, the crystal courses of the common law I have been reminded of the beautiful fable in the Greek Mythology, which some of you will recall: Arethusa, one of the Hesperides, was besought in quests of love by the river god Alpheios. Diana, guardian of the fountains, transformed her into a stream, causing it to flow under ground. This beautiful fable is emblematic of the pure sources and clean progress of the common law through the immemorial past. It has been kept clear and clean of turbid contact and courses to-day, as it has through the ages, a pure and crystal stream.

I now propose, gentlemen, mainly by reference,—because I apprehend that anything I may say by way of re-enforcement of the words and arguments of great men, not merely judges, gentlemen, and Senators, but lawyers,—would be presumptuous. The great men, of whom the bar and the people are proud in every community. Lawyers, I say with pride, make as much law as do the courts. The courts expound the law as it is discussed to them by lawyers,—as it is hammered out upon the anvil of glorious intellects. I say, and shall not be contradicted, although it compliments my own profession, (and there are distinguished members of it within the hearing of my voice and the circuit of my vision,) that three men can be named in New York city to-day.—I refer to Charles O'Connor, William A. Beach, and William M. Evarts,—I say that they have *made* more law than all the judges cotemporary with them in the State of New York. It is for this reason, therefore, that some of the refences which I shall make, are from the arguments of such and similar distinguished men. Men who are above partizanship,—men whose pride of character elevates them so high above ordinary men that ordinary men are never able to look at them horizontally. When we speak of Daniel Webster in the Prescott case, we do not refer to him as an advocate for Judge Prescott any more than we do when we refer to his argument in the Dartmouth College case; therefore he is cited as authority. And with him and other men who stand upon the same Alpine promontory of preeminence is Judge Curtis, Judge Groesbeck, Evarts, and others, who have been cited.

Now, we say that an offense, to be impeachable, must, under our constitution, be committed under color of office, in violation of a known law, and be an indictable act. The reasons for this dogmatic conclusion are given briefly, and in language infinitely better than any I could summon in which to panoply by my poor ideas, in that memorable speech which is always referred to as at once the archetype and model of majestic defensive eloquence,—I cite from the speech of the Earl of Strafford. He says:

It is hard, my lords, to be questioned upon a law which cannot be shown! Where has this fire lain hid for so many hundred years without smoke to discover it, till it thus bursts forth to consume me and my children? My lords, do we not live under laws? And must we be punished by laws before they are made? Far better were it to live by no laws at all; but to be governed by those characters of

virtue and discretion which nature hath bestowed upon us, than to put this necessity of *devination* upon a man, and to accuse him of a breach of law *before it is a law at all!* If a waterman upon the Thames split his boat by grating upon an anchor, and the same have no buoy appended to it, the owner of the anchor is to pay the loss; but if the buoy be set there, every man passeth at his own peril. Now, where is the mark, where is the token set upon the crime to declare it to be high treason?

Ponder this as illustrating, in brief, the reason and the necessity of being governed by law, and of not chastising the citizen for disobedience to law unless it is *a known law*. I refer also with pride to the way English and American lawyers glory in the fact that the definitions of the law are such that they cannot be misunderstood. They are the landmarks of society, the landmarks of government, the beacons at once and the lighthouses of all civilized organizations. Examine the speech of Lord Erskine found on page 638 of British Eloquence, by Professor Goodrich.

It is in his speech in behalf of Lord George Gordon, who was indicted for treason.

In nothing, therefore, is the wisdom and justice of our laws so strongly and eminently manifested as in the rigid, accurate, cautious, explicit, unequivocal definition of what shall constitute this high offense.

* * * * * *

Injuries to the persons and properties of our neighbors considered as individuals, which are the subjects of all other criminal prosecutions are not only capable of greater precision, but the powers of the State can be but rarely interested in straining them beyond their legal interpretation. But if treason, where the government is directly offended, were left to the judgment of its ministers, without any boundaries—nay, without the most broad, distinct and inviolable boundaries, marked out by the law, there could be no public freedom. The condition of an Englishman would be no better than a slave's at the foot of a Sultan: since there is little difference whether a man dies by the stroke of a sabre, without the forms of a trial, or by the most pompous ceremonies of justice, if the crime could be made at pleasure by the state to fit the fact that was to be tried. Would to God, gentlemen of the jury, that this were an observation of theory alone, and that the page of our history was not blotted with so many melancholy disgraceful proofs of its truth! But these proofs, melancholy and disgraceful as they are, have become glorious monuments of the wisdom of our fathers, and ought to be a theme of rejoicing and emulation to us, for, from the mischiefs constantly arising to the State from every extension of the ancient laws of treason, the ancient law of treason has been always restored, and the constitution at different periods washed clean; though, unhappily, with the blood of oppressed and innocent men.

I read from page 290 in the trial of Judge Peck, the remarks of Judge Spencer, who was one of the managers associated with Mr. Buchanan in that prosecution, where he gives his definition (and it is *quasi* judicial) of an impeachable offense by a judicial officer.

It is necessary to a right understanding of the impeachment, to ascertain and define, what offenses constitute judicial misdemeanors. A judicial misdemeanor consists, in my opinion, in doing an illegal act *colore officii* with bad motives, or in doing an act within the competency of the court or judge in some cases, but unwarranted in a particular case from the facts existing in that case, with bad motives.

That is what Judge Spencer defines to be a judicial misdemeanor. Mr. Buchanan, associated with Judge Spencer as manager, on page 427, same work, says:

What is an impeachable offense? This is a preliminary question, which demands attention. It must be decided before the court can rightly understand what it is they have to try. The constitution of the United States declares the tenure of the judicial office to be "During good behavior." Official misbehavior, therefore, in a judge is a forfeiture of his office. But when we say this, we have advanced only a small distance. Another question meets us. What is misbehavior in office? In answer to this question, and without pretending to furnish a definition, I freely admit we are bound to prove that the respondent has violated the constitution, or some known law of the land.

I had also made a citation from the argument of Senator Hinds as manager in the Page case, but my reference is not here.

I refer again upon this subject as to the character of crime cognizable by this court, to the second volume of the life of Judge Curtis, page 410. He says:

My first position is, that when the constitution speaks of "Treason, bribery, and other high crimes and misdemeanors," it refers to, and includes only, high criminal offenses against the United States, made so by some law of the United States existing when the acts complained of were done; and I say that this is plainly to be inferred from each and every provision of the constitution on the subject of impeachment.

"Treason" and "Bribery." Nobody will doubt that these are here designated high crimes and misdemeanors against the United States, made such by the laws of the United States, which the framers of the constitution knew must be passed in the nature of the government they were about to create, because these are offenses which strike at the existence of that government. "Other high crimes and misdemeanors." *Nositur a sociis.*

That is, he is known by his companions—vulgarly, by the company he keeps.

We have already seen, by the reference which I made to page 89, of volume one, of Johnson's trial, in the course of the speech of manager Butler—that the word high has no significance at all. That "Crimes and misdemeanors" are convertible words with "High crimes and misdemeanors." We have also seen by reference to the argument of Mr. Hopkinson I think, in the Chase trial, that the word "High," and that is the grammatical and necessary construction, where it is used, should read the same as if read "High crimes" and "High misdemeanors." Now we have Judge Curtis, in this argument from which I have quoted, saying, in so many words, that the constitution means offenses which are of sufficient rank to keep company with treason and bribery, high crimes and misdemeanors. Not venal offenses, not crimes indicating moral turpitude; not the expression of sentiments or the performance of acts which some of us disapprove and others approve, but something highly penal,—something which demands the condign punishment which you members of this court are authorized in the last emergency to inflict upon a man accused, if found guilty.

"Other high crimes"—[to reiterate the last sentence]—"other high crimes and misdemeaners." High crimes and misdemeanors, so high that that they belong in this company with treason and bribery. This is plain on the face of the constitution, in the very first step it takes on the subject of impeachment. "High crimes and misdemeanors" against what law? There can be no crime, there can be no misdemeanor without a law, written or unwritten, express or implied. There must be some law, otherwise there is no crime. My interpretation of it is, that the language "high crimes and misdemeanor" means "offenses against the laws of the United States."

The argument proceeds further, but in the same general strain. I now refer gentlemen, to an authority which has been quoted, and I shall read briefly. Whether the same quotations have been made by my predecessors or not I do not know, but if so, I conceive that so much time has elapsed since the opening arguments upon the demurer here that perhaps repetition will be agreeable, and possibly important. I have not read the arguments of the gentlemen on the demurrer and heard only a portion of them. I will read therefore, from Professor Dwight. He is the law-professor in Columbia College. He speaks not as a partizan but as a judicial lawyer, addressing a class of students in the law; not to accomplish any object except to instruct those who may come after him in the noble profession of the law. I read from pages 263–4 under the head of "The crimes for which an impeachment may be had." Mr. Dwight says:

Upon this topic it is important to made two inquiries: First, what were the subjects under the English law which could be tried by impeachment; second, what cases under our system can be tried in this manner.

Now, in the next paragraph is a characteristic remark by Professor Dwight, which discovers at once to us that he is speaking not in the character of a partizan, but as a conscientious instructor of the youth under his charge and instruction. I will say, further, in alluding to Professor Dwight, that possibly next to Ex-President Woolsey, of New Haven, he is the most philosophical lawyer in the country to-day. I do not mean as an advocate, I do not mean as a disputant at the bar,—the tumultuous arena of the legal forum, but as a philosophical expounder of the law he stands second to no one, unless possibly to ex-President Woolsey. I was remarking that the next paragraph shows to us the character in which he was addressing the young men under his tuition.

In examining the first question, (that is, as to what offenses are impeachable,) it must be conceded that the judgments of the courts are not absolutely uniform. This could hardly be expected, both because there is no system of appeal by means of which authoritative precedents could be established, and because the House of Lords has been at times impelled by faction, or overborne by importunity, or overawed by fear. The weight of authority is therefore to be followed. So said the great Selden, in a speech which he made as one of the committee of the house in the impeachment of Ratcliffe. "It were better to examine this matter according to the rules and the foundations of this house, than to rest upon scattered instances." The decided weight of authority is that no impeachment will lie except for a true crime, or in other words, for a breach of the common or statute law, which, if committed within any county of England, would be the subject of indictment or information. * * * It is asserted (Professor Dwight concludes) without fear of successful contradiction, both upon authority and principle, notwithstanding a few isolated instances, apparently to the contrary, that no impeachment can be had where the King's bench would not have held that a crime had been committed, had the case been properly before it. There are no doubt extreme cases favoring an opposite view.

Pages 266-7 pursue the same general current of argument.

The later and most authoritative decisions are clear to this effect. In the impeachment of the Earl of Macclesfield, who was a great lawyer, and at one time Lord Chancellor, the case was put exclusively on such criminality as is the subject of indictment. It was agreed that he had violated the statute of 6th Edward, VI.,

concerning the administration of justice, while he rested his defense on the fact, that it was not criminal for a judge to receive presents either by common or statute law. The decision of this case against Macclesfield is critized by Lord Mahon and others, but is defended by Campbell, on the ground that the statute of Edward VI. was violated: 16 How, S. T. 823; 4 Camp. Lord Chan, 536. This is one of the best considered cases on the subject.

Further on, on page 267, he says:

The text-writers and leading jurists are of the same opinion. Says Wooddeson: "The trial differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail, for impeachments are not framed to alter the law, but to carry it into more effectual execution, where it might be obstructed by the influence of too powerful delinquents, or not easily discerned in the courts of ordinary jurisdiction by reason of the peculiar quality of the alleged crimes. The judgment thereof is to be such as is warranted by legal principles or precedents:" Lectures, vol. 2, p. 611. So Cushing, in his "Law and Practice of Legislative Assemblies," says: "The proceedings are conducted substantially as they are upon common judicial trials as to the admission or rejection of testimony, the examination and cross-examination of witnesses, and the legal doctrines as to crimes and misdeameanors.

Farther on, upon page 268, he says:

I have dwelt the longer upon this point because many seem to think that a public officer can be impeached for a mere act of indecorum. On the contrary, he must have committed a true crime, not against the law of England, but against the law of the United States.

I now refer to Benton's Abridgment, vol. 3, pages 237 to 240, the whole of which I shall not read. This is from the argument of Mr. Hopkinson, a man who perhaps had as much experience upon both sides of the early impeachment trials in the United States as any other lawyer, unless possibly, his cotemporary, Mr. Harper. And I read it because it is authority; I read it because it is reason, and because it is better stated than it could be by me.

The first proper object of our inquiries in this case is, to ascertain with proper precision what acts or offenses of a public officer are the objects of impeachment. This question meets us at the very threshold of this case. If it shall appear that the charges exhibited in these articles of impeachment are not, even if true, the constitutional subjects of impeachment; if it shall turn out on the investigation that the judge has really fallen into error, mistake, or indiscretion, yet if he stand acquitted in proof of any such acts as by the law of the land are impeachable offenses, he stands entitled to discharge on his trial. This proceeding by impeachment is a mode of trial created and defined by the constitution of our country.

It is proper, perhaps, for me to remark—what is a well-known fact—that these arguments are digested and re-written by counsel, by all of the distinguished members who figured in those impeachment cases, and therefore are not struck off in the fervidity of the arena, but they are the cool and deliberate judgment of the men, after the acts of the discussion and its facts have transpired.

This proceeding by impeachment is a mode of trial created and defined by the constitution of our country; and by this the court is exclusively bound. To the constitution, then, we must exclusively look to discover what is or is not impeachable. We shall there find the whole proceeding distinctly marked out; and everything designated and properly distributed necessary in the construction of a

court of criminal jurisdiction. We shall find, first, who shall originate or present an impeachment; second, who shall try it; third, for what offences it may be used; fourth, what is the punishment on conviction.

* * * * * * * *

I offer it as a position I shall rely upon in my argument, that no judge can be impeached and removed from office for any act or offense for which he could not be indicted.

I have remarked, in passing, that it does not make an offense impeachable, because it is already indictable. By no means; it is only impeachable, if within the purview of the offenses intended by the verbiage of the constitutions,—to which reference has been made. For example: seeing my friend, Senator Gilfillan, there,—I came very near breaking my neck one dark night in passing by the imposing structure which he has erected—a monument to his public spirit, and of which we are justly proud—because he had obstructed the sidewalk. I do not claim therefore that Senator Gilfillan, being a member of this court, though he might be indictable would be impeachable.

It does not follow, therefore, that because an offense is indictable it would be impeachable. The question to be determined is, as I have already stated, whether or not it was intended to be impeachable. Resuming my citation from Hopkinson:

One of the gentlemen, indeed, who conduct this prosecution, (Mr. Campbell) contends for the reverse of this proposition, and holds that for such official acts as are the subject of impeachment no indictment will lie or can be maintained. For, says he, it would involve us in this monstrous oppression and absurdity that a man might be twice punished for the same offense—once by impeachment, and then by indictment. And so most surely he may; and the limitation of the punishment on impeachment takes away the injustice and oppression the gentleman dreads.

The impeachment is punishment of the official character, I remark here parenthetically. It is the arraigning of the official character, and the punishment follows upon conviction. The punishment relates to the official character. He is prosecuted by the entire commonwealth, and if found guilty is remitted as an individual to the bailiwick or the immediate jurisdiction. Therefore, we see that in the constitution of the United States, and I think I am correct in stating, in the constitutions of all of the States; the provision is expressly made that this punishment shall not withdraw the convict from the reach of the criminal law for his offense as an individual.

I reiterate the remark that the constitutions of all, or nearly all, the States turn over the convict to what I may call the municipal jurisdiction as a criminal; and right here I say that there is an argument indicating to my mind with the very strongest force that it was indictable offenses which were referred to in that constitution—in the constitution of all of the States, I believe—certainly I am correct in stating that in a majority, and I believe I am correct in stating in all of the States—the convict is handed over to indictment, why refer to indictment in all of these cases if it was not in contemplation that the offense should be indictable? Resuming from Mr. Campbell:

For, says he, it would involve us in this monstrous oppression and absurbity, that a man might be twice punished for the same offense,—once by impeachment,

and then by indictment, and so most surely he may; and the limitation of the punishment on impeachment takes away the injustice and oppression the gentleman dreads.

The House of Representatives had the power of impeachment; but for what they are to impeach, in what cases they may exercise this delegated power, depends on other parts of the constitution, and not on their opinion, whim, or caprice. The whole system of impeachment must be taken together, and not in detached parts; and if we find one part of the constitution declaring who shall commence an impeachment, we find other parts declaring who shall try it, and what acts and what persons are constitutional subjects of this mode of trial. The power of impeachment is with the House of Representatives, but only for impeachable offenses. They are to proceed against the offense in this way when it is committed, but not to *create* the offense, and make any act criminal and impeachable at their will and pleasure. What is an offense is a question to be decided by the constitution and the law, not by the opinion of a single branch of the Legislature; and when the offense thus described by the constitution or the law has been committed, then and not until then has the House of Representatives power to impeach the offender. So a grand jury possesses the sole power to indict; but in the exercise of this power they are bound by positive law, and do not assume under this general power to make anything indictable which they might disapprove. If it were so, we should indeed have a strange, unsettled, and dangerous penal code. No man could walk in safety, but would be at the mercy of the caprice of every grand jury that might be summoned, and that would be a crime to-morrow which is innocent to-day. * * * But if we are to lose the force and meaning of the word "high" in relation to misdemeanors, and this description of offenses must be governed by the mere meaning of the term "misdemeanors," without deriving any grade from the adjective. Still my position remains unimpaired, that the offense, whatever it is, which is the ground of impeachment, must be such a one as would support an indictment. "Misdemeanor" is a legal word, and technical term, well understood and defined in law; and in the construction of a legal instrument we must give to words their legal signification. A misdemeanor or a crime,—for in their just and proper acceptation they are synonymous terms,—is an act committed or omitted, in violation of a public law, either forbidding or commanding it. By this test let the conduct of the respondent be tried, and by it let him stand justified or condemned.

Does not, sir, the court, provided by the constitution for the trial of an impeachment, give us some idea for the grade of offenses intended for its jurisdiction? Look around you, sir, upon this awful tribunal of justice.

He then proceeded with some heroic rhetoric which I will not detain the court by reading.

I had a reference, also, to Mr. Webster's speech in the trial of Judge Prescott, 5 Webster's Works, pp. 513, 515. That reference was made by my predecessor, Mr. Allis, and I will not occupy your time by a repetition. It has been said in this argument, or in connection with this discussion, *arguendo*, that Judge Prescott was convicted. That is so, but he was convicted under the verbiage of that provision of the constitution to

which I have called your attention,—"malpractice, malconduct in office." That was the ground of the conviction there. If we had such a constitution as that we would have other grounds of defense.

I refer also to the opinion of Senator Reverdy Johnson in 3 Johnson's Trial, page 51. Senator Johnson was one of the judges in that case, and his is a great and venerable name, of which the bar of the country is justly proud. By way of relief to myself I call attention, but not by express citation, to the first volume of Judge Curtis' life, written by his brother, Mr. Curtis of New York, also a prominent gentleman, to certain correspondence between Reverdy Johnson and Judge Curtis, which relates to the connection of Judge Curtis with the trial of President Johnson,—for the purpose of illustrating the character of those two great men. It is well known to those who are familiar with the life of Judge Curtis that he retired from the bench of the supreme court of the United States because of his poverty; because he was unable to support the circumstances of luxury which his position demanded, upon his official salary. He therefore went back to the ranks of the profession, resigning the first position in the country from necessity. It is also notorious, perhaps, at any rate it is very interesting to see the diffidence with which Judge Curtis undertook the defense of President Johnson. He was written to by Mr. Stansberry, then attorney general, and solicited—the letter, stating that when the subject of counsel was proposed, the first name mentioned by President Johnson, and echoed at once by the entire cabinet, was Judge Benjamin R. Curtis of Boston. And thereupon, and upon particular urgency, after various correspondence, Mr. Curtis, aware of the fact that President Johnson had no money to pay him for his services, aware also of the fact, that it involved his abandonment for the time of a very lucrative practice (the best, I believe, at the time in the State of Massachusetts), involving a serious pecuniary loss, he deliberated upon it, and finally writes to his brother, the author of his biography, saving that he has concluded to accept the position; that he regarded it to be the performance of a great public duty, and that he would feel as if he was not justified before the public, and in his own mind, if he should decline it because it involved sacrifices. After the acquittal of President Johnson he was tendered the office of attorney-general and declined to accept it. Correspondence ensued between Senator Johnson, the gentleman to whose argument in this opinion I am about to refer, soliciting him to make the sacrifice and accept of this distinguished appointment on grounds professional and public. I allude to this for the purpose of inlighting the grand, the unselfish and unjealous intimacy of the elevated men of the world in whatever walk or of whatever calling they may be.

I now refer to page 51 of the third volume of Johnson's trial. After enforcing other grounds Mr. Johnson says:

> That the terms "crimes and misdemeanors" in the quoted clause mean legal crimes and misdemeanors (if there could be any doubt upon the point) is further obvious from the provision in the third section of the first article of the constitution, that, notwithstanding the judgment on impeachment, the party is liable to "indictment, trial, judgment and punishment according to law."

I find, gentlemen, in looking over some of these references, I have adopted the same ideas,—anticipated some of these references; they are therefore, probably not original with me. I have in some of my preceding remarks claimed that the juxtaposition of these words in the sections of the constitution referred to, made it obvious that the framers of the constitution had high crimes and misdemeanors in their minds. Senator Johnson continues:

This proves that an officer can only be impeached for acts for which he is liable to a criminal prosecution. Whatever acts, therefore, could not be criminally prosecuted under the general law cannot be the grounds of an impeachment. Nor is this doctrine peculiar to the United States. It was held in the case of the impeachment of Lord Melville, as far back as 1806, and has never since been judicially controverted in England. The charges in that case were the alleged improper withdrawal and use of public moneys entrusted to him as treasurer of the navy. By the managers it was contended that these were by law crimes and misdemeanors, and denied by his lordship's counsel. The impeachment evidently turned upon the decision of the question. The opinion of the judges was requested by the House of Lords, and their answer was, that they were not crimes or misdemeanors, and his lordship upon the vote in the aggregate upon all the articles, of one thousand three hundred and fifty, was acquitted by a majority of 824.

I will read in this connection the question which was voted upon in the trial of Lord Melville. It is found in 29 Howell's State Trials, page 1,470. I do this as a verification of the statement of Senator Johnson.

Friday June 6th, 1806.

The lords being met in the chamber of parliament the following question was put to the judges:

3. Whether it was lawful for the treasurer of the navy, before the passing of the act of 25 Geo. 3rd c. 31, and more especially——

[To the Secretary of the Senate.] Will you read those two questions and answers for me? My throat is troubling me a good deal.

Whether it was lawful for the treasurer of the navy, before the passing of the act of 25 Geo. 3rd, c. 31, and more especially, when by warranty from His Majesty, his salary, as such treasurer as aforesaid, was augmented in full satisfaction for all wages, fees and other profits and emoluments, to apply any sum of money imprested to him for navy services, to any other use whatsoever, public or private, without express authority for so doing; and whether such application by such treasurer would have been a misdemeanor, or punishable by information or indictment?

Monday, June 9, 1806.

The lords being met in the Chamber of Parliament, the lord chief justice of the court of Common Pleas delivered the unanimous opinion of the Judges upon the third question.

That it was not unlawful for the treasurer of the navy, before the act 25th Geo., 3rd, C. 31, although after the warrant stated in the question, to apply any sum of money imprested to him for navy services, to other uses, public or private without express authority for so doing, so as to constitute a misdemeanor punishable by information or indictment.

Mr. BRISBIN, (resuming.) Well, gentlemen, you learn from the citation last made that Lord Melville (and that is the last impeachment trial in England) was acquitted on the ground that the offense charged

in the article was not an indictable offense; and that is the best extant authority attainable.

I read also in the same connection from page 459, vol. 3, of the Johnson trial, the opinion of Senator Davis. (This citation the secretary was also requested to read, and read as follows:)

Treason, bribery, and other offenses of the nature of high crimes and misdemeanors, to be impeachable, must be crimes against the general law of the United States, and punishable in their courts of the localities where committed. Thus, treason against the United States is an impeachable offense, whether it be committed in any State or Territory, or the District of Columbia, and so of any act to be impeachable it must be an offense by the laws of the United States, if perpetrated anywhere within its boundary That an act done in a portion of this district ceded by the State of Maryland would be an impeachable offense, and a similar act done in any place beside in the United States would not be impeachable, is sustained by neither law nor reason. Such an offense would be against the District of Columbia, not against the United States. The law of impeachment is uniform and general, and it has no phase restricting it to the District of Columbia, as has been assumed by the prosecution.

Then, besides treason and bribery, which are impeachable by the constitution, to make any other act an impeachable offense it must not only be defined and declared to be an offense, but it must be stamped as a *high crime or misdemeanor* by an act of Congress The words "High crimes and misdemeanors" do not define and create any offense, but express generally and vaguely, criminal nature, and of themselves could not be made to sustain an indictment or other proceeding for any offense whatever; but a law must define an offense, and affix one of those terms to it to make it a constitutional ground of impeachment. And this is not all; the offense in its nature must have the type of heinous moral delinquency or grave political viciousness, to make an officer committing it amenable to so weighty and unfrequent a responsibility as impeachment. He may have been guilty of a violation of the Sabbath, or of profane swearing, or of breeches of the mere forms of law, and if they had been declared offenses by act of Congress, with the prefix of "High crime" or "High misdemeanor" attached to them, they would not be impeachable offenses. They would be too trivial, too much wanting in weight and State importance to invoke so grave, so great a remedy. Nor would any crime or offense whatever against a State, or against religion or morality, be a cause for impeachment, unless such an act had been previously declared by a law of Congress to be a *high crme* or a *high misdemeanor*, and was in its character of deep turpitude.

Mr. BRISBIN. (Resuming.) I will conclude these references.

Senator ADAMS. One moment, please. Mr. President, it should be, and is, without doubt, apparent to the Senators upon the floor that the counselor has spoken about as long as he is able to endure it. It would be better, in the interest of justice and of all concerned, that we take a recess until 8 o'clock, and let him then go on and finish his argument. Human endurance only extends to a given limit; beyond that limit a man breaks down. He neither does justice to himself nor his subject. I suggest that the Senate now take a recess until 8 o'clock this evening.

Senator HINDS. Let us hear from the counsel himself.

Mr. BRISBIN. I am obliged for the courtesy of the Senator. I had about concluded my references and perhaps before that recess is taken, as General Jennison has kindly volunteered to read for me, I may as well request his further courtesy to read the matter as taken from sections 797-9 of Story on the Constitution. I refer to it from page 411 of the Hubbell trial, because of more ready reference, and because it is adopted by Judge Ryan who was prosecuting there. The prosecution in that case was conducted with very great bitterness. I do not refer

invideously to it, or to the individual. I speak it of course with the highest respect for a great author. I apprehend that no lawyer refers to Judge Story as an authoritative text-writer, whose writings are at all conclusive upon a legal proposition. He states all of the law as a general thing, upon both sides. He is not good authority. Although he has a very great name in jurisprudence, he is not writing from a judicial stand-point. For that reason his text-books are not relied upon, (that is my judgment), generally by the bar, as being of very great authority, in comparison with others that might be named. He is cited, for example, upon both sides of this case. I merely refer to this not as conclusive at all in support of the propositions which I have maintained in argument, and by authority, but as stating in general terms the importance of the character of offenses which are cognisable by this tribunal. The gravity of these offenses and the necessity of hedging these tribunals about by well-known principles of law; I refer to this in conclusion for that purpose and beg the courtesy of Gen. Jennison to read it.

The Secretary then read as follows:

Resort, then, must be had to parliamentary practice and the common law, in order to ascertain what are high crimes and misdemeanors, or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions, that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time, or in one person, which would be deemed innocent at another time, or in another person. The only safe guide in such cases must be the common law, which is the guardian at once of private rights and public liberties. And, however much it may fall in with the political theories of certain statesmen and jurists to deny the existence of a common law belonging to and applicable to the nation in ordinary cases, no one has as yet been bold enough to assert that the power of impeachment is limited to offenses positively defined in the statute-book of the Union as impeachable high crimes and misdemeanors.

The doctrine, indeed, would be truly alarming, that the common-law did not regulate, interpret and control the powers and the duties of the court of impeachment. What, otherwise, would become of the rules of evidence, the legal notions of crimes, and the application of principles of public or municipal jurisprudence to the charges against the accused? It would be a most extraordinary anomaly, that while every citizen of every State originally composing the Union would be entitled to the common law as his birthright, and at once his protector and guide, as a citizen of the Union, or an officer of the Union, he would be subjected to no law, to no principles, to no rules of evidence. It is the boast of English jurisprudence, and without it the power of impeachment would be an intolerable grievance, that in trials by impeachment the law differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, same legal notions of crimes and punishments prevail, for impeachments are not framed to alter the law, but to carry it into more effectual execution, where it might be obstructed by the influence of too powerful delinquents, or not easily discerned in the ordinary course of jurisdiction, by reason of the peculiar quality of the alleged crimes. Those who believe that the common law so far as it is applicable, constitutes a part of the law of the United States in their sovereign character as a nation, not as a source of jurisdiction, but as a guide and check and expositor in the administration of the rights, duties, and jurisdiction conferred by the constitution and laws, will find no difficulty in affirming the same doctrines to be applicable to the Senate as a court of impeachment. Those who denounce the common law as having any application or existence in regard to the national government must be necessarily driven to maintain that the power of impeachment is, until Congress shall legislate, a mere nullity, or that it is despotic, both in its reach and in its proceedings. It is remarkable that the first Congress, assembled in October, 1774, in their famous declaration of their rights of the colonies, asserted "that the re-

pective colonies are entitled to the common law of England, and that they are entitled to the benefit of such of the English statutes as existed at the time of their colonization, and which they have by experience respectively found to be applicable to their several local and other circumstances." It would be singular enough if, in framing a national government, that common law, so justly dear to the Colonies, as their guide and protection, should cease to have any existence as applicable to the powers, rights, and privileges of the people, or the obligations and duties and powers of the department of the national government. If the common law has no existence as to the Union as a rule or guide, the whole proceedings are completely at the arbitrary pleasure of the government and its functionaries in all its departments.

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

Mr. BRISBIN. That concludes, gentlemen, all the citations I propose to make.

Senator CROOKS. Mr. President, I think as a convenience to the counsel, who is very much troubled with his throat, that it would not be right to ask him to go on to-night. I think if he should rest until to-morrow morning he would then be ready to go on with his argument. I would therefore move to amend the motion of the Senator from Dakota, by moving that we now adjourn.

Mr. BRISBIN. I will state to the Senate, if the President will permit, that it is not physical disability or weariness with the argument that troubles me. I have been for the last two or three years occasionally liable to be suddenly attacked with an enlargement of the throat to such an extent that I have been at times almost at the point of suffocation, and it is that I am apprehensive of. It has only attacked me within the past few moments. I regret very much to ask this courtesy, and I shall not ask it unless tendered. The reason is that I pledged myself in advance to certain members of the Senate, when it was anticipated that I might be forced to open my argument last evening, that I would only occupy one day, and I will say that if I am permitted to speak in the morning I shall occupy with my concluding remarks but a short time. The most of my argument is concluded, and what I shall have to say in conclusion, if I am able to say anything farther, will be a brief resume of the facts, not an analysis but simply a casual going over of the facts and perhaps a few considerations to be addressed to your judgment in behalf of the respondent.

Senator ADAMS. Mr. President, I rise to second the motion.

The PRESIDENT *pro tem.* A motion to adjourn would carry it to 9 o'clock.

Senator GILFILLAN, C. D. Would one hour be sufficient to finish the argument?

Mr. BRISBIN. My impression is it would. I should endeavor to be very brief. It is very possible I might be able to go on this evening.

Senator GILFILLAN, C. D. I would vote in favor of the adjournment with the understanding that the counsel closes at ten, so as to give the counsel for the State an opportunity to speak to-morrow.

Mr. BRISBIN. Oh, I will go on this evening, and I will get through.

Senator ADAMS. I hope there will be no disposition to close this argument prematurely. If it would take the counsel two hours to-day, it will take him two hours to-morrow. I can assure the Senate of the fact that not a moment will be taken more than will be actually necessary. Let the counsel get through with his argument whether it takes him one hour or two. I don't want to have him handicapped in his present disabled condition, and say he must get through in one hour what would take him two hours in the morning.

Senator GILFILLAN, C. D. I would simply state that if the argument is going to occupy the forenoon of to-morrow, the result will be that this court will not get through this week. The proceedings will continue into next week. I believe it is very desirable upon the part of every Senator here that we should certainly close our labors the present week.

Senator ADAMS. True Senator.

Senator GILFILLAN, C. D. I thought if the counsel could get through in one hour to-morrow that there would be no reasonable excuse on the part of the managers not to continue then.

Senator MEALEY. Mr. President—

The PRESIDENT *pro tem.* There is a motion to adjourn before the House.

Senator CAMPBELL. I raise the point of order that there is no motion before the House upon which debate can be had.

The PRESIDENT *pro tem.* As many as favor the motion to adjourn will say aye; contrary, no. The ayes have it.

The Senate then adjourned.

FORTY-NINTH DAY.

ST. PAUL, MINN., Thursday March 16th, 1882.

The Senate met at 9 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, Crooks, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson R. B., McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Pillsbury, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, 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.

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, 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 *pro tem.* Counsellor Brisbin will resume his argument.

Mr. BRISBIN. May it please the president and members of the Senate.

At the time your courtesy was volunteered to me last evening, I felt that probably I might be able this morning to resume my argument with the expectation of closing it formally and fully without, however, invoking your indulgence to a prolonged course of remarks. My inability last evening was not occasioned by weariness, but by a distension of the bronchial glands, and I have been advised by my physician, consulted this morning, that it would be imprudent for me to make a prolonged discussion. I therefore promise to relieve you in a few moments.

I am the more embarrassed and discouraged by this *contretemps* for the reason that the general course of argument which I intended to address to you, had been completed alone upon the law without any suggestions as to the facts, and what I had designed in continuation—(being anxious to abbreviate as much as possible,) was to make a general *resume* of my argument, and present to you such deductions—a little more fully than I shall be able to do now—as I thought necessarily followed and must necessarily follow in your minds as they have in mine. My mind has been directed, I hope and believe, to an examination and consideration of the facts herein involved, and their gravity as related to possible results, conscientiously,—although, of course, with some bias, such bias as always affects counsel and parties.

I shall not be able to satisfy my own expectations. I had proposed to allude somewhat *in extenso* to a topic suggested by the interlocutory discussion between Senator D. Buck and myself near the opening of my

argument, that is, as to whether or not this is a *criminal* prosecution. That subject has been cursorily hinted at in my previous remarks.

Permit me to repeat the expression of my sincere regret that there shonld have been a misunderstanding between the Senator and myself. It was entirely owing to my negligence and to the company he kept *noscitur a sociis*. I held Senator Buck responsible as endorser, I did not know the maker of the paper. The Senator admits that this is a court (I hope there can be no misunderstanding now)—but he seems to intimate that this was not a criminal trial.

Senator BUCK D. You are correct this time.

Mr. BRISBIN. I am very glad to be caught at it once, I intend to be always so, sir, and the remarks that I made I was led to make not by information from others but by my own recollections of the occasion. It was doubtless a confusion of the Senator with a neighboring member of the court. For the illumination of the Senator let us retrace our steps. Recall to your minds from the mass of authority which has been cumulated upon this position, the impressive protestation and disclaimer of that great and well remembered man, Mr. Nicholson, leading manager in the impeachment trial of Judge Chase, joined in in battle as he was with giants "*Fortes vixere ante Agamemnona*" (no reference but playful is made to the Senator from Blue Earth.

"We are told by the honorable counsel for the accused that when we found the accusation shrunk from the testimony and that the case could no longer be supported, we resorted to the forlorn hope of contending that an impeachment was not a criminal prosecution but a mere inquest of office. For myself I am free to declare that I heard no such position taken. If declarations of this kind have been made, in the name of the managers I here disclaim them. We do contend that this is a criminal prosecution, for offences committed in the discharge of high official duties, and we support it, not merely for the purpose of removing an individual from office, but in order that the punishment inflicted on him may deter others from pursuing the baleful example which has been set them.

If, then, it is a court, is it a court organized for the trial of civil actions? Has it anything to do with rights of property? Is it a prosecution for money, or does it involve any of those material interests which generally come before courts of civil jurisdiction? It appears to me that such a conclusion is a clear *non sequitur* from the premises. It is, therefore, I repeat, with Senator Adams, a court. It is a court of criminal jadicature, and nothing else. It is, in a certain sense, *sui generis*, and in the very nature of the case, a court from which there is no appeal. Its jurisdiction and the functions imposed upon it by the constitution and the law are therefore more strictly pursued. The questions are heard and solved with more care, because the responsibilities devolved upon you are of far greater consequence than those resting upon what are generally called inferior courts—courts of original jurisdiction, as we lawyers denominate them. From these courts there is an appeal. From *your* decision there is no appeal. It is *ultima ratio* except to your own consciences and to public opinion, which sometimes, like the banquetters of Sisera, punishes the host.

Hence, it is urged with emphatic confidence that this is not only a criminal trial, but a trial, as I have already insisted, devolving upon a perilous responsibility. What is the result? What does the consti-

tution declare shall follow upon conviction? Is the word penalty used with reference to civil cases, Senators? Upon conviction, the "*penalty* shall not exceed removal from and disuualification to hold office." Penalties are not consequent upon civil proceedings.

Not a criminal prosecution! Does not your judgment strike at the immortal part? Under our benign institutions all the roads which lead to the summits of authority and power are open to the humblest citizen. Wherever he may be placed, however he may be cloven down by present disaster, hope and the crested future of ambition are beckoning him onward like a heavenly star. He may exclaim with the German professor, "Any road, even this simple Entepfuhl road, will lead me to the end of the world." Your judgment imprisons the God, and no power less than a miraculous resurrection can roll the stone from the sepulchre to which it may consign him.

I repeat, therefore, when this is admitted to be a court, it is not simply illogical, but frivolous and absurd, to argue that it is not a court of criminal judicature, with all of the imposing incidents and the terrible possibilities appertaining to criminal trials and convictions.

It follows, therefore, Senators, that the position assumed by the member of this court to whom I especially speak (who is one of my most respected friends and one of the best reputed lawyers) was taken in the heat of interlocutory debate, and not upon reflection. Therefore, gentlemen, when you retire to the solitude of your chamber to discuss and deliberate upon these great issues, I ask the Senator to explain that position.

I had also intended, gentlemen, to make, not a very critical analysis of the testimony in any event, but to pass over it summarily, placing the articles side by side, juxtaposing the witnesses, contrasting them, and in a general way to direct your minds, so far as I might be able, to the proper result upon the facts, outside of the considerations of law which have been submitted.

If you conclude that this is a criminal and not a civil prosecution, then you must admit, as the managers have admitted, that the law which governs these proceedings provides that the accused shall have the benefit of all reasonable doubts. If such be the fact, Senators, it is impossible, on your consciences, for you to find against this respondent. It is impossible, I repeat with emphasis—because the witnesses for the State are not only over-sworn in many important instances, but there is a heavy balance of testimony in his favor on every article which has been regarded by counsel for the respondent as of any gravity,—I had designed, moreover, at some length, to allude to two articles which have not been regarded by counsel for the respondent as of sufficient importance to introduce testimony upon. One of those occasions was in the parlor of the Nicollet House, and the other was obviously out of court and on the street,—I refer to the Long mandamus. These topics, however, have been dissected and discussed with such consummate and I had almost said unparalleled minuteness and ability by the counsel who immediately preceded me that it is, perhaps, supererogatory to make even casual allusion to them.

Permit me, Senators, before proceeding to a brief analysis of the contents of these two occasions to make some criticisms upon the witnesses by whom they are in great part supported which are demanded by the

facts in evidence. The conspicuous actors in the scene of the Nicollet House parlor, and, in fact, the banner carriers of the prosecution, are Hon. Thomas Wilson, attorney of the Minnesota end of the Chicago & Northwestern Railroad Company, a member of the House of Representatives which exhibited these articles of impeachment to the court,—the author, abettor, and advocate of the salacious articles 19 and 20, one of which was *ejected* by the Senate and the other abandoned by the managers. Article 20, as you will remember, charges the respondent with indecent sexualities,—ubiquitous both as to time and place. It is, in fact, a reproduction of article 18 upon a far lower and baser plane of morals. Upon this the managers discreetly sheathed the unhesitating sword.

Article 19 charges a distinct and explicit act of lewdness with a specific but unknown prostitute in Ramsey county *extra* the attainted precincts of the Ninth Judicial District. "*Similia similibus curantur.*" True to the dogma of homeopathy (which, by the way, characterizes most of the testimony upon all of the articles,) the testimony supporting this article was brought from a kindred base level—a single witness scraped from the sweepings of a Minneapolis stable. The court charily mindful of its dignity and the proprieties of the tribunal of its own motion, expunged this article from the record, and even contemplated a movement against the witness for perjury.

The reach of this scurrility is deeper and its malignant tendency more comprehensive than that of all the other charges. It probes the quick. It goes home to the very penetralia of the respondent's household. The same testimony was produced to the judiciary committee as that which has been offered here. When the committee reported the articles to the House of Representatives, Hon. James Smith, one of the managers, moved to expunge these filthy and irrelevant articles. Mr. Wilson admits that he argued their retention and makes here the diaphoncus statement that his action was based upon exemplary grounds. The respondent forsooth is to be convicted without law and without evidence, as no one better knows than that distinguished gentleman, for the benefit of others, vicariously, *pro bono publico*. Mr. Wilson is a lawyer of high and deserved eminence. He knew that those articles charged no impeachable offenses; that they were in no way related to official conduct, if true; that they had no reputable color of supporting proof and yet he more than any other man is responsible for the injection of this base matter into the record which so wantonly hurls upon the respondent these infamous slanders without the warrant of proof. There is, therefore, neither excuse nor palliation for Mr. Wilson. There is no explanation of his conduct, unless he was moved by the behests of the corporation which he represents, or animated by a malevolence which I should hesitate to attribute to a gentleman of his worth.

The other witness in this behalf is S. L. Pierce, Esq., of this city. His motives of malice are painfully conspicuous. It irks me to attempt a characterization of his testimony. It is comprehensively scandalous; it crawls over the whole record and much of it was volunteered. He is ambidextrous, hitting "right and left." I cannot, I will not forbear to recall to your minds at least two illustrations of the motives of this ubiquitous maligner.

I will not refer to the record because it would be wearisome and annoying, but will call your attention to his testimony relating to the

Gezike trial. You will remember that when asked by my associate why the young man Goodenow was called in as an amanuensis and further questioned "was there no lawyer there to whom this case could have been referred, was not Col. Baasen there?" He replied yes, and volunteered to say "I suppose he was as drunk as the Judge." If this testimony had been called out or exacted, or was pertinent or hinted at a truth which was relevant, its proffer might have been palliated or possibly excused. It was a clear gratuity—a slander with *malice prepense*.

Senators, Col. Baasen and Capt. Cox were joined in chivalry on red fields, at the close of day, with the starry register of States floating over them, when this man, this peripatetic lawyer, was haunting the purlieus of country circuits, snapping up "unconsidered trifles" of litigation.

I call your minds to an other occasion when malignity was more hideously conspicuous. This was at the Nicollet House parlor. Having been asked if Judge Cox was drunk he answered "Yes, I never saw a judge on the bench so drunk." This answer, although expletive was tolerably near decency, if true. Mr. Pierce, not satisfied with the answer proceeded. "I take that back. I have seen here in St. Paul a judge as drunk, but he has retired." Senators, the gentleman against whose memory that malignant attack was made is dead.

He has gone before that judgment seat where liars shall have their places assigned to them. He is on trial before the just Judge, by whom our faults and frailties will be weighed and measured at the last great day when we shall take our places with him among the undying dead. The gentleman to whom that unkind and malicious reference was made notwithstanding his frailties, was a most distinguished, a most estimable man. I see in this room a gentleman who helped to carry his body to the grave where the sod is growing green over him and early flowers have been planted by white hands.

> "When spring, with dewy fingers cold
> Returns to deck his hallowed mould,
> She there will cull as sweet a sod
> As Fancy's feet have ever trod."

I could not withhold these remarks, I would not. The man and the testimony deserved a reprimand from me because it was volunteered and the victim was my friend and is dead.

Testimony coming from such sources will be received, and criticized and discriminated with great caution. I feel that I have wandered somewhat from the direct course of remark, but my feelings will admit of no restraint. Let us now recur to the circumstances and object which produced Messrs. Wilson and Pierce before Judge Cox in the Nicollet House parlor. It appears that an action had been tried at a preceding term of court in which the plaintiff was represented by Mr. Pierce and the Chicago of Northwestern Railroad Company defendant, was represented by Mr. Wilson as attorney. A verdict had been found in favor of the plaintiff. Notice was given by Mr. Wilson in behalf of the defendant for a new trial. The practice following such a motion is familiar to all lawyers, but as the members of the court are not all of them even *professing* lawyers, I shall be excused for stating what is the practice. After the notice of motion is given, which is done in open court, upon rendition of the verdict application is made for a stay of proceedings

upon the verdict for a time which is either fixed by the court or stipulated by the attorneys in which the aggrieved party may prepare and serve upon the adversary a case or bill of exceptions upon which to predicate his motion. After review of the case or bill the other party has a limited time in which to prepare and serve upon the mover any amendments which he may be advised are proper to correspond the case or bill with the truth of the trial. If the amendments are accepted the case or bill is engrossed and handed to the judge before which the case is tried, and if he finds it in accordance with the facts he signs it as the settled basis upon which the motion is to be made before him. If the amendments prepared are not adopted, the litigant moving gives notice to the other party that a motion will be made before the judge at a special term for the settlement of the case or bill. If either attorney elects to have the motion heard out of term, an application is made to the judge to fix a day fo. the hearing of the motion, notice of which is given to the adversary. Upon the term day, or the day so fixed, the attorneys appear before the judge—present their views and the ju lge after allowing or disallowing any or all of the amendments settles the case or bill and regards it as so settled. After settlement the motion for a new trial is heard upon notice given in the same manner as for the settlement *of* the case.

In this case it is neither proved nor pretended—in fact, it is admitted that no such notice was given. The Judge was therefore in no way informed that he would be called upon to act. The attorneys agreed to go before Judge Cox—out of order—irregularly. They agree to go, and they go. They take the risk of Judge Cox being at home, and if at home of his willingness to hear a matter of this kind without notice. It was completely optional with the Judge to hear or decline to hear this motion. These gentlemen, in fact the managers, appear to think that a court like a penstock is always open and always running. Mr. Pierce goes by regular course of travel to St. Peter the evening before the "combat." Mr. Wilson arrives the next morning, probably on a "special freight," owing to his greater avoirdupois. The Judge had just returned from a hunt. He is hunted up; they convene in the celebrated parlor. The proceeding was out of court. It was not chamber but parlor business. If Judge Cox had peremptorily refused to hear or notice them, it would not have been inconsistent with a rigid observance of official duty. Judges, like other men and even officers, have private avocations, and are not on call at the behest of attorneys and the like. He had, however, consented, and as I have said they convened. It was, however, a convention of Greek and Greek, and the "tug of war" was inevitable—it came. As both of these gentlemen admit, a quarrel ensued at the outset—belligerents the magnificent Thomas Wilson and the scarcely less imposing Mr. Pierce. When interrogated hereabout, Mr. Wilson admits he was rather positive, "It is my way." Gentlemen, he is from the north of Ireland. This gives you the key to his conduct. He has the pugnacity of an Irishman from the south of Ireland and the tenacity of the Scotch-Irish who went over as you know during the "big wars." Mr. Pierce being a Yankee is of combative stock and the mixture of these various elements, curdled into a quarrel which brought on a scene which demanded the penal interference of the court. The strongest evidence that the Judge was *dehors* his reason—intoxicated on this

and on many other occasions, is that he neglected to assert the dignity of his office by committing the parties for contempt.

Do you suppose, Senators, that any lawyer of this city or Minneapolis would annoy and insult the presence of Judge Wilkin by the production of such a scene as this? If such a thing were possible, do you imagine they would go scatheless of a reprimand pinch? They were not, I presume, treated with the consideration which their assumed importance demanded, and "hence the tears," hence the testimony, while awarding to it absolute verity, does not approach within a "Sabbath day's journey" of proving official misbehavior. Senators, I have in the early days been in courts, held on the periphery of civilization, and speak "by the book" when I refer to the annoyances which men of the character of Judge Cox, in his situation, are subjected to by the conduct of malapert lawyers and the general surroundings. The judge is not treated respectfully, and possibly, by some sort of reciprocity, or rather by contagion, the judge occasionally relaxes from a proper rigidity. Many of the scenes which have been testified about during this trial, although colored by the bias of witnesses, are not inconsistent with probability, nor with what I may term local proprieties. The order which lawyers in this city are constrained by usage to maintain, would be both novel and intolerable on the frontier. To illustrate, the witness Judge Severance, is notoriously æsthetical. This distinguished gentleman substantially admits that on the trial of this Gezike case he told the Judge to "shut up." Permit me to digress a moment. Judge Severance is another of the witnesses who carries a heavy weight of laudation by the managers. His name is iterated and reiterated. He is literally the twin of truth, and lives in the bottom of a well; moreover, he has drank nothing but water for 18 years. The Gezike case, you remember, was taken up a ter court had adjourned to accommodate the various, multifarious and multitudinous array of counsel from abroad, who came late, as some women go to parties, because it is fashionable. His testimony is obviously, conspicuously biased and is flatly contradicted by Mr. Blanchard and the parties to the trial. Why was he biased? It is apparent to those who know the peculiarities of Mr. Severance. The presence of such a multitude of counsel is excused or rather accounted for by the fact that they represented different interests. Gezike was the carcass. Each of the representative attorneys claimed priority of caption. Judge Severance built his case upon an attachment. Judge Cox sitting then, as they tell you, "*locum tenens*" to accommodate, casually picked up the undertaking upon which this attachment rested, and forsooth, he was drunk because he at once discovered that the undertaking was bad, and therefore the attachment was void, and Mr. Severance's priority vanished into thin air. The evolutionists tell us that the world originated in vapor which by some process yet unknown, but in the way of speedy discovery was concreted into the living and inanimate glories of God, which we see and which we are. Who created the vapor? says a querist. Here the evolutionist stops. The Judge, by some mysterious instinct, at once penetrated to the vapor. He struck the heel of Achilles—his vanity.

Pardon me this excursion, Senators. I felt that it was but justice to Mr. Severance to associate him with Messrs. Wilson and Pierce. It was perhaps also due to my argument, which I am hurrying along with an incoherent speed which prevents a close analysis of the testimony, that

I should call your attention to the motives of the three great men who carry the dignity of this prosecution.

I now tremulously approach the awful neighborhood of the Long mandamus. Hereabout the offense of Judge Cox hath this extent no more. It appears that prior to the events narrated by the witness, Mr. Long, he had refused for reasons which have not been exposed by the proof to certify to a case; that the Supreme Court had issued a writ of mandamus, commanding him to make the certificate, and that Long, a party to the action, went to St. Peter to make service of the writ and secure obedience to its mandate. He found the court or rather the Judge on the sidewalk—he is in hot haste and opens his business forthwith—exhibiting the writ he somewhat indecently demands obedience. The Judge at first declines the abrupt and somewhat peremptory request, but after consultation with Mr. Lamberton, obeys the writ and performs the merely clerical act of writing his name at the end of the case with a description of his function, to-wit: "E. St. Julien Cox, judge of the Ninth Judicial District." Now, gentlemen, have not the mountains labored and is not the progeny a "*ridiculus mus*" which being interpreted for the benefit of the managers, who have dignified this by making it a separate charge of impeachment, means, "a little mouse." It is beneath grave discussion. What may have been the Judge's condition is entirely immomentous. He did what he was required to do and no one complained that the act was improperly performed. The court is not a traveling mendicant—an organ-grinder—taking up business on the sidewalk at the instance of every itinerating party to a law suit.

If the Judge had declined to act, when so called upon, he would have conducted with a stricter regard to official decorum. I dismiss, I banish the charge—I nail it to the cross.

I have strayed from the more direct course of remarks which I had marked out to pick up these trifles by the way-side. I had intended also to call your attention somewhat fully to the character of the witnesses for the State. I do not speak of personal character. It would involve too much detail for me to analyze the character of those witnesses. The manager, in his opening, says that of our witnesses there were twenty-five lawyers. Gentlemen, that is the finest compliment to Judge Cox which could be paid. It is the business of lawyers to have the laws conscientiously, incorruptibly and intelligently expounded and administered. That these young lawyers (all of them, I believe, excepting Col. McPhail and Judge Brownell, are young men), with all the world before them where to choose, have sought this Ninth Judicial District full of hope and full of promise is a most flattering commentary upon the Judge's officiality. The kindness of these young men, literally swarming here and doing their best devoir as business men, is at once pleasing and flattering. That they feel an affection and a respect for the Judge is the very highest compliment which could be paid to him both as a man and an officer.

If there is one corner in my heart more precious than another, watched over by my intellect, it is that which treasures the memory of Judge Daniel Cady, formerly of New York, in whose office I studied, and before whom I practiced when he went on the bench at the age of 74, and Judge Ira Harris, of the same district. My friend, Senator Hinds, knows both of them by reputation, perhaps knew them personally in their lives. He once lived in Washington, a county contiguous to Al-

bany, where they glorified the bar of New York. Another man, Judge Amasa J. Parker, still "in the land of the living," is warmly garnered among my cherished memories. He went to the bench, elected under the constitution of 1848, cotemporary with Cady and Harris. You will pardon me, Senators, for these affectionate reminiscences of the unreturning past. My reason and my excuse is that it was the necessity of their character and the habit of their official lives, as it is, I believe, the habit and necessity of Judge Cox to extend to the younger members of the bar consideration at least equal to that which is not unoften exacted by its seniors.

Suppose either of these great men, with whose names I have honored my poor address, had been afflicted by Providence with frailties akin to those which are here charged against Judge Cox. Imagine, if you can, impeachment of "crimes, misdemeanors, and misbehavior in office" was exhibited against such characters. The first to champion such defendants would have been the aspiring young lawyers of New York. Suppose all had been *proved* which has been *vainly attempted here*, and grant if you can, *gratia argumenti*, that such acts were impeachable. Answer me, would not the young and old—the *bar*—have exclaimed, "The sources of justice are kept pure—the law is wisely administered—to err is human." The fact is, Senators, Judge Cox's impeachment is machinated for by malicious men, by men of sinister motives and aspirations. They would convict him on hearsay and evil report. Beware of the men and the motives. Put your minds on guard against the invidious approach of suggestions which are not proof—of reputation which is not testimony.

I had purposed, gentlemen, to review and comment at length upon the character of the testimony which has been advanced, but neither your patience nor my health will permit. It is all made up of *opinion*—"I *thought* the Judge was drunk"—and of reputation—hearsay from remote sources. It appears, and it must be admitted, that Judge Cox has occasionally been under the influence of liquor, although it neither has been, nor can be, proved that he has been so affected while performing official functions. It is very strange that a man who has been intoxicated so often as he is represented to have been should be *found* intoxicated and never *seen* getting drunk. Mark that. Some say "The Judge was drunk; his eyes looked blood-shot," and various other indicia are graphically and unctuously narrated. No witness gives you a scientific diagnosis of the symptoms. One man thought because "the eyelids sagged down," therefore he was in that condition. Another testified that the Judge's eyes were "red and rheumy." If this witness had the eyes of Argus—joined to the insight of omniscience at the time referred to he could not have seen whether his eyes were blood-shot or diagnosed, whether the indicia so graphically narrated came from bile in his stomach—whether he had the jaundice or cholera, or was purpled by the rosy god. Another man said he was drunk—because he was brushing mosquitoes from his face, and it appears by the witnesses they were thick as grasshoppers.

I was reminded at that time of an anecdote told of Dean Swift, who belonged, as we all know to the church of England, and being stationed in Ireland, was not very popular with his Romish fellow citizens. He went into a country parish, and disliking him, or rather his religion, they lodged him in a place full of fleas. He got up in the morn-

ing. "Well, Dean, how did you enjoy the night?" "Very well; oh, very well." "Didn't the fleas bother you?" "Oh, no," he said, "the little fellows were not unanimous; they all pulled different ways, and so I held my own." Judge Cox held his own by brushing away the mosquitoes. The little fellows here are not unanimous, they are pulling different ways: "he holds his own." I say it is a remarkable thing, gentlemen, that no man finds him getting drunk. I withdraw the last remark. It is *intimated* by the man Chapman—this half editor and half lawyer—who is a *multum in parvo*, or rather *parvum in multo* man. He sees through a glass darkly. He sees everything going on—things that were and things that were not. It is baldly frivolous to hoist such stuff into a court like this. I was reminded at that time, when it is claimed the Judge was drunk, and his associates were described (although it is disproved and did not occur in court), that he should exclaim, as did Slender in the *Merry Wives of Windsor*—

"I'll ne'er be drunk whilst I live again, but in honest, civil, godly company, for this trick: if I be drunk, I'll be drunk with those that have the fear of God, and not with drunken knaves"

Says the redoubtable Chapman: "They were all there drinking, playing *penny-ante*—a very disreputable game, (that is a reflection upon the Judge, he ought to have played for higher stakes)—a very disreputable game even among men of the cloth, *i. e.*, the green baize. But they wanted to make an omnibus case there. They supposed this was the eighteenth article, the "habitual," the omniverous charge. This occasion covers the case, and Chapman is equal to the occasion. Forsooth the Judge is getting drunk—was drunk—was playing penny poker—and babbling of naughty women on the street near the bridge.

"Ah! me, in sooth he was a shameless wight,
Sore given to revel and ungodly glee;
Few earthly things found favor in his sight,
Save concubines and carnal companie,
And wassailers of high and low degree."

The interpolation of such incidents and scenes is nauseating, unworthy of consideration, unworthy of discussion. Do you suppose that if, in those little frontier towns, Judge Cox had been inebriated, there could not have been more men than Chapman brought here who saw the process as well as the result. They would have you believe that Judge Cox is a recluse. He goes to consult the goddess of the cup, just as Numa Pompilius went to the cave to consult Egeria and to bring back laws. Why I tell you, gentlemen, the plate glass panels in the bed-chamber of the royal tyrant we read of were not more sure to detect the approach of an intruder, than the eyes of every man, woman and child in these little towns were certain to discover, remember and tattle the acts of every conspicuous man who chanced to be within the vicinage.

This testimony is the result of impressions, not observation of facts. It is a conclusion reached from the fact that Judge Cox has been known at times to be intoxicated. I will not take time to go into a philological discussion of the meaning of the words intoxicated and drunk. It is obvious.

Contrast with their *impressions* their *opinions* derived from the peculi-

arities—perhaps I should say the frivolties of Judge Cox, the statements of Col. Baasen He had been a familiar friend of Judge Cox for a quarter of a century—knew his habits and his habitudes. He was informed that the Judge was drunk, and in proof was told he had fined the man Wiltz—the crazy man with a crazy interpreter, referring to whom Mr. Blanchard says, "They got up a circus in court." He immediately leaves his business to find his friend and ascertain the fact. He finds the statement false. The assertion had been derived, or possibly fabricated, from the confusion incident to the antics of a "crank." Witnesses of the State give you their impressions—their conclusions. Col. Baasen states before you facts, and you believe him against the field. He is a great, brave man. No brave man ever lied. He is neither afraid to confront a man or a fact. Such is the mental characteristic of a brave man. He is true; there is no hypocrisy in the blood. The moment danger approaches the mind challenges the heart, and the heroic blood rushes upon the enemy. Falsehood is the enemy of an honest man. The brave! they cannot lie. I refer to the testimony of Col. Baasen, because it illustrates the contrast of testimony. Other witnesses, equally conspicuous, might be cited, but your memories are loaded with them and I am admonished to brevity.

One of the characteristics of Judge Cox so far as I have known him, so far as the facts show,—is, that he is too manly for hypocrisy. Gentlemen, I rather love a splendid failing than a petty good. The course of the thunderbolt is downward but it is nobler far than any fire which soars. Is it your intention gentlemen, in the presence of this law and of these facts, to allow trifling suggestions, unsupported by solid proof, to affect distinguished and cool-judging men? No! In behalf of the integrity of this great body I answer, no, no.

It was said by Manager Collins that there were no politics in this proceeding. I believe not; and the gentleman to whom we are indebted—(I do not agree with him in politics)—more than any other for elevating the judiciary above politics, is the gentleman who has last left the gubernatorial chair—Governor Pillsbury. The generations to come will look upon his administration with grateful pride, for the reason that he dismissed in connection with this sacred department of government such degrading considerations.

As I casually remarked in my opening yesterday, this does not involve—it is not the animus, nor the animating motive of those who are behind this prosecution,—the aspirants to and competitors for Judge Cox's position—to have merely a suspension such as you might adjudge,—or a pecuniary fine such as you may impose this side of the extreme limits provided by the constitution, or even a removal. No. They want something more. The Judge must be both removed *and* disqualified.

Wilfred of Ivanhoe, the disinherited knight, when he returned from the Holy Land and entered the lists at Templestowe, to rescue the fair Rebecca, struck less terror to the belted knights, than would E. St. Julien Cox going back to the Ninth Judicial District, endorsed as he is to-day by a majority of the voters there, to these crawling aspirants. You must give him the whole of the penalty or nothing. This only will satisfy the voracious maw of this prosecution, moved, abetted and fortified by the clamoring competitors for the high place of the respondent.

I have been led into more extended remarks than was prudent in my condition of health. I have however banished my hoarseness.

The consequences with which your decision is pregnant I shall not depict. We make no appeal to this court of that character; no appeal. We stand upon the adamantine basements of the law. We make no diversion or allusion to Judge Cox's surroundings, his home, the place where home-born joys have gathered and nestled within his heart like swallows on his roof. These considerations are out of place in a tribunal, elevated above the affections of men.

Allusion was made by the counsel who preceded me for the State to a remark made by my associate, Mr. Arctander, about the coat of arms of the Cox family. "Coats of arms," he says, "in this country have no significance. This is a democratic country." He then proceeded; "Tweed had a coat of arms and so had Fisk." Gentlemen, I take issue with the honorable manager. They are the insignia reminiscent of great deeds and great men. They come of the days of chivalry when the deeds of great men in whatever department of life, because then life was greatly physicial, were *graven*—they could not be written in history; the writers were not there. The world-domineering Alexander recorded his victory upon the mountains so that their memory should be handed to the future as long as the everlasting hills remained. In the early physical ages the great deeds of ancestors were graven on his shining shield and carried in front of the soldiers heart as stimulants to heroic battle.

Great deeds were handed down as precious heirlooms from generation to generation, from century to century, from age to age. Pride of ancestry, gentlemen, is the noblest pride that we can cherish and bequeath. It is intellectual. Pride in our immediate posterity is sympathetic and personal. I am proud of the unstained honor of my father, and of his ancestors. It is in bad taste, gentlemen, to make such allusions to the armorials which record and memorize the unstained names and characters of those who, under Providence, have brought us into this world.

Men of low as well as high degree cherish with equal fidelity these precious memorabilia. In the "sessions of sweet silent thought," how eagerly we summon from the caverns of the past these sacred remembrances. They animate, they stimulate even the errant and the sinful to virtuous deeds.

In the midst of the follies, frailties, aye, vices, if you will, which beset us in this work-a-day world, when we all, aye, even the worst of us join our hearts and minds, if not in vocular prayer, at least in invocations to the Almighty, how precious is the assistance which we derive from what I believe is the actual spiritual presence of the great and good with whom we have been connected by the fortunes and accidents of life,—Judge Cox is proud of his ancestry. He glories in his shield which bears the insignia of loyal and virtuous actions. He would hand it to his posterity untarnished as it was delivered to him. Shall he do it? Upon your judgment hangs the awful and perilous issue.

Senators, I have extended my remarks longer than I intended to do. I will conclude them by appealing, as I have done frequently through this trial, to the language of great men. I will conclude by reading the language of the laurelled aristocrat of the bar of the civilized world. It is not necessary to cite the name Thomas Erskine. He had frailties—he had foibiles; he understood the human heart perhaps with just as instinctive and just as inherent power of insight as did Robert

Burns, of whom it may truly be said that no man conscious of true manhood—no man high or low, rich or poor, saint or sinner ever approached the hallowed ground which covers his ashes without depositing at least a tear. So it may be said of Erskine.

I read from page 697 of Goodrich's British Eloquence:

One word more, gentlemen, and I have done. Every human tribunal ought to take care to administer justice, as we look hereafter to have justice administered to ourselves. Upon the principle on which the attorney general prays sentence upon my client—God have mercy upon us! Instead of standing before him in judgment with the hopes and consolations of Christians, we must call upon the mountains to cover us; for which of us can present, for omnicient examination, an unspotted and faultless course? But I humbly expect that the benevolent Author of our being will judge us as I have been pointing out for your example. Holding up the great volume of our lives in His hands, and regarding the general scope of them; if He discovers benevolence, charity and good will to man beating in the heart, where He alone can look; if He finds that our conduct, though often forced out of the path by our infirmities, has been in general well directed; His all-searching eye will assuredly never pursue us into those little corners of our lives, much less will His justice select them for punishment, without the general context of our existence, by which faults may be sometimes found virtues, and very many of our heaviest offenses to have been grafted by human imperfection upon the best and kindest of our affections. No, gentlemen, believe me, this is not the course of Divine justice, or there is no truth in the gospels of heaven. If the general tenor of a man's conduct be such as I have represented it, he may walk through the shadow of death, with all his faults about him, with as much cheerfulness as in the common paths of life; because he knows that, instead of a stern accuser to expose before the Author of his nature those frail passages which, like the scored matter in the book before you, checkers the volume of the brightest and best spent life, His mercy will obscure them from the eye of his purity and our repentance will blot them out forever.

"His mercy will obscure them from the eye of his purity and our repentance will blot them out forever." Judge Cox, gentlemen, has gone through the fiery furnace. He has been accompanied, to paraphrase an idea from the undying Grattan, he has been accompanied in these trials through the furnace, with the present spirit of the constitution and the laws. He has felt sorrow: he has suffered as no men know. He is naturally of a cheerful and even frivilous disposition. No men know so fully as one of his counsel, Mr. Arctander, and, to some extent myself, his agonies. The iron has pierced his soul. Gentlemen, do justice. Our repentance at the great day, as Mr. Erskine tells us, will blot out the recollection of our sins, and as he goes forth acquitted, as I believe he will be if justice is done, in the language of that human searcher of the hearts and deeds of men—the immortal bard, he will exclaim:

> My reformation glittering o'er my fault,
> Shall show more goodly and attract more eyes,
> Than that which hath no foil to set it off.

The PRESIDENT *pro tem.* The question will now come up whether the closing argument on the part of the State will be divided between two speakers or not.

Senator CROOKS. Mr. President, I move that we take a recess for ten minutes.

Which motion was adopted.

Senator Rice in the chair.

Mr. PRESIDENT *pro tem.* What is the pleasure of the Senate?

Mr. Manager DUNN. Mr. President, if I may be permitted, I desire to suggest to the Senate that the argument on behalf of the State might be concluded in less time if the managers were permitted to divide the argument upon the law and the facts between the two managers who are present. Mr. Manager Gould has prepared a brief upon the law of this case in response to the positions that have been taken here, and I have not given the matter that preparation which we think the occasion demands. I am prepared to argue the facts in the case when the time shall arrive. I therefore suggest, in the economy of time, that this argument be divided, and that Manager Gould be permitted to present his views upon the law of this case at this time. He will, I think, be able to finish—if I can answer for him—when we shall adjourn for supper. In the evening I shall then be able to take up the argument on my part on the facts, and will endeavor to conclude my remarks by to-morrow afternoon or evening.

It will be probably a great strain upon myself to condense an argument that ought not to be made in less than four or five days into one day; but I think—and I think I simply echo the sentiments of many Senators—that this matter has been prolonged now to a great extent, and that the interest of the State demand that the trial should come to a conclusion this week. Having that in view, we will endeavor, upon the part of the State, to close our arguments so that the trial may come to a conclusion this week.

Mr. BRISBIN. Mr. President and members of this court. We protest emphatically against this, and the suggestion was an adroit one—knowing the anxiety that Senators feel to get home—by the managers that it would be an economy of time. You will find, however, that although they keep the word of promise to the ear they will break it to the hope. It is understood by those who have been familiar with the proceedings that an order was made originally allowing or prescribing the order of argument. The State was to open, and then both of respondent's counsel were to answer, and then one of the managers close. Afterwards counsel for the managers requested a modification of that order. That was not substantially resisted by the counsel for the respondent, so that both of the arguments which they proposed, instead of one, should come anterior to the arguments of the respondent's counsel. I stated myself, at that time, that so far as I was personally concerned, I would prefer to have one of the counsel open and speak alternately, so that I would have Manager Gould directly to answer, but in view of justice to Mr. Arctander, who had expected up to that time that he would have half a day more for preparation and consideration, I waived my personal preference in the matter.

The order was then passed, and Mr. Arctander, (as the counsel will bear me out in saying), was precipitated upon his argument, because of the declension of Major Gould when he had several days preparation to fill the place assigned to him by the last order. I then told Major Gould in this building, in the corridors below—(I met him there casually—perhaps this is not improper for me to mention),—that I had no objection to his intervening between Mr. Arctander and myself. It is

well known that in discussion it is preferable to have something to answer—it stirs up the blood; and for that reason, I had no objection to that arrangement. Now, after we have completed our argument, after Mr. Arctander has been precipitated upon his argument, to some extent unprepared, after we have expected that the rule of the Senate would be adhered to; now, without any opportunity to answer on the subject, we are driven to hear two arguments, one upon the law and one upon the facts; and I protest against the injustice.

And about economy of time. In mathematics I know all the parts make the whole. I am not much of a mathemetician, however. But here each of the parts will be as large as the whole. That is simply in allusion to the suggestion made by the gentlemen that it would be an economy of time; but I protest against it as a flagrant injustice to the respondent. If one of the respondents counsel, Mr. Arctander, or Mr. Allis or myself, if I am in condition to do it—(Mr. Allis is the best rested)—can be permitted to answer Mr. Gould and Mr. Dunn, or one of them, there is no objection; we will then see-saw back and forwards to the crack of doom, if we hold out.

Senator CAMPBELL. Mr. President, I am very sorry that the counsel for the respondent, and the managers can not agree satisfactorily among themselves in this matter. The counsel will recollect that the Senate has extended about everything that has been asked on the part of the counsel for the respondent in the way of time. It is true that Mr. Arctander was required to proceed probably a short time before he felt quite ready; but it is also true that when Mr. Arctander had talked until his voice was up on Saturday night, this Senate adjourned over until Monday night that he might recuperate and prepare himself anew for a fresh start. It is also true that a great deal of time has been occupied by Mr. Arctander, that he has argued his case very elaborately and that he has had all the time he wanted in which to do so. That being so, I do not apprehend it would be unreasonable if the managers were to occupy two days in answering the two very able and very lengthy arguments of the counsel for the respondent. If then, sir, these two managers are willing to divide their time, (and I understand Mr. Manager Dunn to say that they would close to-morrow,)—if all the time they desire is what is left to-day and to-morrow, to answer those two lengthy and able arguments, I think we might reasonably allow them to divide that time in the manner most convenient to themselves. I can not see where any injustice would be done. I hope that Mr. Gould will be heard.

Mr. BRISBIN. I ask the Senator where is our opportunity for answer? Manager Collins stated that he understood the law to have been well settled. The law now, it seems, is to be spoken upon and we are not to be heard. I ask if there is any justice in that? And I object to it, as I have already stated, for the reason that twice the Senate has made a solemn order upon the subject; and, further, for the reason that it is perpetrating an injustice upon counsel for the respondent; and if it must be, I demand, as a right, to answer the gentleman, either by myself or some of my associates. If this course is to be adopted,—if we are to see-saw backward and forward forever, why let us know it and we will change time and bandy words with them *ad infinitum*. We do not wish any suggestions Maj. Gould may have to make upon the law to go un-

answered. I repeat, if this order must be enacted, let us have the right by one of our counsel to answer.

Senator WILSON. Mr. President, I do not wish to take up the time of the court to any extent in discussing this matter, but I wish to say that I have, from the beginning of this trial, favored granting to the respondent every privilege which it was within the power of the State to give, and all the witnesses that he desired, and all the time that his counsel desired to present his case fairly to this Senate.

Now I protest also against the idea of shutting off Mr. Gould from arguing the law in this case, as he has prepared for it, and as it will consume no more time and be no more unfair to the respondent that two of the managers should address the Senate, dividing the time, than that one should go over both the law and the facts. I see no injustice at all; but I do think that it would be an outrage and an injustice on the part of the Senate, to deny to the managers the very just request which they make, and I hope that this Senate will allow Manager Gould to speak, confining himself strictly to the law in the case, and that Manager Dunn be required to confine himself strictly to the facts while occupying his time. I move that Manager Gould be allowed to make his argument.

Mr. BRISBIN. Are we to be allowed to answer?

Senator HINDS. There appears to be only two objections made upon the part of the counsel for the respondent to the proposition of Manager Dunn. One is that if we permit them to diuide the time that each one of the two parts occupied would be equal to the whole time which is requested, thus making it doub'e. That objection certainly can be removed by an order which the court can adopt and enforce. The other objection is that the respondent would have no opportunity to answer unless permitted to re-open the argument, and thus have the argument see-saw, backwards and forwards between the two parties. I think this is not a fact. The managers, whether one or two speak, have a right to answer the argument upon the facts, and it makes no difference whether that argument is made by one or two men.

In either case, whether made by one or two, there would be no right in the respondent's counsel to answer, because they themselves are being answered. It is clear that if the closing argument was made by one manager, counsel for the respondent would not claim to answer the argument either upon the law or the facts. Why should they when the argument is divided and made by two? Certainly there is no foundation for the position as taken. As a substitute for the motion that was made I offer the following order and move its adoption.

The PRESIDENT *pro tem.* The order will be read by the Clerk.

The Secretary read as follows:

Ordered, that the arguments close at or before 6 P. M. to-morrow, and that Managers Dunn and Gould divide the time between them to suit their convenience.

Senator WILSON. Mr. President, I withdraw my motion and second that.

Senator POWERS. Mr. President, this is a matter that has already been decided by the Senate; but if we can reach justice by re-considering the matter I, for one, would be in favor of making a change and granting the request which has been made by the Managers. I think, myself, it was, perhaps, a little in bad taste, after we had made the or-

der, to hold back until the whole strength and time on the part of the respondent had been exhausted, and then come in with this application, and there *is* a show of injustice in it, perhaps more in appearance than in fact, and perhaps it would work more to the detriment of the respondent before a jury than it will before this Senate. I had intended to vote for the resolution of Senator Wilson, and then if the counsel for respondent required half an hour, or an hour, or any reasonable length of time to touch upon any of the law points before the final argument of Mr. Dunn, I should have voted for that, and will if such an arrangement is made; but after Counsellor Arctander having used twenty-eight hours and a half,—four days and a half—time, and after the lengthy and exhaustive and very able and eloquent argument that has been made by Counsellor Brisbin, to get up now and choke down the managers to a limited period of time whether they can finish their argument or cannot, is more objectionable in my mind than it would be to allow two men or five or ten to speak upon that subject. I do not like this muzzling process. For the last three or four days or a week, since the funds have given out, we have heard of nothing here on the part of the Senate hardly, but the almighty dollar and the saving of a few moments of time. I have became tired of it and disgusted with it. We have a work to do; we have been doing it patiently and we have been hurrying as fast as has generally been done under similar circumstances, and I want to see this thing finished fairly, and each side to have a fair chance. I do not think that many votes will be changed—I do not think they will—but we want the prosecution or the managers to have a fair, reasonable length of time. If the motion is renewed to hear both Mr. Gould and Mr. Dunn, and then also the counsel for respondent if they desire a short time in which to reply to the argument of the managers upon any law point raised, I shall vote for it. I shall vote first in favor of hearing the two and then in favor of allowing a short response, if it is necessary, on the part of the respondent. I certainly will not vote to hamper the managers for the prosecution in this case, and confine them in their effort to impart all the light they can in reply to the five days speechifying on the side of the defense, to six o'clock to-morrow afternoon I think there is an injustice in it. I do not think that our constituents will justify us, I do not think that public sentiment will sustain us in any such course as that. and I hope that it will not pass.

Senator GILFILLAN, J. B. I should like to ask for information if time to-day and to-morrow is all that the managers ask for.

Senator HINDS. It is their proposition. I have only incorporated it with the order, because it was their proposition to close to-morrow.

Mr. Manager DUNN. If we can talk without interruption, and commence *sometime* to-day, we will endeavor to close it by to-morrow night at six o'clock.

Senator GILFILLAN, J. B. But commencing when? I ask for information.

Mr. Manager DUNN. Commencing now. My remark was a jocular one—if we could ever get at it. But I say this, that when I say we will endeavor to get through to-morrow, I make the statement in good faith. I do not mean to make the promise and break it as counsel suggested; but still some unforeseen circumstance might occur which would prevent the fulfillment of that promise. I do not want to make a promise without any elasticity.

Senator POWERS. You can do it as well without an order as with it.

Mr. Manager DUNN. I am willing to take the order of Senator Hinds, relying upon the good sense of the Senate to have the time extended if it becomes necessary, and I will not ask for an extension of time unless it becomes necessary.

Senator GILFILLAN, J. B. Mr. President the matter stands about like this: The order that we first entered was that we should hear two counsel on a side; that is, that the managers should open the argument, the respondent follow by two counsel and the managers should then close by one counsel. Now they do not ask for a change in the order of argument. This order would still leave it so that the managers would have the closing both upon the law and the facts; so that this order does not propose to change the order of argument as first arranged. As I understand it then, it is simply a question of privilege to the managers. The honorable manager who is to close asks as a privilege or favor that he may give a portion of his time to one of his associates to present a certain part of the case, which he does not propose to cover in his argument.

Mr. Manager DUNN. That is it, exactly.

Senator GILFILLAN, J. B. I do not know what difference it would make to the respondent whether the same argument is presented altogether through one mouth, or whether it is cut in two, and one half of it spoken by one and the other half by another, each confining himself to a particular part of the argument. So far as the justice of it is concerned I should feel there was no infringment of justice in the matter. Then it becomes a question of privilege or courtesy to the honorable manager who is to close whether he will consent that he may give a part of his time to his associate, he pledging himself specifically, of course, to close by six o'clock to-morrow evening. Now the Senate have not been unfair, I think, in extending and allowing time to counsel all around, and when it is proposed now to occupy only a day and a half more I do not think we should propose to be over nice in saying to the managers that they shall not have that favor. I think it might, perhaps, expedite matters alike, do no injustice and be an act of coustesy to the honorable managers who have the closing in case more than one speaks.

Several SENATORS. Question! Question!

The PRESIDENT *pro tem.* The Secretary will call the roll; those in favor of the order will vote aye; those opposed no.

Senator CROOKS. Let the order be read.

The SECRETARY. [Reading.] Ordered, that the argument close at or before six o'clock P. M., to-morrow, and that Manager Dunn and Gould divide the time between them to suit their convenience.

Senator CROOKS. I would ask to divide the order. I want the managers to speak on this order as long as they please and I object to gagging them at six o'clock or any other time. I am with Senator Powers on this question.

The PRESIDENT *pro tem.* The question is on the adoption of the order.

Senator CROOKS. I ask that the order be divided.

Senator GILFILLAN, J. B. I think that Senators who would be inclined to vote for that order would do so with the understanding that if two shall speak one shall confine himself to the—

The PRESIDENT *pro tem.* The chair will state that all this discussion

is out of order. The division was not called for until until after the roll-call had commenced. All this discussion is out of order.

Senator CROOKS. I stand corrected, Mr. President.

The roll being called, there were yeas 23, nays 9, as follows:

Yeas: Messrs. Aaker, Buck, C. F., Buck, D., Campbell, Case, Castle, Clement, Gilfillan, J. B., Hinds, Howard, Johnson, F. I., Johnson, R. B., McCrea, McLaughlin, Mealey, Officer, Perkins, Rice, Shalleen, Tiffany, White, Wilkins, Wilson.

Nays: Adams, Crooks, Johnson, A. M., Miller, Morrison, Peterson, Powers, Shaller, Wheat.

The PRESIDENT *pro tem.* The question being on the adoption of the order, there were yeas 23 and nays 9; so the order is adopted.

Senator CAMPBELL. I move, Mr. President, that the manager proceed with his argument.

Mr. MANAGER GOULD. Mr. President, owing to the several rules that have been made in this matter, and the understanding last night that I was not to speak, my books are not up here nor my memoranda of authorities, and I should like to ask the indulgence of the Senate for ten or fifteen minutes.

Senator CAMPBELL. I move, Mr. President, that we take a recess, in accordance with the request of the manager.

The PRESIDENT *pro tem.* That will be taken as the sense of the Senate unless objection is made.

AFTER RECESS.

The PRESIDENT, *pro tem.* Mr. Gould will proceed with his argument.

Mr. Manager GOULD. Mr. President and Senators: I fear that the time taken in discussing whether or not I shall address the Senate upon this occasion will not prove to have been very well occupied, for the reason that I shall be, perhaps, entirely unable to satisfy the Senate that "The game is worth the powder." I approach the consideration of this case with all the more embarrassment from the fact that I have to follow immediately a speech so replete with all that goes to make up an entertaining legal argument,—a speech that, aside from the law which it presents, is adorned by all the graces of oratory, and which constitutes, in its whole, the respondent's view of the law of impeachment, virtually in poetry; following so cultured and able an advocate I feel that what I shall be able to say will seem very tame and common place.

Nevertheless, I think the law of this case whatever the poetry may be, is with the prosecution, if it is proper to term this proceeding a prosecution. That term however is offensive to me in this connection and is not, in my judgment, appropriate. I premise what I have to say with the remark that this Senate sat a week and heard discussion upon the question as to whether these articles charge impeachable offenses, and after a week's deliberation the Senate almost unanimously decided that question affirmatively. But the distinguished counsel tells that this is not *res judicata*.

And why, forsooth? He tells you that on the occasion of that deliberation there were but twenty-nine of the forty-nine Senators here, and *per consequence*, the decision arrived at by the Senate, then, is not to be considered a decision now. The same reasoning applied to the deliberations of the Supreme Court consisting of five judges, would show that

a decision promulgated by but three of those judges, or when but three were present, would not be a determination of the Supreme Court. It is nothing but my respect for the learning and ability of the counsel that would lead me to treat a proposition of that kind with anything else than utter contempt. It is too preposterous, it seems to me, to find a lodgement in the minds of the lawyers, at least, of this Senate.

But the counsel further argues that had every Senator been present on that occasion still the decision would not be *res judicata*. Because, he says, the courts of the county frequently change their views and grant new trials. Has any lawyer of this Senate ever heard of a new trial being granted before the original one had been determined? Is it possible that a court is going to grant a new trial while in the midst of the trial of the same case? I trow not. Such a course of judicial proceeding has never been heard of and probably never will be.

It is because this Senate had already decided, after full and careful consideration, that the articles of impeachment charged impeachable offenses—it is because you had so decided, that when the Senate adopted a rule requiring me to argue the law of this case, if at all, before I heard what was to be said on the other side, I felt that the course proposed was very inappropriate. The court had decided already in favor of the State. The law was determined to be on our side, and the counsel desired that we should argue the law over again, in the face of the decision of the court in our behalf before we had heard anything to the contrary from the respondent's counsel. I felt that in justice to this Senate and in justice to myself I could not submit to being placed in so ridiculous an attitude. For a man to continue to argue a case when the court had already decided in his favor would certainly be a most ludicrous situation for an attorney.

I therefore insisted that I would wait until we had heard something from the other side to show why the decision which had been made should be reversed. We have waited. We have listened to a speech upon the facts, remarkable for the energy with which it has been conducted, remarkable for its consideration of details, its examination of the minutiæ of the evidence of this case. If that argument and the argument of the same counsel which had preceded this has been blemished by certain assaults upon the managers and the witnesses in this case, it does not detract from our admiration of the energy, at least, that was displayed by the counsel.

Following that we have listened to the argument to which I have first referred, an argument upon the law of impeachment, and it is in answer chiefly to the latter that I propose to direct my remarks.

I begin by calling the attention of the Senate to the marked distinction which exists between impeachment as it was known in that country, from which we derive most of our political and judicial learning and practice, and what it is under the constitutions of the American government. I shall not be able to entertain you, Senators, by allusions to the classical writings of ancient Greece or Rome, nor to adorn what I have to say with quotations from the poetry of the world. My opportunities in life have not been such, nor my natural gifts such as would enable me to rival or even imitate the gentleman in that respect. But I shall endeavor so far as possible to confine myself to plain language, and to plain matters of observation and experience among men.

What was impeachment in England? Impeachment in England was

a prosecution begun by the house of commons, heard by the house of lords, for the purpose of punishing offenders for the commission of crime. The ordinary courts of England were held by men appointed by the crown. They were the creatures of the ruling monarch. They were dependent upon the favor of the king or ruler for whatever of official dignity they occupied. As a consequence, whenever any prosecution was instituted before the ordinary criminal tribunals of England, if the person accused was a powerful and influential man he was quite sure to have the favor and patronage of the sovereign. The consequence of this was, that with judges dependent upon the king prosecutions of men, who were also favorites of the king, frequently came to nought, and very naturally so.

Because of this evil and to protect the public rights, there arose a new proceeding which took the name and title of impeachment, whereby these great offenders were complained of by the House of Commons representing the entire kingdom, and were prosecuted before the House of Lords. The House of Lords, both with respect to cases of that charter, and to common law cases involving civil issues and admiralty, was a court of judicature. It was in all its essential features, a *court*,—the same as the Supreme Court of this State or of the United States or of any of the states, and possessed of the same judicial powers. It had original jurisdiction in certain cases; it had appellate jurisdiction in certain other cases.

Thus Blackstone in giving the several courts of criminal jurisdiction in England mentions that of the High court of Parliament as the first and highest and the powers of impeachment as the means by which it exercised jurisdiction. 4 Blackstone Com. 257.

Now, for the purpose of reaching these high offenders and punishing them for their derilictions of duty and their misdeeds, this proceeding known as impeachment grew up in England. A person there impeached under that process was arrested, taken into custody, brought to the bar of the House of Lords, required to plead, let to bail or sent to prison. If upon a trial he was found guilty of the offenses charged against him, he was fined, whipped, set in the pillory, sent to the tower or perhaps beheaded. All the punishment known to the criminal law was administered in that court as it might be in the criminal courts of any country. The proceeding had no reference to the offender being an officer. It was applicable as well to one person as another. Its object was not to remove the accused from office if, perchance, he happened to be an officer. It had nothing of that character about it. It was simply and solely a criminal proceeding for the punishment of high offenders who might otherwise escape justice.

It is apparent that in a case of that kind every safeguard which the law throws around the rights of the citizen must be invoked in his behalf. He must have the right of counsel; he must have the right to be confronted with his witnesses; he must have all rules of evidence construed in his behalf, so far as it could truthfully and properly be done. So, here, if in this present proceeding it were competent for this court to send this distinguished respondent to the gallows; if it were competent to amerce him in a heavy fine, or send him to prison; in short, if it were competent for this court to administer the criminal law, so far as punishment is concerned, and to deprive this man of his life, his liberty, or his property, no man should go further than myself in asking for him every

right which the humblest citizen may claim in the adminstration of the criminal laws of his country.

In the country to which I have just referred, as I said before, the process of impeachment had no reference to officers more than to others, but it might sometimes strike officers. It has reached some of the most illustrious of British men and women. A sovereign of England was impeached, his trial lasted eight days, and within ten days from the day when that impeachment began a king of England had lost his head upon the block, as a sentence of impeachment.

When a court exercises powers so terrific as those we may well invoke for the person accused every right, and give him the benefit of every doubt.

Such then was the law and the process known as impeachment in England when the colonies severed their connection with the British government and when the fathers of this country "instituted a new government, laying its foundations upon such principles and organizing its powers in such form as to them seemed most likely to affect their safety and happiness." Now when these forefathers came to organize governments in this wild, new country, they found it necessary to make provisions for the removal of their officers, and I stop here to say that it is and must be, necessarily inherent in every government, whatever its form, whether a monarchy or a republic, to have the right to control its public servants. It must have a power over those agents, whether elected or appointed, who are, for the time being, entrusted with the exercises of the powers of government.

Consider for a moment, gentlemen, a government with no authority over its officers. Imagine a government in the hands of a number of men, who had no responsibility to anybody. Men whose moral, social and political career was such as to bring that government into ignominy and contempt; how long, I ask you, would such a government as that endure? It must therefore be inherent in every government that it possess and exercise control of its officers. And when those officers fail to perform their duty, or performing it, do so in an arbitrary or unjust manner, or when, by reason of their excesses or for any other cause, such public officers become unfit to occupy the places which they do, then it is the right of the government, as well as its duty, to remove such officers and substitute in their place somebody who will do better.

In organizing government in this country provision was made for exercising this power of removal to which I have referred, and the method by which it was to be accomplished was unfortunately called impeachment. It is because of this misuse, as I may say, of a word that much of the confusion on this subject has arisen. The proceeding for the removal of officers in this country had very little resemblance to impeachment, as known in the mother country, except that it was instituted by one House of the legislative department and tried by the other. In England all persons are subject to impeachment; in this country only officers. In England the accused was arrested, let to bail, imprisoned, and treated in all respects as a criminal. In this country the person accused was not arrested, but came before the court voluntarily, if at all. There the accused, if convicted, was subject to fines, imprisonment, banishment, or death. Here he was simply removed from office. There the purpose was punishment; here it is the purification of the public

service. There it was the administration of the criminal law; here it was security of the public welfare.

Impeachment, as known with us, simply determines whether the person accused shall continue to exercise public functions as an officer of the government, and may determine whether he shall ever be allowed to do so. If, incidentally, some disgrace follows; if, perchance, the person accused is regarded less favorably by his fellow citizens by reason of his having been removed from office, that is a mere circumstance growing out of the nature of the case and with which the trial body has no concern. The Senate has in mind only the public weal. It takes no thought of the effect on the individual. The public good is the supreme law. If the acts complained of justify the *punishment* of the offender, that duty is left to the ordinary tribunals.

Having now considered the distinction which exists between impeachment for the punishment for crime, as it exists in England, and impeachment for the purpose of removal from office, as it prevails in this country, and keeping the distinction clearly in mind, we are prepared to take the next step in our investigation and consider.

What are impeachable offenses? And here it is first to be observed that the purpose for which the proceeding is instituted enters into and determines the character of the offenses for which an officer may be removed for impeachment. The ultimate object must be kept constantly in view, which is to secure the proper administration of the functions of government by competent and worthy officers. Hence we are to inquire whether the conduct complained of is such as to endanger or prevent the due, orderly and proper operation of the functions of the government. If we find that the acts complained of have the effect just mentioned, then if they are of serious importance they constitute cause for impeachment. The terms "corrupt conduct in office or crimes and misdemeanors," as used in the constitution, must be construed with reference to the object or purpose under consideration. They must be interpreted so as best to effectuate and accomplish the end for which the proceeding is instituted. These acts, therefore, are "*crimes and misdemeanors*" or "*corrupt conduct*," as the case may be in this sense, the natural tendency and effect of which is to seriously impair and break down the orderly operations of the forces of government. Having this tendency, they become "*true crimes* and *misdemeanors*" in the just acceptation of those terms, by reason of being offenses against the public.

In the administration of the criminal law we strive to ascertain the guilt or innocence of the person accused, that, if guilty, he shall be punished for his *past misconduct*. In the administration of the law of impeachment we seek to learn the guilt or innocence of the accused for the purpose, if found guilty, that the offender shall not longer endanger the public welfare by continuance in the public service. The one seeks to punish for an act already committed; the other to prevent a recurrence of the offensive act or conduct.

If a man is to be punished as a criminal then he must be charged with some offense which is, in and of itself, criminal in the common and ordinary sense of that term. It must be something which either is a violation of the morals of society or it must be in conflict with some provision of the statute law. But when you come to consider whether a man shall be removed from a public station simply, then the acts which will justify the proceeding are of another nature; they have a

different phase, and the same degree of criminality is not and cannot be required. What Senator among you in his private capacity, having a man in his employ whom he finds neglectful of the duties entrusted to him, dissipated, disregardful of your interests,—what man of you waits until your employee has broken into your safe and robbed it or murdered your family before you discharge him? When you have found that by reason of his conduct he has become unfit for your service you dimiss him. You have a small fortune at stake; but when a great State like this has a man in her employ for whose time and talents she has paid and is paying for, who is entrusted with duties and responsibilities of the most weighty character both to the citizen and the State,—when he holds in his hands, as it were, the lives, the liberty, the property and the reputation of the commonwealth, will you say that you cannot remove that man from office unless he has murdered somebody—unless he has stolen somebody's money? Have you to wait until he commits crime which will consign him to prison or the gallows before you can rid the public service of his pulloting touch? The proposition is too monstrous! Common sense and common justice and common prudence tells you that the same principles which actuated you in the discharge of your private duties and the conduct of your private affairs are equally potent when you come to consider the affairs of the commonwealth.

The object being to purify the public service, those offenses are impeachable which tend to degrade and debase the public service; and when the terms used in the constitution, "corrupt conduct in office," "crimes and misdemeanors," are considered, they must be understood with reference to the object to be attained; and those things will be crimes and misdemeanors in this connection which would not be crimes and misdemeanors in any court having a different purpose in view.

To illustrate, and simply as an illustration,—under the judicial system of the United States there are no common law crimes, it is said. Under the State laws, or at least in this State, there are such things as common law crimes. Now it may so happen that an act will be committed in this State which in the courts of this State might be punished as an offense, but if the person accused were accused in the courts of the United States within this jurisdiction, he could not be punished.

The jurisdiction of the court is different. One takes cognizance of offenses which the other does not. And so a court of impeachment, if we term this a court, takes notice of different offenses from what the courts of criminal law in the State will do. And I stop here a little to say a word or two upon this mooted question of whether this is a court or not. There is high authority for maintaining that you sit here as a Senate exercising political duties, trying political offenses, and administering political punishment. There is eminent authority for the proposition that in the sense in which other courts sit this is not a court; that it is a political body; but I apprehend that it is of little consequence so far as the issues of this case are concerned, whether you term this a court, or whether you call it a commission, or the Senate, or a tribunal, or what you call it. The purpose and object of this assembly is to hear the charges preferred by the lower house and determine whether this man shall longer remain in office. I do not care what name you give to this body. In the remarks which I made on the demurrer in this case I argued that you were not a court. I based it upon authorities which I found, and which seemed to be conclusive on the

subject, but I regard this question now as entirely immaterial. Your jurisdiction and the purpose which you have in view are clearly defined and a name amounts to very little in this matter.

Your purpose then, here, is to inquire whether such offenses have been committed by this respondent as justify you in removing him from office. Now what are the offenses charged? They are substantially two, although covering a multitude of articles. First, that in the discharge of his public duties he has been in a condition of gross intoxication; that his mind has been unfitted for the discharge of the great duties that he has had to perform. The other charge is, that he has been during the time he has occupied this office an habitual drunkard.

I shall not discuss the facts, the evidence which goes to show that these articles are sustained. My associate who will follow me will do that. But I shall discuss the question of whether or no having done that with which he is here charged, he should be removed from office. Gentlemen, the position and influence of the judiciary of this country is, I fear, too little appreciated among the great mass of the people. When it shall occur that the people of this commonwealth no longer respect those who administer justice in her courts, when it shall come to pass that the judges of this State shall forfeit the respect and allegiance of the people, you may expect mobs and riots and lynch law and anarchy and the dissolution of the government. It is, therefore, of the utmost importance that this great department of the government shall be kept free and pure, and that it shall so conduct itself and the affairs intrusted to it that it will command the confidence and the respect and the homage of the people.

Has this distinguished respondent done that in the ninth judicial district? The evidence goes to show that within ten days of the time when he stood in this capitol and took upon himself the solemn obligations of his office he disgraced the public service of this State and filled the whole atmosphere with the scandal of his debauches. It was known from one end of the State to the other,—in fact, from one end of the Union to the other, as it flashed over the wires and was published in the papers of the country. So great was that scandal, that the Legislature saw fit to investigate it. But at that time it so happened that another impeachment case was pending; it was his first offense, and the promises of reformation, to which the counsel has so feelingly alluded, were made, and a committee was appointed by the House that whitewashed the defendant's conduct and he went free. Scarce had he left the capitol building, certainly before he departed from the city, the promises of reformation which he had made vanished into thin air and he left the city in a condition of disgraceful drunkenness. Does that constitute a misdemeanor? When you think that the object of this court sitting here, the purposes of impeachment is to remove unworthy officers, and you are asked what are misdemeanors when connected with such administration of the affairs of the government, I ask you is such conduct a misdemeanor? If you can answer in the negative your estimation of the public service is not by any means such as I have given you credit with entertaining.

Before the year is ended in which that disgraceful occurrence took place we find respondent in the western part of the State at a special term of court, in a condition of drunkenness again, swearing at the officers, disgracing himself upon the public thoroughfares and in the

place where he is supposed to administer justice. If you could excuse the first instance, as we sometimes excuse offenders—because it is the first offense, what can you say, when after the admonitions which were given to this defendant in January, 1878, you find him in November, 1878, conducting himself in a disgraceful manner in the halls of justice at Marshall? In my opinion, gentlemen, that was misconduct in office, and it was a misdemeanor in a court of impeachment, whatever it might be in a court of law.

I think I have stated that in a court of impeachment those things may be regarded as misdemeanors which, in a court of criminal law, would not, for the reason that the object is not punishment, but the public welfare and the purity of the public service. I find an illustration which seems to me pertinent in this respect, in which we have the decision of the most eminent courts of the country, in cases which seem to me parallel with this. They go to show what the courts think is misdemeanor and misconduct or misbehavior. As you all know attorneys at law are officers,—they are officers of court. Before entering upon the discharge of their duties they take an official oath. They become, if not officers of the government, at least officers of the court. Those officers of the court are removable for substantially the same reasons that an officer of the government is removable, and if you shall find that attorneys at law who have spent years in fitting themselves for their profession, whose profession is their means of livlihood and their support for themselves and families, can be stripped of their office for any particular kind of conduct, the same reasoning will apply when the government comes to treat its official delinquents.

Now, what can an attorney be removed from office for? I will give you some illustrations. I read from 1st Michigan Reports, page 392, in the matter of Mills, an attorney:

> The revised statutes of Michigan provide that any attorney, solicitor or counselor may be removed or suspended, who shall be guilty of any deceit, malpractice, crime, or misdemeanor.
>
> The court may remove or suspend an attorney for other causes than those mentioned in the statute, which is not to be construed as restrictive of the general powers of the court over its officers.

I read that from the Syllabus. Now I will read from the opinion of the court.

> The prerequisites necessary to admission at the bar are, *first*, that the applicant shall be approved by the court for his *good moral character*; and, *second*, that he possesses sufficient *legal learning* to discharge the duties of his office.
>
> The authority of the court to remove or suspend an attorney when guilty of any deceit, malpractice or crime, exists independently of the statute. Whether this authority to revoke a license granted to an attorney, extends to causes other than those specified in the thirty-fourth section, is now, for the first time, presented for the consideration of this court.
>
> If our courts are restricted to the causes set forth in the statute, there would seem to be a lamentable defect in our laws. The words "deceit" and "malpractice" in the statute, have direct reference to the conduct of an attorney, as such attorney, and if the authority of our courts to remove or suspend an attorney is to be thus restricted to *official* delinquencies, it follows, that however degraded his moral character may be—whatever fraud or deception he may be guilty of—if such fraud or deception is unconnected with his *professional* acts, he is deemed worthy of a place at the bar. In other words, an individual may be guilty of acts

which may involve a violation of every moral precept, and yet retain our license, and practice in our courts, provided these acts were committed in his *private*, and not *official capacity*.

If it is of consequence to the community that those who are in any way concerned in the administration of justice, should posses a reputation unstained by any of those vices which in their nature tend to degrade and corrupt, then it is important that a power should be lodged in some tribunal, to purge the bar of such as may have become the victims of such vices. That no person can faithfully and honorably discharge the delicate and responsible duties of an attorney, unless fortified by strong moral principles, is too clear for argument. The *nature* of those duties necessarily implies the possession of high moral character, in order to their conscientious performance. This our statute contemplates, for it is only to those who are "approved by the court for their good character" who are permitted to wear the honors and bear the responsibilities of an attorney

If it be necessary, to gain admission at the bar, that a person should furnish the evidence of "moral character," as required by the twenty-seventh section, how infinitely greater the necessity, that he should actually possess that character when he shall have entered upon the active and exciting theater of professional life, where he is beset at every moment by temptations, well calculated to test the firmness of his principles. It can not be contended, with reason, that while our courts are clothed with the authority to revoke the license of an attorney who may be convicted of a *misdemeanor*, that they are powerless when that authority is invoked in respect to an attorney who may be convicted of immoralities which utterly unfit him for the association of gentlemen, and the faithful discharge of his duties, either to his clients or to the court in which he may practice.

Can it be that an attorney, convicted of a petty offense in no wise involving moral turpitude—one who may have adorned the profession by his talents, his eloquence and his learning—may be expelled from the bar; while another, whose reputation may not have extended beyond the limits of the township in which he resides, and whose character may be stained by gross immoralities, is permitted to appear as a counselor and advocate in courts of justice? Such a state of things would result, if the views taken by the respondent be correct.

As it is a condition precedent to his admission at the bar, that an attorney should possess a blameless moral character, I think he forfeits his rights as such attorney, upon a breach of that condition. When a license is granted to an attorney, we certify to the world, that he has been "approved by the court for his good character and learning." Upon this certificate the public have a right to rely. They may fairly presume, so long as the attorney retains his office, that his "good character" continues to be "approved by the court," and that they may safely rely on his honor and integrity.

Should this court, after being officially advised that one of its officers has forfeited the good name he possessed when permitted to assume the duties of his office, still hold him out to the world as worthy of confidence, they would, in my opinion, fail in the performance of a duty cast upon them by the law. It is a duty they owe to themselves, to the bar, and the public, to see that a power which may be wielded for good or for evil in not entrusted to incompetent or dishonest hands. The extreme judgment of expulsion is not intended as a punishment inflicted upon the individual, but as a measure necessary to the protection of the public.

That is what I claim in this case, that this is a proceeding made necessary for the welfare of the public and has not in it, for its purpose and object, the punishment of the person accused.

The extreme judgment of expulsion is not intended as a punishment inflicted upon the individual, but as a measure necessary to the protection of the public, who have a right to demand of us that no person shall be permitted to aid in the administration of justice whose character is tainted with corruption. Upon principle, therefore, I think that the authority of this court over attorneys ought not to be restricted to the cases specified in the statute. And the reasoning by which I am conducted to this result is conclusive to show that the Legislature never intended to withhold from our courts the exercise of a power so necessary to pre-

serve the administration of justice from pollution, and the public from imposition.

I now read from the case of Austin, reported in 5th Rawle, Penn. Reports, page 19. In speaking here of removal from office of an attorney, —and the court will bear in mind that I do not insist that the cases are exactly parallel—the removal of attorneys and the removal of officers by impeachment—but I do say that the same principles are involved, to-wit, that in both cases the object to be attained is the protection of the public and not the punishment of the offender, and that conduct which justifies the removal of an attorney from his office will warrant the removal of any other officer, and the reasoning of the courts in such cases should be a guide in the present instance.

But the end to be attained by removal is not punishment but protection. As punishment it would be unreasonably severe for those cases in which the end is reclamation and not destruction, and for which reprimand, suspension, fine or imprisonment seem to be the more adequate instruments of correction; for expulsion from the bar blasts all prospects of prosperity to come, and mars the fruit expected from the training of a lifetime. For this reason the statute to regulate attachment and summary punishment for contempts seems to be inapplicable to this class of cases. Expulsion may be proper where there has been no contempt at all, as in cases of *brutality, drunkenness and the whole circle of infamous crimes.*

I next read from the case of Kimball, reported in the 64th Maine Reports, page 607.

"The power of removal, however, is a judicial power, to be exercised by a sound judicial discretion, and in accordance with well established principles of law, where the evidence is of a conclusive character. But while its use calls for judicial discretion, it also invokes judicial firmness.

The proceedings for the removal of an attorney at law *do not partake of the nature of a criminal procedure*, in which a party has a right to insist upon a full, formal and technical description of the matter with which he is charged. They are usually commenced by motion to the court, setting forth the misconduct of the attorney in terms that may be readily comprehended by him, and praying for a rule on him to show cause why he should not be removed from the bar for the causes assigned.

The causes for which an attorney at law may be removed from the nature of the case are diverse and numerous. He may be removed for violating his official oath; for conviction of perjury or other felony; for attempting to get an opposing attorney drunk in order to obtain advantage of him in the trial of a cause; for obtaining money of his client by false pretences; for advocating the admission in evidence of a forged copy of a letter, knowing it to be forged when offered by his associate counsel; for ceasing to possess "a good moral character;" and for any ill practice attended with fraud and corruption and committed against the principles of justice and common honesty.

I have other cases to the same effect, which I will not now stop to read. Sufficient has been said upon that subject to show you that the courts of the country have the right to remove their officers for certain offenses, if not for all gross moral delinquencies, such as drunkenness, brutality, fraud, deceit, and all manner of ill practice. Now, then, if such things would be ground for removing Judge Cox from the bar if he were an attorney, do you say that because he sits upon the bench with the powers and duties of a judge of the district court of this State that the same conduct is not sufficient to warrant you in divesting him of those judicial powers? The courts say in the case of removal of attor-

neys that the object is not to punish the attorney. As a punishment it would be too severe. But that the object to be attained is the good of the public, the protection of the public interests; and so in this case the object of impeachment is not to punish this man, but it is to protect the public; and the same offenses which might justify the removal of an attorney would certainly, for a much stronger reason, justify the removal of a judge. We have another illustration of the care, the watchful solicitude of the law over the administration of justice and over its courts, in the provisions made with regard to new trials, in the event of any misconduct on the part of a juror. An important case comes on for trial and upon the trial before the jury, while they are listening to the evidence and to the argument of counsel, or after they have gone into their jury room, some one or more of the jurors misconducts himself, is guilty of misconduct or misbehavior—that verdict goes for nought in the courts; it will be set aside because of the misconduct of the juror. Here we find another definition of the term misconduct. Here we find another illustration of the solicitude of the courts that their judgment shall be pure and unbiassed, and that the men who administer the law shall do so decently and in order.

What constitutes misconduct on the part of a juror? These, now, are simple illustrations of what courts regard as misconduct or misbehavior. The cases are not exactly parallel to cases of impeachment. But they go to show what the law considers misconduct or misbehavior on the part of those who administer justice in her courts. It has been repeatedly held, as every lawyer here knows, that the intoxication of a juror is such misconduct as will render his verdict and the verdict of the jury to which he belongs liable to be set aside. Nay, more, there are many courts that go to the extent of saying that if a juror after he shall have received the charge of the judge and retired to his jury-room shall so much as indulge in one drink of liquor, though it may not be shown to have affected his mind a particle, the verdict will be set aside. If that be so with regard to a juror, what shall you say of a judge in a condition of inebriation sitting upon the bench and giving that jury the law? Is that misconduct? Is that misbehavior? I call your attention to some cases upon this subject. I read from the 27th Iowa, page 404, Ryan vs. Harrow.

Plaintiff moved the court to set aside the verdict and for a new trial on the ground of the misconduct of the jury, alleging that certain of the jury drank intoxicating liquors and were intoxicated while deliberating upon their verdict.

The Supreme Court in giving their opinion in that case upon this question as to whether the verdict of the jury should be set aside because of the misconduct of the jury, used the following language:

Beck, J. The fact that during the progress of the trial, and after the cause was submitted to the jury, and before they had agreed upon their verdict, two or more of the jury drank intoxicating liquors, seems to be conclusively established by the evidence embodied in the record. The liquors appear to have been procured by the jury without the knowledge or aid of any of the parties, none of whom are blamable for this misconduct of the jury in this respect. Whether any of the jury were intoxicated is a question of doubt. Several of the jurors, and the bailiff attending them, giving it as their opinion that one or two were under the influence of intoxicating liquors, while the persons thus charged, and several others, deny

the fact. The view we take of the case will relieve us of the duty of determining whether the charge of intoxication is sustained by the record. And we are glad to escape so unpleasant an investigation, which might result in convincing us that the administration of law in our State has been disgraced by the drunkenness of those appointed to decide, in a court of justice, upon the rights of their fellow-citizens. We had hoped that such things were of the past, and would only be remembered as rare instances existing in the traditions of frontier days. This court has ruled that a juror, separating from his fellows while considering of their verdict, and drinking ale or lager beer, without the charge that he became intoxicated is misconduct requiring the verdict to be set aside. The ruling of the court is based upon the fact of the drinking of the liquor by a juror, and no weight seems to be given to the fact of separation without permission.

Then he gives the authorities cited. After considering a good many cases on the subject, (on page 499), the Judge continues:

The foregoing are all the cases that have fallen under our notice, which serve to elucidate the question under consideration. It must be admitted that they are very far from agreement, and cannot be reconciled. It may be said, however, that all admit that the drinking of intoxicating liquors by jurors, while in the discharge of their duties as such, is a very dangerous practice, that ought to be discouraged, it is uniformly condemned. All unite in holding, too, that if a juror was under the influence of spiritous liquor while sitting in the case, the verdict cannot be sustained. The rule which this court adopted in *The State v. Baldy* is supported by reason, and will certainly tend to insure purity and correctness in the verdicts of juries, by removing the possibility of the effects of excessive indulgence in intoxicating drinks, admitted on all hands to be dangerous and evil. There is absolute safety in the rule. There is admitted danger without it. Prudence, and a desire to secure a pure administration of the law, demand that we adhere to it. It is in harmony with other rules intended to secure unbiased and dispassionate verdicts of juries, and is supported by precisely the same reasons. If a juror has communications in regard to the cause with a party or attorney therein; if he receives refreshments from a party to the suit, or is exposed to other temptations that might operate on him to corrupt his verdict, the courts will not enter into an inquiry in order to determine whether indeed such was the result, but, in the fear of possible improper influences wrought thereby, will set aside the verdict. In such cases jurors of ordinary intelligence and integrity would not be influenced by these things, but the courts hold it far safer, and as more certainly conducing to the correct administration of justice, to remove temptation entirely out of the reach of jurors, than to weigh the temptations to which they may be exposed, and their ability to resist them, and thereupon to determine whether in fact the pure fountain of justice has been corrupted. Doubtless ardent spirts, to a certain amount, may be drank without inflaming the passions or beclouding the reason, but, beyond a certain limit, they indisputably produce these results. Where that limit is with different men cannot be certainly known.

Courts will not assume to determine the limit, and whether, in cases where jurors have indulged in the use of the dangerous liquid, it has been passed. Inasmuch as, in such a case, there can be no certainty of the purity and correctness of the verdict, that it is the result of cool and dispassionate deliberation and the honest exercise of reason, it will be set aside.

In the business affairs of the country these very reasons often constrain those who employ men to discharge duties requiring coolness, deliberation and the calm exercise of judgment for their performance with safety to life and property, to impose strict abstinence from intoxicating beverages upon those so employed. Engineers upon railroad locomotives, pilots upon steamboats, etc., etc., are often the subjects of such restrictions, not because indulgence in intoxicating liquors within the very indefinite bonds of what is called moderation, would absolutely unfit them for the careful discharge of their duties, but because there is absolute certainty of perfect safety from the maddening influence of alcohol in entire abstinence from the use of all the liquors in which it exists, and without such abstinence there can be no such safety."

If the verdicts of juries will be set aside in the courts of the country because a juryman shall partake of a small quantity of liquor,—if that conduct on the part of a juror is such misbehavior as warrants a disregard of that which the jury has done in its judicial capacity, shall it be said that a judge may attempt to perform the duties of his office in a condition of inebriation, and there be no redress? Here we have a judge who in one instance is shown to have held his court on the steps of the court house, and while there attempting to attend to his duties, furnishes money to suitors to buy liquor and bring it into court, and himself participates in using it in open court, when he is already badly intoxicated. Shall such an officer remain in public service? No; it cannot be: it is too outrageous. Such conduct on the part of a juror would be punished as a contempt.

I have several other cases on this subject, but I do not know that it is necessary to read them. I think I have sufficiently illustrated what I mean. I refer to the State vs. Baldy, 17th Iowa, 39; Davis vs. the State, 35 Ind., 496; Commonwealth vs. Robie, 12th Pickering, 496; Moore vs. the State, 36 Miss., 136; Parry vs. Braley, 12th Kan., 539.

On motion of Senator GILFILLAN, J. B., the court took a recess until 2:30 P. M.

AFTERNOON SESSION.

The Senate met at 2:30 P. M., and was called to order by the President *pro tem.*

The PRESIDENT *pro tem.* Mr. Gould will resume his argument.

Mr. Manager GOULD. Mr. President and Senators: When we adjourned this afternoon I had been considering the subject of misconduct of jurors as illustrating what the courts of the land regarded as misbehavior or misconduct on the part of those charged with official duty. Before speaking of the jurors, I had alluded to the fact that attorneys were subject to removal for misconduct, and I cited cases showing what the courts had regarded as misconduct in the case of attorneys. I wish now, for the purpose of making a record, and to enable Senators to consult authorities upon that question if they see fit to do so, to give a list of cases to which I beg leave to refer.

Senator CASTLE. In regard to attorneys?

Mr. Manager GOULD. In regard to attorneys; yes, sir. I think I mentioned but two cases, and I now wish to add Kimball's case, 64th Maine, 145; Randall's case, 11th Allen, Mass., 480; 79 Ill., 149 (I am unable to give you the title of the cause; I haven't it in my brief); Dickens' case, 67 Penn., 169: Weeks on attorneys, pages 141--145.

In further illustration of what is misconduct or misbehavior on the part of public officers, I desire to call the attention of the court to a provision of the statute, to-wit, Chapter 87. The first section of Chapter 87 says:

> The following acts or omissions in respect to a court of justice or proceedings therein, are contempts of the authority of the court.

Omitting the first two the third is:

> Misbehavior in office or other wilful neglect or violation of duty by an attorney,

counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service.

That is, any other person appointed or elected to perform a judicial or ministerial office is guilty of contempt if he misbehaves in office.

The 12th section of the same chapter provides that if a person is found guilty of such contempt upon a hearing he shall be fined in a sum not exceeding $250, and by imprisonment not exceeding six months.

I take it that it will not need any argument to convince this court that drunkenness repeated and continuous almost through a period of four years constitutes misbehavior in office. And if a misbehavior in office, it is in violation of that chapter on the subject of contempts, and liable to punishment. It is, in other words, an offense; it is a misdemeanor.

Now, Senators, I have alluded to the case of attorneys, to the case of jurors, and to this matter of contempt, for the purpose of bringing your minds to bear upon the question of what the law construes as misconduct, as misbehavior in office, and I have brought your attention to that subject in order that I might next allude to another provision of the statute. I refer now to section 8 of chapter 91, which provides that,

Where any duty is enjoined by law upon any public officer or upon any person holding any public trust or employment, every wilful neglect to perform such duty and every misbehavior in office where no special provision is made for the punishment of such delinquency or malfeasance is a misdemeanor punishable by fine or imprisonment.

Senator CROOKS. I would ask, and very reluctantly, too, because I do not wish to interrupt—

Mr. Manager GOULD. I am very glad to have the Senator interrupt if I can help him.

Senator CROOKS. Does the manager hold that a misdemeanor in office, or a misbehavior in office are synonymous terms?

Mr. Manager GOULD. Under this statute misbehavior in office is made a misdemeanor.

Senator CROOKS. Therefore, in your judgment, they are synonymous terms?

Mr. Manager GOULD. So far as the construction of that statute is concerned, misbehavior in office is made a misdemeanor.

Senator CROOKS. Or that both delinquencies are the same?

Mr. Manager GOULD. Whatever may answer to the term misbehavior in office, whether it be an act of omission or commission is misbehavior in office.

Senator CROOKS. And is a misdemeanor in office?

Mr. Manager GOULD. And is a misdemeanor by the terms of that section.

Senator CROOKS. That is what I understand.

Mr. Manager GOULD. Any misbehavior in office is a misdemeanor and I have shown what has been considered with regard to jurors and in regard to officers of court as misbehavior. Now if such things constitute *misbehavior* in office they are made *misdemeanors* by the very terms of our law, and as a consequence they come clearly and unequivocally

within that provision of the constitution which says that certain officers may be impeached for misdemeanors. The counsel who last addressed you, who immediately preceded me, with an ingenuity which may do credit to his genius, but with a want of candor which reflects somewhat upon his sincerity, has stated to you that section eight could not have referred to judicial officers, for the reason that it was adopted while we were yet a Territory and when the process of removal of officers was by order of the President of the United States.

To show you how little force there is to that argument, I have but to refer you to the constitution itself. The framers of that instrument met at this capitol for the purpose of drafting a constitution, and they found that Sec. 8 upon the statute books of the Territory, and in the constitution which they adopted they expressly provided for the retention upon the statute books of this State of that identical article, and thus it became, and is now, and will continue to be, until otherwise changed, virtually a part of the constitution itself, by the express authority of the convention that framed the constitution, and the people that adopted it. See Sec. 2 of schedule.

There is no escape from the conclusion that the constitution itself, when it says that all laws now in force, unless herein otherwise provided, shall be and remain in force, revived and continued in operation, and made a part of itself that provision of the law which says that misconduct in office shall be a misdemeanor. This clause has therefore more sanctity than any mere law which was passed before or has passed since, because it is engrafted by express provision in the organic law of the State.

The constitution provides on the question of impeachment that certain officers may be impeached for crimes and misdemeanors, and we may learn something of what is meant by these terms crimes and misdemeanors by a study of the cases which have been decided—cases of impeachment which have been tried in this country.

The first case of any particular note is that of Judge Pickering, so often referred to. Judge Pickering was impeached by men who lived in the very time that the systems of constitutional law established in this country were adopted. They were men that probably knew what the intention of the framers of the National Constitution was, as well as some of these gentlemen of later date, and a large majority of the United States House of Representatives then thought that drunkenness was an impeachable offense, and a large majority—two-thirds—of the Senate, after a hearing of all the evidence in the case, concluded that drunkenness was an impeachable offense.

I pause here to say that the term misdemeanor has a very broad signification. It involves a multitude of inferior offenses which it would be impossible for the ingenuity of man to describe beforehand. And it must occur that when a given state of facts is presented to any court, that court must say whether the facts stated constitute a misdemeanor. Acts may be committed to-day that had never before been committed, and no case of the kind may have ever come into a court of justice. The person accused is arrested and brought before the court, and it remains for that court to say upon the facts stated whether or not they constitute a misdemeanor.

Now, we have had a great deal said here in the course of this trial, and said in a rather ill tempered manner about this court assum-

ing to be a law unto itself—about its being above and beyond all law, and that it made law for itself. Gentlemen, there is no claim upon the part of the management that this court has any such authority or that it is liable to any such denunciation, any further than the same might be said of the supreme court or any other court of last resort.

A controversy arises between parties. The law provides some way in which that controversy can be adjusted, and, somewhere or other, within the political fabric, there must be a tribunal of last resort,—somebody who shall finally decide upon the rights of these two parties. Is it proper to say of that tribunal, whether it be a Supreme Court or a Senate, or whaetver it may be, that it is a law unto itself and above the law, except its own convictions. It means nothing more than to say that they are, by virtue of the law, a court of last resort; and that is what you are, sitting here. You are the tribunal, the body which is finally to decide whether or not the acts here charged constitute a misdemeanor or an impeachable offense.

Now what are misdemeanors? The statute of this State will tell you what a misdemeanor is, as far as it is possible to tell it. Section 2 of chapter 91 provides:

> A felony is a public offense punishable with death, or which, in the discretion of the court, may be punishable by imprisonment in the State prison.

It is a public offense which may be punished in a certain way. "Every other public offense is a misdemeanor."

Senator BUCK, D. Assault and battery would be a public offense.

Mr. Manager GOULD. Assault and battery would be a public offense; yes, sir.

Senator BUCK, D. And a misdemeanor?

Mr. Manager GOULD. And a misdemeanor.

Senator BUCK, D. And not indictable?

Mr. Manager GOULD. I believe the statute provides that assults may be punished, not in a summary manner, by a justice of the peace.

Senator GILFILLAN, J. B. By complaint, but not by indictment.

Mr. Manager GOULD. Of course, there are no indictments in a justice court. Misdemeanor is a general term, but what particular acts come under this statute must be left to the discretion of the court called to pass upon that question.

I now desire to read a few lines from that most distinguished, perhaps, of all American writers upon the law, the author of the first text book to which the student turns in the study of the jurisprudence of this country. I ask you to consider for a few moments the language of Chancellor Kent. The particular passage to which I refer is quoted in the book which I hold in my hand, the 5th volume of the American Law Register, on page 144, and is an extract from a letter written by Chancellor Kent concerning the criminal code of the State of Louisiana. Chancellor Kent says:

> I entertain the most thorough conviction that under a government that punishes nothing, either of omission or commission, but what is within the letter of a written law, a great deal of fraud and villany and abuse and offense will escape punishment. I will show precisely wherein I think your code is lamentably deficient in an attempt to bring an offense within the letter of a law.

Senator CROOKS. What is the date of that letter?

Mr. Manager GOULD. The letter was dated the 13th of March, 1826. He continues:

> It is impossible to define expressly and literally every offense that ought to be punished, and if you ask me what is the evidence of its being an offense, if not defined in the code, I answer the laws of nature, of religion, of morality, which are written in the breast of every son and daughter of Adam, declare the offense.

This court, (if you term it a court,) this body of men, now sitting here are called upon to declare whether or no the acts here charged constitute offenses. That they are public offenses, if offenses at all, is apparent. If the offense has been committed, why its publicity is a matter known to you all and known to the world. If these acts constitute an offense they constitute a public offense. Do they consttitute an offense? That, gentlemen, you are to determine according as you shall look upon these acts; and if there be any Senator here prepared to say that the conduct of this respondent as it has been delineated by the witness before you, in spending his days upon the bench in drunkeness and his nights in revelry and debauchery with the officers and suitors about his court,—if you are prepared, on your consciences, and with the enlightenment that you have, to say that that is not an offense, then, and not otherwise, can you possibly say that a public offense has not been committed, and if a public offense, it being less than a felony, it is a misdemeonor by that statute. There is no escape, no possible escape from that conclusion. The vote which you shall give on this question must decide whether or not you consider that drunkeness and debauchery in an officer holding a high judicial station, constitutes an offense, and when publicly done constitutes a public offense, and hence is a misdemeanor by the terms of the law.

As I said before, the adjudged cases upon this subject tend to throw some light upon what are considered offenses in courts of impeachment. I have already alluded to the Pickering case in which a large majority of the Congress of the United States concluded that drunkenness was an impeachable offense.

Another case where a conviction ensued was the case of Judge Humphrey in the year 1862. Judge Humphrey was a United States judge for the district of Tennessee, and what was he impeached for? A large majority of the House of Representatives in that case said he had committed an impeachable offense, and two-thirds or more of the Senate said he had committed an impeachable offense. And what had he done? Had he murdered anybody? Had he stolen anybody's horses? Had he committed treason against the government under the constitution by any overt act? He had done nothing under heavens except to *speak* against the government of the United States. He was convicted for treasonable utterances simply. Treason against the United States consists in levying war upon her or in giving aid and comfort to her enemies in time of war. But this man had done neither, except so far as speech might do it. And the Senate, composed of distinguished lawyers by more than a two-thirds majority, said that that man had committed an impeachable offense, simply by the words that issued from his mouth.

Study the case, if you please, of George G. Barnard, of the State of New York, and before I proceed to read from that case, as I intend to

do, and give it some consideration, I invite your attention to the character of the court of impeachment in New York.

The court of impeachment in New York consists of the Senate and the Lieutenant Governor, and in addition thereto the Judges of the Court of Appeals, the court of last resort in that great commonwealth. That court, composed of those distinguished judges, as well as many other able lawyers upon the floor of the Senate, impeached George G. Barnard of crimes and misdemeanors in office and maladministration in office. What did they charge him with? I think there were altogether something like forty or forty-one charges. I will not attempt to read all of them, but I want to call your attention to a specimen—a "sample" of the others.

The 37th article of impeachment in the Barnard case reads as follows:

ARTICLE XXXVII.

That the said George G. Barnard, unmindful of the duties of his office, and in violation of his oath of office, was guilty of malconduct in his office of justice of said Supreme Court, in this: That he, the said George G. Barnard, did, at divers times between the 1st day of January, 1869, and the 1st day of April, 1872, while sitting on the bench and holding a term of said Supreme Court at the city of New York, in the presence of suitors, counsel and officers of said court, and of other persons from time to time there present, repeatedly deport himself in a manner unseemly and indecorous; did repeatedly use language coarse, obscene and indecent; did repeatedly use language justly causing those persons in his hearing, and other persons, to believe and understand that he, said George G. Barnard, in his official actions as said justice, acted not with an honest intent faithfully to discharge the duties of his said office, and to use the process of said court for the purpose of doing justice, but with the wrongful and corrupt intent to aid and benefit his friends and favored suitors and counsel; did repeatedly, when applications were made by counsel to him, the said George G. Barnard, in his judicial capacity, for divers writs, orders and processes, treat such counsel in a manner coarse, arbitrary and tyranical, and calculated to intimidate officers and delay such counsel in the discharge of their sworn duty to their clients, and to deprive such clients of their right to appear and be protected in their liberty and property by counsel, and in the above and other ways was guilty of conduct unbecoming the high position which he held, and tending to bring the administration of justice into contempt and disgrace, to the great scandal and reproach of the said court, and of the justice of the State of New York.

What is he charged with? With using unbecoming language, misdemeanor of himself towards the attorneys and others about the court. Now the Court of Impeachment of the State of New York, consisting as I said of the judges of the court of last resort considered this article, and I read now from page 2166 of the 3rd volume.

Senator CROOKS. Will the counsel permit me to interrupt him a moment? What were the charges against Judge Barnard?

Mr. Manager GOULD. I have just read one at length.

Senator CROOKS. That is not all the charge, what were the specifications?

Mr. Manager GOULD. I am going to refer to the specifications and the discussion, but I want to get before the Senate what the charge was and then get the vote. On page 2176 of this journal is the vote that was given on that charge—not on the specifications; the specifications were voted on separately and I will consider that directly, but I am speaking now of the charge itself. On that charge 24 found "Guilty," 11 "Not guilty," and of the 24 that found guilty there was a majority of

the court of last resort of the State of New York voting that this article charged an impeachable offense for which George G. Barnard should be removed from office.

Now, I propose with the indulgence of the Senate to take up the specifications of that charge to further show what in the State of New York are considered impeachable misdemeanors. The first specification under this article is as follows:

SPECIFICATION FIRST.

That in or about the month of October, 1871, upon the occasion of an application to him, the said George G. Barnard, while he was holding a special term of the Supreme Court in the city and county of New York, for the appointment of a referee, the party making the application suggested the appointment of one Gratz Nathan as such referee, whereupon the said George G. Barnard said in substance: "Gratz Nathan—Gratz Nathan; I know no Gratz but one; that is Gratz Coleman; he is my Gratz;" or, "he is my referee;" the said George G. Barnard thereby alluding to a notorious fact, that Gratz Nathan was a person usually selected as a referee by Justice Cardozo, and meaning thereby that he had a like favorite in one James H. Coleman.

Now you notice Senators he had not committed murder. He had not stolen anybody's horses. He had not committed any of the long catalogue of offenses that the gentleman has read to you about, from his cyclopædia of crimes and misdemeanors. He had not even done any act—except to talk. He had simply done what, perhaps, every American delights in doing. But he had talked indiscreetly. He had talked disgracefully. He had talked in a manner to bring down the censure of the people upon him. He had conducted himself in such a manner as to bring the judiciary, and the administration of justice in that State, into contempt.

They considered each of these specifications separately. On this specification which I have just read in your hearing,

The President proposed to each member of the court, in the order in which his name stands on the list, the question: "How say you, are the charges contained in the first specification of the thirty-seventh article of impeachment proven or not proven?" Each member of the court thereupon arose in his place and replied as follows:

* * * * * * * *

Proven, 35; not proven, none.

The second specification I will omit, and I omit it for the reason that the language attributed to the Judge in that case, was perhaps, too filthy to reiterate, together with the discussion upon it, before this court and in this public place It is sufficient to say that it was very unbecoming language; but the proof upon that specification was deemed insufficient, and on a vote being taken on that specification, there were 10 votes in favor and 25 votes against conviction.

I now proceed to the third specification.

SPECIFICATION THIRD.

That in the year 1870, an application was made to the said George G. Barnard while he was holding a special term of the said court, at the place last aforesaid for the appointment of Thomas W. Clarke, Esq., then late a justice of said court, as referee, whereupon the said George G. Barnard said, in substance, that no man

need offer that person's name to him as a referee, that said person had lied about him and had been his enemy, and that he favored his friends and not his enemies; meaning, thereby, that in his judicial capacity he acted with intent to favor his friends.

On that third specification the President propounded the usual question, and thirty-four of that Court of Impeachment voted for conviction and none against. The Senate will bear in mind that there is nothing changed in that specification but the language he used. It is not charged even that he did appoint anybody wrongfully, or that he wrongfully refused to appoint anybody, but that he simply said that this man "had lied about him," and there was no use coming to him to appoint such a man. That was considered by the judges of the Court of Appeals of the State of New York, (including such men as Grover, Folger, now Secretary of the Treasury; Andrews, and Rapello,) as being impeachable, and they voted for his conviction.

I read now the fourth specification:

SPECIFICATION FOUR.

That in or about the month of March, 1870, the said George G. Barnard, while on the bench and holding a special term of the court aforesaid, at the place aforesaid, publicly said in substance as follows: "My enemies are very unfortunate; one of them went home from his woman and fell down dead in his house; another tried to make a little capital by getting himself knocked in the head, but he got knocked too hard." The said George G. Barnard, meaning and intending by the term "another," to refer to Dorman B. Eaton, Esq., a distinguished member of the bar in the city of New York, who had then recently been brutally assaulted at night, and nearly killed by a ruffian.

On that specification, after considerable discussion, the Senate voted not proven, and voted unanimously; but for the purpose of considering how they looked upon the matter, I will read the discussion which ensued upon the vote:

The president proposed to each member of the court, in the order in which his name stands on the division list, the question, "How say you, are the charges contained in the fourth specification of the 37th article of impeachment, proven or not proven? Each member of the court thereupon arose in his place and replied as follows:

JUDGE ALLEN. Mr. President, there being no evidence that the remark referred to Mr. Eaton, as charged, I vote not proven.

There was Judge Allen, of the Court of Appeals. He says, in substance, that had there been evidence to show that this man, in the brutal remark he made from the bench, had referred to Dorman B. Eaton—had there been *any* evidence to connect him with it—he would have voted guilty on that charge.

Senator BENEDICT. Mr. President, I do not think it is necessary to prove the inuendo. The question is not the point, was Mr. Eaton in Judge Barnard's mind at all? The point is, did Judge Barnard say, "My enemies are very unfortunate. One of them fell down dead when he came home from his woman, and the other one got himself knocked on the head, but he was knocked a little too hard." Now, the charge says it meant Mr. Eaton. If it meant me it would not make any difference; he didn't say anything about Mr. Eaton.

Judge GROVER. Mr. President, my vote is based upon the idea, in the absence of proof of the inuendo, the remark does not amount to anything.

Senator BENEDICT. Well, sir, we do not prove anything about the other man, Mr. Raymond.

Judge GROVER. Therefore I vote not proven.

Senator CROOKS. Did that allude to Henry G. Raymond, the editor of the New York Times?

Mr. Manager GOULD. I presume that is the man referred to.

Senator BENEDICT. This is a question of judicial propriety, whether it is proper for a judge on the bench, administering justice, to make such speeches as that in regard to his enemies; that is the point, not whether he shall make it in regard to Mr. Raymond or Mr. Eaton; who cares for them so far as this is concerned; the question is, did the Judge say so on the bench? Therefore, I shall vote proven.

Senator PERRY. Mr. President, I would like to inquire if it is within the recollection of any member of the court whether the respondent himself pretended to deny that he made this statement?

Senator BENEDICT. Never.

Judge GROVER. I think he denied it; there was evidence tending to show he made the remark about his enemies.

Senator PERRY. As I recollect the evidence, Mr. President, I think this charge is substantially proven.

Judge FOLGER. Page 560 is Mr. Johannes' evidence on the subject; it was my remembrance that Judge Barnard denied it on the stand.

Senator D. P. WOOD. My remembrance is that he said he didn't remember anything about it.

Senator PERRY. Of course, Mr. President, as there was but one witness, as I understand, to prove these statements, if the respondent himself, under oath, positively denied saying them, I should be compelled to give him the benefit of the doubt and vote no, but I do not understand there was any such evidence in the case.

Senator BENEDICT Page 1642: "'My enemies are very unfortunate;' do you remember that occasion and remark? A. I not only do not remember it, but I never said so." He having thus denied it, Mr. President, I change my vote.

Senator PERRY. Then I vote not proven.

Judge FOLGER Without wishing to imply that Mr Johannes has not testified to what he believes to be true, there being a direct contradiction between them, and the scale being even, I will say not proven.

And the Senate voted not proven. They voted not proven upon that charge—that a man made these remarks about his enemies. That was simply a remark that the Judge made from the bench, but it was an unbecoming remark, a remark that tended to bring the judiciary into disrepute, and although the Senate voted not guilty, its members have said that such conduct upon the part of a judicial officer is an impeachable offense.

Senator CROOKS. I think the manager meant that they voted not proven. You said not guilty.

Mr. Manager GOULD. Not proven. The final vote was guilty or not guilty under the charge. The vote on the specifications was proven or not proven. We now come to the fifth specification.

Senator CASTLE. These are all specifications under article 13?

Mr. Manager GOULD. Under article 37.

SPECIFICATION FIFTH.

That on or about the 24th day of March, 1869, while the said George G. Barnard was sitting on the bench and holding a special term of said court, at said place, one Thomas C. Durant, who was then vice-president of the Union Pacific Railroad Company, was being examined in said court as a witness, and said Durant, in the course of such examination, testified in reference to a remark that had been open-

ly and publicly made by the said George G. Barnard in the lunch room of the Astor House, at said city, being a place of general resort, in the words or to the effect following: "I have driven one set of scoundrels out of New York, and I am going to drive out this set."

You see, Judge Barnard, like the distinguished respondent in this case, claimed to be a great conservator of public morals. He had driven one set of thieves out of New York, but, in the language of the distinguished counsel for the respondent, this man whom we have here under consideration now, has been engaged in the very laudable undertaking of suppressing gin-houses and drinking places in the ninth judicial district. Oh, yes, men of this character wish to assume a virtue if they have it not, and the less they have of it the more they want to assume. I read farther:

"I have driven one set of scoundrels out of New York and I am going to drive out this set," and on such remark being so testified to, said George G. Barnard, from his seat on the bench, in the presence of suitors, officers and counsel of the court, admitted that he had made said remark, at the place and under the circumstances testified to, thereby giving those present to understand that he, said George G Barnard, as a justice of the said Supreme Court, used the process of said court, not for the purpose of doing justice between party and party, but for the purpose of prosecuting and harrassing the Union Pacific Railroad Company and the officers thereof, said company being engaged in a litigation with James Fisk, Jr.

Now, gentlemen, that is a little stronger even than the other; that is a little farther from a felony, as you ordinarily understand the term, than the other specifications; for the other specifications charge him with something that he had said upon the bench; some offensive remark, that he had made while acting in his judicial capacity; but in this case he is charged with admitting that at some other time, at the Astor House, in the city of New York, he had made an offensive remark.

That is the fifth specification, let us see what they say about that. (page 2164.)

The President proposed to each member of the Court in the order in which his name stands on the division list, the question: "How say you, are the charges contained in the fifth specification of the 37th article of impeachment proven or not proven?" Each member of the court thereupon arose in his place and replied as follows:

Judge ALLEN. Mr President, that is one of the matters I am excused from voting on.

Judge ANDREWS Mr. President, I have no doubt of the fact the words were proven, but the allegation that he intended to give those present to understand "That he, the said George G. Barnard, as a justice of the said Supreme Court, used the process of said court not for the purpose of doing justice between party and party, but for the purpose of prosecuting and harrassing the Union Pacific Railroad Company and the officers thereof," in which consists the entire substance of the specification, not being in my judgment proven, I shall vote not proven.

Judge RAPALLO. Mr. President, on the ground stated by Judge Andrews, I vote not proven, though I find the language proven.

He votes not proven, although he finds the language proven, but the idea intended to be conveyed, that Judge Barnard proposed to mis-use the powers of the court, not being proven, he could not vote to sustain that specification.

Senator PALMER. Mr. President, I desire to ask the stenographer to read Judge Andrew's remarks, or have Judge Andrews repeat them.

Judge ANDREWS. Mr. President, I will repeat them. While I believe the words charged as having been spoken here, proved to have been spoken by Judge Barnard, that the intent and meaning, alleged in the specification, with which he spoke the words, and in which, as I understand it, consists their impropriety, substantially have not been proven.

Judge FOLGER. Mr. President, may I be allowed a remark. There is no intent charged to Judge Barnard in speaking these words for the purpose of giving people to understand, only that the use of the phrase *did* give the people to understand, and I can hardly fail to see how it failed to give the people to understand that he had that purpose.

Senator PALMER. Mr. President, I think it is clearly proven that he made this statement, and therefore I shall vote proven.

A vote was then taken and there were 27 who voted proven and 7 who voted against it. The sixth specification; let us see what there is about that.

SPECIFICATION SIXTH.

That the said George G. Barnard, in or about the month of October, or November, 1871, was sitting on the bench of said court at the place aforesaid, and an application was made to him for an order appointing a receiver of the property of a judgment debtor, and opposition was made to such appointment by the counsel for such judgment debtor, and said George G. Barnard said in effect, "In such matters, of course we always grant a receiver; you are gone, counsellor." And, afterwards, pointing or looking at a gentleman sitting in the court, "There is a friend of mine and a very honest man, I know, and I think I will appoint him receiver."

And as I pass along I desire to call your attention to this remark, "You are gone, counsellor." You can see how near it tallies with the remark made by the respondent in this case when he met Mr. Wallin and Mr. Morrill one morning when they had gone down to New Ulm, to have a case settled—the case of the County Commissioners against Tower. The Judge meets these two counsel on the street, and in his maudlin, drunken way says, "Mr. Morrill, I have got to give Wallin a new trial in this case. Wallin has got you."

Senator CROOKS. Who said this, Mr. Manager?

Mr. Manager GOULD. This is what the Judge said to Mr. Wallin and Mr. Morrill when they met him on the streets at New Ulm one bright summer morning when they went down to get a case settled, and afterwards they went up to the court house at the proper time for the court to transact its business at the special term, and found the Judge in such condition that they did not regard it safe to submit their evidence to him and their papers, and they concluded between themselves that they would bundle them up and send them down to St. Peter and let him examine them when he got sober.

But I will go on with the specification:

That, thereupon, the person so mentioned said he happened to be the judgment debtor. That, thereupon, said Barnard said to the counsel applying for said order, "Counsellor, you will have to tell your client that Judge Barnard is such a bad man and such a rascal that he will not grant this order," or words to that effect. That said George G. Barnard made said remarks and used said words, from the bench in the presence and hearing of suitors, counsel and officers of said court, thereby giving it to be understood and openly declaring that he, the said George G. Barnard, would abuse the process of the said court and thereby appoint a receiver, not because he was a fit and proper person to discharge the duties of such

office, but because he was a friend of said justice, and that he, said George G. Barnard, would refuse a order appointing a receiver in such a case, if the party proceeded against were a friend of his, the justice, where he would otherwise grant the same, and that the said justice was influenced in his official action as such justice by the motion and intent of corruptly and wrongfully aiding and assisting his friends by the abuse of the process of the said court.

Now that specification was not sustained, but the debate upon that question is instructive. (Page 2165.)

The President proposed to each member of ths court, in the order in which his name stands on the division list, the question: "How say you, are the charges contained in the sixth specification of the 37th article of impeachment proven or not proven?" Each member of the court arose in his place and replied as follows:

Judge GROVER. Mr. President, upon this specification I must vote not proven. A part of the charge, some of the remarks that he made, the remark that he would appoint the man there, I have no doubt is proven, but the gist of the charge is, that from motives of partiality to his friends, he refused to appoint a receiver in the supplementary proceedings where it was his duty so to appoint. Judge Barnard testifies, and his testimony is uncontradicted, that he did appoint a Mr. Valentine receiver in that particular case. I vote not proven.

Judge PECKHAM Mr. President, I confess I am unable to agree with brother Grover as to this evidence. I understand Judge Barnard to have testified, as Judge Grover states, but I understand the reporter who was present, I think it was the reporter—

Judge GROVER. It was not the reporter.

Judge PECKHAM. Mr. Johannes.

Judge GROVER. He don't know whether a receiver was appointed or not.

Judge PECKHAM. I understand him to testify that no receiver was then appointed: he declined to appoint any, and I understand Judge Barnard to differ with him in that respect; he swears he did but he don't swear that he did it then.

Senator LEWIS. Yes, sir, immediately.

Judge PECKHAM. If he did he differs from the other witness.

On the vote being taken, there were none for conviction under that charge. The reason being that the intent was not sufficiently proven.

I now come to the thirteenth specification. There seems to be an interregnum. Certain specifications were stricken out or dropped out for some reason that does not appear in the records.

SPECIFICATION THIRTEEN.

That on or about the 13th day of February, 1872, the said George G. Barnard, while sitting on the bench and holding a term of court at the city of New York, on an application being made to him to attend an order whereby Philo T. Ruggles, Esq., had been appointed referee, said in effect: "I shall sign no order unless I can make it to a man I can rely upon. I am not going to appoint any one, even by consent, unless it is satisfactory to me. I did not appoint this referee. And one of the counsel in the case stated: "This gentleman was not appointed by consent." The said George G. Barnard further said, in effect: "I don't care, I shall not do it, and if you don't like it you can put it in for the 959th article of impeachment."

That was the thirteenth. The usual question was put, and the vote in favor of sustaining the specification was 35 against none.

Now we have gone through the several specifications of this charge, Senators, and we have not found in any one of these specifications anything that resembled a crime or misdemeanor, as it is understood in the administration of criminal law; but we have found what constitutes misdemeanor in a court of impeachment, because the ob-

ject, as I said before, of the proceedings of this court is not to punish the person accused, but to get an improper person out of office, and that purpose enters into and characterizes the act, and makes it a misdemeanor or not, according as it shall warrant or not warrant removal from office.

Now we have gone through the specifications, and we come to the consideration of the charge as a whole, and I read from page 2167:

The president proposed to each member of the court, in the order in which his name stands on the division list, the question: "How say you, is the respondent guilty or not guilty, as charged in the 37th article of impeachment?" Each member of the court thereupon arose in his place and replied as follows:

Judge GROVER. I must vote guilty on this article, putting my vote mainly upon the first specification, and I don't recollect the other,—the one in which he referred to Judge Clerke as an enemy.

Judge ANDREWS. That is the third.

Judge GROVER. Yes, sir.

Here is a judge, one of the minority of the court that voted against conviction under this article. Now, hear what he has to say:

Mr. President, the difficulty with me is, whether this article charges an impeachable offense. The first charge is that he repeatedly deported himself in a manner unseemly and indecorous. For my part, I doubt whether that fact itself is sufficient to impeach a judge without showing it was *grossly* unseemly and indecorous.

The difficulty with him was whether the offense was gross enough; but I take it that if Judge Barnard had held in the City of New York a court upon the steps of the court-house, if he had gone up to that place in a swill-cart and there ordered up the drinks for "the boys," and drank with the suitors before the court, it would have been gross enough even for the fastidious taste of Judge Folger.

He continues:

I don't find that we have voted proven upon any specification which convicts or proves—shows—the respondent did repeatedly deport himself in a manner unseemly and indecorous. I cannot conceive of such indecorous conduct upon the bench as would need for the protection of the repute of justice in the eyes of the people, that a judge should be brought to account for it, and I do not find in this testimony or in the facts found, as we have voted upon the specifications, anything which shows that the respondent did repeatedly deport himself in a manner so unseemly and indecorous as to come up to my mind in that respect. The charge is, that he did repeatedly use language coarse, obscene and indecent. There are two specifications which would come under that general charge. The first is as to the protection of a defendant in an adultery case; the next is as to a Mr. Raymond and Mr. Eaton. As to both of these the court has voted not proven. So it seems to me that part of the general charge falls to the ground.

Now, consider there for a moment. He says on these specifications he votes not proven; that is, he is not convinced enough by proof; that the Judge had said what was imparted to him, from which we may very fairly and justly infer that if these specifications had been proven; had been established by the evidence, he would have regarded them as worthy of impeachment, and neither of them would constitute an indictable offense in any court of justice.

I read further:

The third is, that he "did repeatedly use language justly causing those persons

in his hearing, and other persons, to believe and understand that he, said George G. Barnard, in his official action as said justice, acted not with an honest intent faithfully to discharge the duties of his said office, and to use the process of said court for the purpose of doing justice but with the wrongful and corrupt intent to aid and benefit his friends and favored suitors and counsel." I do not think it is an impeachable offense to use language to that effect. If the article had charged him with doing the thing, so discharging his duties as to wrongfully and corruptly benefit his friends, it would be impeachable, but the mere use of the language to that effect, I do not think is impeachable. The fourth general charge is, that he did repeatedly, where applications were made by counsel to him, the said George G. Barnard, in his judicial capacity for divers writs, orders and processes, treat such counsel in a manner coarse, indecent, arbitrary and tyrannical, and calculated to intimidate, oppress and delay such counsel in the faithful discharge of their sworn duty to their clients, and to deprive such clients of their right to appear and be protected in their liberty and property by counsel." I do not see that these are, by any specification upon which we have voted, proven.

He does not say that it was proven, but he admits that if it was proven it would be impeachable.

The last is, and it seems to be a sort of conclusion upon the others, "and in the above and other ways was guilty of conduct unbecoming the high position which he held, and tending to bring the administration of justice into contempt and disgrace, to the great scandal and reproach of the said court and of the justice of the State of New York." Now, I am not prepared to say that anything which is established by the specifications found does support that general charge. It is true we have found, he says, he knows no Gratz but one, an expression which very few judges would use; perhaps no other one but Judge Barnard, as far as my experience goes, but I am not prepared to say that it is an impeachable offense. So, too, of his expression as to Judge Clerke, that he lied about him and had been his enemy, and that he favored his friends and not his enemies. So, too, as to the remark about the Union Pacific railroad; it is not a remark which he made in court, asserting there on the bench, sitting as a judge, that he had driven one set of scoundrels out of the country, and was going to drive another, but when a witness had referred to it as having been made, he says, "You allude to a remark I made at the Astor House." He is impeached for making a remark at the Astor House. That is not a specification against him, but the specification is that on the bench he did admit making such a remark. It seems to me it might naturally come out, when this witness was testifying, and was excusing himself for appearing in contempt against the Judge, and excused himself by reporting and referring to and relying upon the remarks of the Judge at a former time; it would be very natural for the Judge to refer to "the remark I made at the Astor House, where I said so and so," without intending himself as having it understood that that was his motive power in exercising his office, and I see nothing in it; I say I do not see enough in it to justify me in voting guilty upon the article. The 13th is a specification in which he says, "I shall sign no order unless I can make it to a man I can rely on," which certainly is not to be found fault with. "I am not going to appoint any one by consent unless it is satisfactory to me;" that can not be found fault with, so that, upon the whole, I must vote not guilty upon this article.

That is what Judge Folger says. He admits that as to most of these things if there had been sufficient evidence to establish them they would warrant conviction and he should vote to impeach upon them.

Now, we have Judge Grover, of the same court.

Judge GROVER. If it will be in order after having voted, as the question is raised by Judge Taylor as to what constitutes an impeachable offense, I would like to make one remark. While I would like to be exceedingly liberal with the judge in any remarks he might make wholly disconnected with the discharge of his official duty, I would give him great freedom of language in all proper places, but, when he sits upon the bench, to use language there tending to cause people to believe, in the language of this article, that he does not act with an honest intent

faithfully to discharge the duties of his office, and to use his process, etc., for the purpose of doing justice, but with a wrongful and corrupt intent to aid and benefit his friends and favored suitors and counsel, in an impeachable offense.

An impeachable offense, *to use the language*, because he is not charged with *doing* the act.

The necessary tendency and effect of such remarks from the bench, on the minds of those who hear, is to introduce a belief that the action of the judge is induced by favoritism. To do anything, to say anything tending to destroy the confidence of the community in the integrity of the administration of justice, I understand to be impeachable; this, in the language of the Senator (Senator Murphy,) at least, is maladministration of his office.

Senator JAMES WOOD. Mr. President: Is it understood that Judge Barnard named Judge Clerke as his enemy on the bench?

Judge GROVER. I understand that an order appointing Judge Clerke referee, with his name already inserted, was passed to Judge Barnard, sitting upon the bench, and that he, with reference to that name, and with the opportunity of every person learning who it was, said: "That man is my enemy; you need not present an order to me with his name in; he has lied about me; no favors to him; my success in life has been achieved by giving favors to my friends and not to my enemies." A judge in the discharge of his duties should recognize no friends nor enemies.

Judge ANDREWS. Mr. President: I am compelled to vote not guilty upon this and, to avoid misconception, I desire very briefly to state the grounds of my vote. Now, nothing, I think, has occurred upon the trial which has attracted more attention than the avowal by Mr. Justice Barnard, upon the stand, of a principle entirely inconsistent with the proper discharge of the judicial functions or with a proper appreciation of the duties of a judge; and, sir, if an article had been formed in which it had been declared in substance, that Judge Barnard held that the appointment of receivers and referees, was patronage vested in him as a judge, and that it was to be distributed by him with reference to his friends and to the exclusion of his enemies, and that he acted upon that principle in the administration of the duties of his office, I should have been of opinion that an impeachable offense was charged.

Senator MADDEN. Mr. President, I would like to ask Judge Andrews a question. If my recollection is correct, Judge Barnard admitted he had won this position, referring, I think, to the election, to the patronage that belonged to him, and had used it for his friends.

Judge ANDREWS. Mr. President, the distinction I am endeavoring to make, if the Senator pleases, is between the facts which might have been deemed established by the proof which has been given in the case, the charge made in the articles; in other words, in my judgment, there is no article among this series which declares that Judge Barnard did appoint his friends, to the exclusion of his enemies, as referees and receivers, and that that was the principle upon which he administered his judicial functions in this respect. It does not seem to me that the specifications cover this point; it is alleged that Judge Barnard indecorously declared upon the bench that he appointed his friends and not his enemies; but there is no charge that, as a matter of fact, this was the rule of his judicial action. Upon this ground, Mr. President, I must vote not guilty upon this article; and while it is true that the general tendency of remarks such as are proved to have been made, and as are charged in this article, is to bring the administration of justice into reproach, it does not seem to me that these remarks alone, without the other allegations I have mentioned, bring the case within the law of impeachment. For these reasons, I shall vote not guilty.

Senator MCGOWAN. Mr. President, I desire to ask the learned Judge one question, if it is not proved here that he did appoint Coleman receiver, his friend; that is one of the charges, and I believe that charge has been proved, hasn't it?

Judge ANDREWS. Mr. President, we have found him guilty in appointing Coleman receiver without authority of law.

Judge PECKHAM. [Interrupting.] Not in that case; Coleman was appointed referee in another case; Coleman was inserted in this particular case where they say he said Gratz, Gratz.

Judge ANDREWS. It don't appear whether any appointment was, in fact, mad or not upon that occasion, I believe.

Senator TIEMANN. No, there is no evidence of that.

Judge Rapallo next addressed the court. He, also, is one of th Judges of the Court of Appeals.

Mr. President, although agreeing with a great deal that has been said by m associate who last spoke. I feel constrained to differ from the conclusions at whic he has arrived, and I do so with the more regret, because that I believe that th respondent, in acting upon and professing the doctrine which he avowed from th stand, although committing a fatal error, has done so under the belief of the co rectness of his position. Still, when the conduct or principles of action of a judg come before a court of impeachment, they can not be passed upon with referenc to the peculiar characteristics of the party on trial, but the court must mark th conduct or principles with approbation or disapprobation, according to their ow merits. Our sympathies may be excited for the individual, where he has acte under a misconception of the duties of his office, but we can not yield to them i pronouncing our judgment. Now, the gist of this offense, which I understand t be charged in this article, is that this language, used by the respondent upon th bench, was calculated to bring disgrace upon the administration of justice; and i considering it I can not forget that the very first complaint made against a portio of the judiciary of this State arose in respect to this very question of patronag Neither can I forget that the tendency of the exercise of judicial power, by way o patronage, was to lead to most of the evils which have arisen. In so far as th reputation of the bench is concerned, it in some instances has led, perhaps, un charitably disposed persons to erroneous conclusions. Yet, it was calculated t lead the mass of mankind to believe that orders which placed patronage in th hands of a judge would be regarded with undue favor, and perhaps be granted fo the sake of that very patronage.

I do not say that such was the case in this instance; but the declaration of th respondent, that he used his judicial power in bestowing patronage upon hi friends and thus promoting his own success, was calculated to bring that scand upon the judiciary. Now in this case the respondent avowed, on his examinatio in regard to these charges, that he acted on the theory that that patronage was th property of the judge to be used in favor of his friends That was his fatal erro I do not understand him to have avowed that, in determining litigations, he favore his friends. On the contrary, he denied that charge. But he did avow that he ha repeatedly stated from the bench, at chambers, that that was his court, that he ha won the office, that the patronage was his, and that he would appoint his friend and not his enemies. And it was also proved and not denied that, in connectio with the same subject of appointments, he stated from the bench that he had suc ceeded in life by aiding his friends and not his enemies.

All this gentlemen, is mere statement by the Judge.

To treat the discretionary power of appointing referees, receivers, guardians, etc which is incidentally vested in a judge, as an instrument of patronage, to be use by him for the benefit of his friends or his own advancement, necessarily destro the perfect impartiality with which such powers should be exercised or their exe cise refused with the sole view to the rights and interests of the parties before hi and causes, motives and interests of his own to intervene, which, if not actuall leading to a corrupt violation of the rights of litigants, must at least destroy con fidence in the integrity of the motive and action of the judge.

In my judgment the public avowal of judicial action so destructive of confidenc in the integrity with which a most important branch of the jurisdiction of th courts, in which the respondent sat, was exercised, does sustain the charge o bringing scandal and reproach upon the court.

Judge PECKHAM—

Another of the judges of the Court of Appeals.

Judge PECKHAM. Mr. President, I would wish to add a word, as I believe I have not said a great deal upon the subject before the court, but I deem this one of the most important articles in the case. I deem it quite important that a judge should so demean himself upon the bench as not to degrade the administration of justice; not to bring it into contempt, not to have the public at large believe that they must pursue a certain course not prescribed by law, or they do not have justice. That sort of demeanor on the bench, it seems to me, is of the worst possible tendency. Suppose we illustrate this matter a little further. Suppose the Judge had said on the bench, openly: "I wish to have it distinctly understood that I appoint no man referee in this court unless he brings me a reasonable present." If he had said that we would all agree, irrespective entirely of his action, that it was laying down a course of conduct which no one could sanction, and which was directly calculated to degrade and dishonor the administration of justice.

Not it he had done it, but if he *said* such a thing; if he announced such a thing from the place of holding court, it would bring the administration of justice into great contempt.

Now, sir, concurring with all that my friend and brother, Rapallo, has said here as to this particular instance, that the Judge might have believed precisely what he said, it does not affect the case; its effect is the same upon the people at large as to how justice is administered. Carry the case a little further. The Judge says: "I appoiut to office no man but my friends: I bestow my patronage upon none but my friends; I appoint a receiver to-day who is my particular friend." Soon the receiver's compensation comes up for consideration. It is in the breast of the Judge to decide how much he shall have, in a great degree. He is my particular friend; I want to establish him as my particular friend. And the influence thus illustrated in the appointment of that referee is carried out, more or less—the allowance made to him for fees and compensation. I do not understand my learned brother to say it would not be degrading if this respondant's act coincided with his declaration, and yet the effect of this proclamation from the bench is precisely the same upon the popular judgment and upon popular sentiment as if the act coincided with the declaration.

I read from the remarks of Senator Benedict, who seems, from an examination of this case, to have been a prominent Senator in this case. I do not know him. There may be gentlemen here acquainted with him. I know nothing about him, except what I here find, but he seems to have acted a prominent part in this impeachment. This is what he says on this question of conviction under this charge. (Page 2173)

Senator BENEDICT. Mr. President, I cannot bring my mind to the conclusion that there is nothing proved under these specifications, which show that this Judge deported himself in a manner unseemly and indecorous; it seems to me that the proof under every one of these specifications shows that he did so deport himself. If "a judge of the Supreme court while sitting on the bench and holding a term of the Supreme Court at the city of New York, in the presence of suitors and counsel and officers of the court, and of other persons from time to time there present, repeatedly departs himself in a manner unseemly and indecorous," I think nothing could more tend to bring the administration of justice into contempt and disgrace Those words, "unseemly and indecorous" have great significance, and it seems to me that such conduct is an impeachable offense, and it is abundantly proved, and his language, in all these articles, was coarse, entirely inconsistent with the courtesy and civility and self-respect which belong to a judge. To say, "Gratz Nathan—Gratz Nathan; I know no Gratz Nathan but one, and that is Gratz Coleman," is a very coarse and unjudicial remark for a judge to make in deciding a grave matter. So, also, "You need not name Judge Clerke to me as a referee, because he has lied about me; he has been my enemy," is coarse, and brings the administration of justice into contempt, and the whole gist of this article is a charge of judicial impropriety on the bench, and these specifications are simply given as instances. It has been suggested that the words must be proved

literally as set forth in the charge, but I think nothing is better settled than that, on impeachment trials, such precision and identity of language is not required.

And so they voted, 24 to 11 for conviction and the accused was convicted.

Senator CROOKS. I would ask the manager if it is not a matter of public notoriety that this justice Barnard was the attorney in fact, was the friend—was the bought and perjured friend of Jim Fisk and Jay Gould in all that celebrated railroad fight connected with the foreclosure of the Erie road?

Mr. Manager GOULD. I will answer the Senator. There was a general reputation, a common report through the country that this Judge was corrupt, and that he was favoring Jay Gould and Jim Fisk; but that *rumor* does not appear with the proof nor in the charges. At least that one charge is not that he was such attorney, or that he was the friend of Jay Gould or Jim Fisk, and I desire, in further answer, to say that there is a report in circulation and has been for the last four years. in this state and elsewhere, that the respondent in this case is a notorious and outrageous drunkard, and this report seems justified by the facts.

Senator CROOKS. I am not comparing those issues. What I wanted to say further than that is this, that Judge Barnes was not tried for drunkenness as I understand.

Mr Manager GOULD. No, sir.

Senator CROOKS. Nor that he was corrupt in office?

Senator GILFILLAN, J. B. No, the court expressly acquitted him of all corruption.

Senator CROOKS. But only on a charge of malice in office.

Mr. Manager GOULD. Indecorous conduct and language on the bench.

Senator CROOKS. But he is not charged with misdemeanor in office?

Mr. Manager GOULD. I take it that he could not be removed from office unless he had committed some impeachable offense. The articles charge what the House conceived to be an impeachable offense, and what the Senate, by a substantially unanimous vote, considered an impeachable offense, viz.—

Senator CROOKS. That is to say, his indecorous conduct as depicted and shown by language was impeachable under the constitution and statutes of New York?

Mr. Manager GOULD. Yes, sir, which are substantially as our own.

Senator MEALEY. Are the articles in that volume?

Mr. Manager GOULD. They are in the first volume. This article I have read in full, and they are reprinted here as they were voted upon. Do you wish to hear some of the others?

Senator MEALEY. I was not in at the time they were read.

Senator ACKER. I would ask the counsel to read that portion of the Constitution of New York so as to compare it with our own. It was read yesterday, but we have forgotten it.

Mr. Manager GOULD. I think the language of the constitution of New York is that officers can be impeached for mal and corrupt conduct in office.

Senator CROOKS. Let us have the law of New York.

Mr. Manager GOULD. I have sent for it, and it will be up here directly, Senator.

I say that this case, (and I have read somewhat at length from it), is an illustration of this theory, gentlemen,—that in a court of impeachment, having for its object the removal of a person from office, those things may be misdemeanors which, if the object was punishment, and the trial was in a criminal court—an ordinary criminal court—might not be so considered. In other words, the purpose for which impeachment was instituted and carried on, enters into the act, and characterizes it as being a misdemeanor or not.

Now, I have alluded to the case of Pickering. I have referred to the case of Humphrey and I have read at length from the case of Judge Barnard. In all these cases—every one of them—there was a conviction and a conviction where there was no indictable offense either at common or statutory law.

I now refer to the case of W. W. Belknap, Secretary of War. He was tried;—acquitted—upon what theory? Simply and solely that at the time the articles of impeachment were preferred he was not then in office, and it was held that no man could be impeached except while in office, and so he escaped.

I now refer to the case of Andrew Johnson. Counsel has spoken of that case in terms of very great disapprobation. I am bound to admit, gentlemen, that the excitement of the times, the partizan spirit which then prevailed, may have more or less affected the minds of the members of the House of Representatives and of the Senate in that case. But I cannot believe that several years after the war had ended and when the passions of men had subsided, that the great men who illumined that congress with the eloquence and the genius of statesmen, could have so far forgotten their duties and obligations that they would deliberately, in violation of their oaths of office, and disregradful of the principles of the constitution, have voted articles of impeachment against the chief officer of the government. And I cannot believe that the Senate of the United States could have voted within one of the necessary two-thirds to have impeached Andrew Johnson unless there were good reasons to believe that he had commited impeachable offenses, although it was conceded on all hands, that there was no statute or common law by which he could have been punished. I refer you to those speeches by Senators in giving their opinions in that case. And let me mention right here one difficulty in examining all these impeachment cases. There is no opinion given by the court, *as a court*, in these cases. When our Supreme Court comes to a conclusion, the judges agree in it, they reduce it to writing, file it with the clerk of the court, and it is printed and becomes a record to which we can refer as the official opinion of the court in its entirety; but when you come to vote on articles of impeachment you simply vote guilty or not guilty, and there is no expression of opinion by the court as to the law pertaining to it. But in this case a number of Senators filed their objections. These are judicial opinions. They are the opinions of men acting and sitting in the capacity of Judges in that case.

I read now from the opinion of Senator Fessenden. Senator Fessenden, if I remember rightly, although a republican, voted for acquittal. [To Senator Campbell.] Is that correct?

Senator CAMPBELL. It is correct, sir.

Mr. Manager GOULD. I read from the 26th page of the 3rd volume.

He was a good lawyer, a conscientious man and in that case he voted for acquittal. I will read a short extract from what he says.

I am not prepared to say that the president might not, within the meaning of the constitution, be guilty of a misdemeanor in the use of words. Being sworn to preserve, protect and defend the constitution, if he should, in words, persistently deny its authority, and endeavor, by derisive and contemptuous language, to bring it into contempt and impair the respect and regard of the people for their form of government, he might, perhaps, justly be considered as guilty of a high misdemeanor in office.

Now, will the learned counsel for the respondent here put a finger upon any line of statutory or common law by which the president could have been indicted for the use of language. Here is a man, learned and eminent in the profession, eminent as a jurist, as a lawyer and a statesman, voting for the acquittal of the man accused, and yet he says that a misdemeanor in office may be committed simply by the use of language. How insignificant, how paltry, how utterly contemptible seems the charge that a man may, simply by language, commit a misdemeanor, when you come to contrast it with the acts and conduct charged and proven in this case.—a Judge habitually upon the bench in a state of drunken stupor or who, going into a town for the purpose of holding court, appears in streets and highways and other public places, as a common drunkard? If you can commit a public offense by simply using words, you must certainly be able to commit an impeachable offense by acts such as have been proven against this man, and which have been admitted virtually by the mouth of his own counsel.

I read from the opinion of Senator Howard in that case (page 49; 3rd volume.)

Suppose a judge of a state court, charged with administering the laws, should go about among the people and tell them thus openly in public speech that the legislation of the State was no legislation; that their laws were all void, and that the citizens were not under any obligation to obey them, would not the power of impeachment be at once made to bear upon him? And why? Because, entertaining such opinions, he desecrates his office, and is therefore *unfit* longer to remain in it. Did we not sustain the impeachment against Judge Humphreys, of Tennessee, for that which was the exact equivalent of this charge, namely, inculcating in a public speech the right of secession from the Union and rebellion? What did he say, but that the government of the United States was in law no government for the seceded states? He had committed no act of treason, and the only proof was that he had thus spoken. And we convicted and removed him because he had thus spoken.

The fact that his language had brought the administration of justice into contempt is why Senator Howard said he would have committed an impeachable offense; and if a man can commit an impeachable offense by mere language he certainly can, by conduct.

Now, I expect I may offend the tastes of some Senators here by reading from some of the authorities in this book——

Senator BUCK D. Pardon me. Mr. President, I move that we take a recess for five or ten minutes.

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

AFTER RECESS.

Mr. Manager GOULD. At the time the recess was taken I was engaged in calling your attention to the case of President Johnson and to the opinions of Senators delivered upon that occasion in giving their votes upon that case; and I was about to remark that I might offend, possibly, the sensitiveness of some members of the Senate by referring to the opinion of the present Postmaster General of the United States, formerly a judge, I believe, of the Supreme Court of the State of Wisconsin—Senator Howe. But I shall, nevertheless, run the risk of reading a few lines from the opinion of that gentleman, of whom, whatever his faults may be, and however much his political tenents may be deprecated by certain persons, there can be no just denial of the fact that he is a good lawyer. He says, on page 78 of the third volume:

> The principle of the tenth article is precisely the reverse of the law of 1768. That law proposed to punish the *people* for criticising the ill conduct of their servants in the government. By the tenth article the people propose to remove one of their servants for ill conduct.
>
> Because the servants may not tell their masters, the people, what to say, it does not follow that the people may not tell their servants what to say.
>
> A law which should prohibit a man under penalties from tearing the siding from the house he owns, to make repairs, might be thought rather harsh and yet it might not be thought unreasonable to punish a tenant from splitting up the floors and bedaubing the frescoes in the house he lives.
>
> The people of the United States own the office of president. They built it. It is consecrated to their use. In it they thought to crystallize and employ the excellence of the republic. They claim the right to protect it from desecration. Their representatives aver that Andrew Johnson has desecrated that office. They tell us wherein, and the simple question presented in the tenth article is whether the language and the conduct proved under it are or are not degrading to the office of chief magistrate.

Applying the principle laid down there, I say the people of the State of Minnesota have created the office of judge of the district court. It is an office to be exercised for and in the interests of the administration of justice for the people of this State. The people of this State own that office. They employ a man to fill it. They pay him a salary. They are entitled to his very best learning, judgment and ability. They are entitled to all these things which we may of right ask of a man whom we employ, and they have a right to require of the incumbent of that office that he shall not disgrace the station. We have the right to demand of the incumbent of that office that he shall so administer its affairs as to command the respect and the allegiance and the fidelity of the people: and when, forgetting this great obligation, he shall so conduct himself that he weans the allegiance of our people from our government, weakens the administration of justice and brings the affairs of the State into contempt in that district, I say it is competent for us to remove him and to hold that, in so doing, his conduct constitutes an impeachable misdemeanor.

Senator Edmunds needs no introduction to the public men of this State. As a lawyer and a statesman he has no superior within the bounds of the American republic. As a constitutional lawyer he towers among the highest peaks of the legal profession. He was one of the judges in the Johnson case. What does he think? What does he say

under the solemn sanctity of his oath of office on this subject? Let me read:

Much has been said in the course of the trial upon the nature of this proceeding, and the nature of the offenses which can fairly be embraced within the terms of the constitution.

Now, just let me stop right there to make a little comment. I want to direct the attention of the Senate for a moment to the fact that the constitution of the State of Minnesota is entirely different from the constitution of the Federal government; that offenses may be impeachable under the constitution of the State of Minnesota which would not be under the Federal constitution. The constitution of the State of Minnesota is not nearly so strong in the characterization of the offenses for whtch impeachment will lie. The constitution of the United States says that certain officers may be impeached for "treason, bribery or other high crimes and misdemeanors." The term "crimes and misdemeanors" might be construed in the light of the words which precede it, and held to import misdemeanors of a very high and important character. Certain characteristics perhaps, are given to those words "crimes and misdemeanors" in the Federal constitution, by the terms "treason and bribery," which precede them, and that idea is further strengthened by the fact that it used the term *high* crimes and misdemeanors—"treason, bribery and other high crimes and misdemeanors." Now, our State constitution says that impeachment will lie for "corrupt conduct in office and crimes and misdemeanors." Treason, bribery and the word "high," which give a sort of character and tone to the description of offenses in the Federal constitution are wholly wanting in the constitution of our State.

I continue to read from Senator Edmunds.

In my opinion this high tribunal is the sole and exclusive judge of its own jurisdiction in such cases, and that, as the constitution did not establish this procedure for the punishment of crime—

The same idea that I have been trying to inculcate all the way through my argument,

—but for the secure and faithful administration of the law, it was not intended to cramp it by any specific definition of high crimes and misdemeanors, but to leave each case to be defined by law, or, when not defined, to be decided upon its own circumstances, in the patriotic and judicial good sense of the representatives of the States.

Representatives of the States, meaning the Senate, of course.

Like the jurisdiction of chancery in cases of fraud, it ought not to be limited in advance, but kept open as a great bulwark for the preservation of purity and fidelity in the administration of affairs when undermined by the cunning and corrupt practices of the law offenders, or assailed by bold and high-handed usurpation, or defiance; a shield for the honest and law-abiding official; a sword to those who pervert or abuse their powers; teaching a maxim which rulers endowed with a spirit like a Tragan can listen to without emotion, that "Kings may be cashiered for misconduct."

In that one sentence from that eminent jurist, delivered under the anctity of oath, in the greatest case of impeachment that has ever been eard in this country, is contained the whole gist of the law of impeachıent; that it is not for the punishment of criminals but for the protecion of the public; that it is but the exercise of the control which the ublic has over its servants.

Senator CASTLE. I beg your pardon. We do not understand right ere, first, whose opinion you are reading, or in what case.

Mr. Manager GOULD. I am reading from the Johnson case, and I was ıen engaged in reading from the opinion of Senator Edmunds, delivered ı that case, the 3rd volume of the impeachment of Johnson, page 94.

I now read again from the opinion of one of the judges in that case,—ne of the most brilliant intellects that has ever adorned the legislative ssemblies of this country, and yet unfortunate; one of the men that ad the same vices that pertain to the respondent here; a man who tood eminent in the counsels of the nation, but who, to-day, fills a runkard's grave—Senator Dick Yates, of Illinois. I read from page 13.

One other point of the defense I wish to notice before closing. It is argued at ngth, that an offense charged before a court of impeachment must be an indictale one, or else the respondent must have a verdict of acquittal

The same argument that has been so often repeated in your hearing.

Then why provide for impeachment at all? Why did not the constitution leave ıe whole matter to a grand jury and the criminal courts? Nothing can be added) the arguments and citations of precedents of the honorable managers upon this ›int, and those most learned in the law cannot strengthen that view which is ›vious to the most cursory student of the constitution, viz., that impeachment is form of trial provided for cases which may *lack* as well as those which do conin the features of indictable crime. Corresponding to the equity side of a civil ›urt, it provides for the trial and punishment, not only of indictable offenses, but those not technically described in the rules of criminal procedure. The surdity of the respondent's plea is the more manifest in this case, because, not ıe Supreme Court, but the Senate of the United States is the only tribunal to try apeachments, and the president's vision should rather have been directed to what ıe Senate, sitting as a court of impeachment, would decide, than to have been ıticipating what some future decision of a court having no jurisdiction in the ıse might be.

The consideration of the opinions of this distinguished Senate, I reard as worthy of this occasion. The opinions of Senators delivered ere are, in effect, the opinions of the judges in a great case, and we may udy them with profit, as we will also study them with pleasure.

I call the attention of the Senate to what is said by Senator Morrill of laine, another of America's distinguished characters. What does Mr. lorrill think about this matter?

The various charges in the articles of impeachment raise the question whether ıe President can do certain acts with impunity. Can he, in violation of his oath, fuse to take care that the laws be faithfully executed? Can he, in violation of ıe constitution, exercise an exclusive power to remove and appoint to office? an he, in violation of the laws of the land, disobey such parts of the laws as he leases, and when he pleases? With so much he appears to have been justly harged, and such acts would seem to be improperly characterized when called high isdemeanors. If they are not, what are they? Certainly they are not innocent

acts. What is a misdemeanor? The definitions given in Webster's dictionary are as follows:

"1. Ill behavior; evil conduct; fault; mismanagement. 2. (Law.) Any crime less than felony. The term applies to all offenses for which the law has not furnished a particular name."

If we limit the term to the law definition, it would still be a very modest name for the offenses.

If the President be guilty, he cannot be guilty of anything less than a misdemeanor. If the facts charged do not amount to a misdemeanor, then the power to impeach the President might as well forever be abandoned.

And the language there used with regard to the president is very applicable to the judges of our courts here. If the conduct of this respondent at New Ulm, at St. Peter, at Lyon county when the grand jury found it necessary to bring in their resolutions of censure, and at Lincoln county, when he began court in the morning a little under the influence of liquor, was intoxicated at noon, drunk at supper time, and held a "jamboree," as one of the witnesses calls it, during the night, came into court the next morning suffering from the effects of his night's debauch;—I say if that is not a misdemeanor, and, an impeachable misdemeanor, then there is no use, in this State of the process of impeachment. Strike it out of the constitution and banish it from your institutions, if such conduct as that is not a misdemeanor.

I now read from the opinion of Senator Frelinghuysen, (page 113;)

Senator FRELINGHUYSEN. The Constitution makes treason and bribery (crimes eminently affecting the State) and other high crimes and misdemeanors impeachable. The word "high," as qualifying misdemeanors, clearly intends to direct and restrict impeachments to such offenses as derive their importance from the effect they have upon the State. Forgery, arson and other crimes, so far as the individual who perpetrates them is concerned, are more serious and higher crimes than the violation of a prohibitory statute like the one in question; but, so far as the government is concerned, may not be so important. If the wilful, defiant, persistent disregard of law in a chief magistrate of a great people does not constitute a high misdemeanor in office, what does? The State is infinitely less interested in the personal dereliction of the official than in the course of an action, which, if tolerated, saps and destroys the government, and as, down to the present hour, the law and its authors are defied, we cannot do otherwise than declare that such conduct constitutes a high misdemeanor in office.

You see, Senators, through all these arguments goes the thread, the idea that this is a process for the benefit of all the public, the purification of its service. He speaks of forgery, arson, etc. Let us suppose, for a moment, that one of the judges of this State should commit murder. What would you do about it? How would you get him out of his office as Judge? Your courts would indict him; your juries would convict him; he would be sentenced to the penetentiary; but although there is a statute which seems to carry the idea that that would be sufficient ground to declare the office vacant, I think that if he has been elected to office and enjoys its honors and emoluments, mere conviction does not, under the constitution, take him out of his office. But whether that be so, or be not so, why do you remove him from office? Why do you impeach him? Because he has committed murder? There is nothing inconsistent with the exercise of judicial functions, because a man may have commited murder. He may be eminent as a lawyer, clear as a jurist, unbiased in his judgment, straightforward in the performance of every function of his office, and yet if the House of Repre-

sentatives should send up to this Senate an accusation against one of our judges that he had committed murder, would you hesitate long in removing him from office.? Why? Not to punish him for commiting a murder; your courts would attend to that; as an individual he would be punished for that. But the Senate would say, having heard the evidence in that case, that any man who was capable of committing so henious an offense would be a disgrace as a public servant, and unfit to occupy a high judicial position. Suppose he steals a horse, and gets the reputation of being a horse thief. That is not inconsistent with his performing the duties of a judge. He may be a good judge, decide cases correctly, expound the law learnedly, thoroughly and conscientiously; but would it take long for the Senate of the State of Minnesota to oust from office a man who had been convicted of being a horse thief? And why? Not to punish him for stealing horses, but because he has disgraced the office and brought the administration of justice into disrespect. That is the motive; that is the idea which underlies the whole matter—that he has brought the administration of justice into contempt, and that constitutes an impeachable misdemeanor.

I read from the opinion of Senator Wilson in the Johnson case, (page 215 of volume 3.)

> High misdemeanors may or may not be violations of the law. High misdemeanors may, in my judgment, be misbehavior in office detrimental to the interests of the nation, dangerous to the rights of the people, or dishonoring to the government. I entertain the conviction that the framers of the constitution intended to impose the high duty upon the House of Representatives to arraign the Chief Magistrate for such misbehavior in office as injured, dishonored or endangered the nation, and to impose upon the Senate the duty of trying, convicting and removing the Chief Magistrate proved guilty of such misbehavior. Believing this to be the intention of the framers of the constitution and its true meaning, believing that the power should be exercised whenever the security of the country and the liberties of the people imperatively demand it, and believing by the evidence adduced to prove the charges of violating the constitution and the tenure-of-office act, and by confessed and justified acts of the President, that he is guilty of high misdemeanors, I unhesitatingly vote for his conviction and removal from his high office.

I have already, on a former occasion, alluded to and read somewhat extensively from the opinion of Charles Sumner. No man can sit down in the quiet of his study and read that opinion delivered in the Johnson case, without rising with a higher appreciation of the greatness of the intellect that gave it utterance; and at the risk of repeating somewhat what I said on a former occasion, I shall read a little from the opinion of Charles Sumner. I read from page 249:

> There is another provision of the constitution which testifies still further, and, if possible, more completely. It is the limitation of the judgment in cases of impeachment, making it political and nothing else. It is not in the nature of a *punishment*, but in the nature of *protection to the Republic*. It is confined to removal from office and disqualification; but, as if aware that this was no punishment, the constitution further provides that this judgment shall be no impediment to indictment, trial, judgment and punishment, "according to law." Thus, again, is the distinction declared between an impeachment and a proceeding "according to law." The first, which is political, belongs to the Senate; the latter, which is judicial, belongs to the courts, which are judicial bodies.

I also read, beginning on page 250:

It is sometimes boldly argued that there can be no impeachment under the constitution of the United States, unless for an offence defined and made indictable by an act of congress, and, therefore, Andrew Johnson must go free, unless it is shown that he is such an offender. But this argument mistakes the constitution and also the whole theory of impeachment.

It mistakes the constitution in attributing it to any such absurd limitation.

The argument is this: Because in the constitution of the United States there are no common law crimes, therefore, there are no such crimes on which an impeachment can be maintained.

To this there are two answers on the present occasion; first, that the district of Columbia, where the President resides and exercises his functions, was once a part of Maryland, where the common-law prevailed; that when it came under the law of the jurisdiction of the United States, it brought with it the whole body of the law of Maryland, including the common-law, and that at this day the common-law of crimes is still recognized here. But the second answer is stronger still. By the constitution *expulsion from office* is on impeachment and conviction of treason, bribery or *other high crimes* and misdemeanors; and this, according to another clause of the constitution, is "the supreme law of the land."

Now, when a constitutional provision can be executed without super-added legislation, it is absurd to suppose that such a super-added legislation is necessary Here the provision executes itself without any re-enactment, and as for the definition of "treason" and "bribery" we resort to the common law; so for the definition of high "crimes and misdemeanors" we resort to the parliamentary law and the instances of impeachment by which it is illustrated. And thus clearly the whole history of England enters into this case with its authoritative law. From the earliest text-writer on this subject (Woodson's Lectures, Vol. II., p. 601), we learn the undefined and expansive character of these offenses, and these instances are in point now. Thus, where the lord chancellor has been thought to put the great seal to an ignominious treaty, a lord admiral to neglect the safeguard of the seas, an ambassador to betray his trust, a privy councillor to propound dishonorable measures, a confidential adviser to obtain exhorbitant grants or incompatible employments, *or where any magistrate has attempted to subvert the fundamental law or introduce arbitrary power.* All these are high crimes and misdemeanors, according to these precedents by which our Constitution must be interpreted. How completely they cover the charges against Andrew Johnson, whether in the formal accusation or in the long antecedent transgressions to which I shall soon call attention as an essential part of the case, nobody can question.

I have thus read, gentlemen, at length from the Johnson case because of its being a late and a very important exposition of the law of impeachment, and I shall now call attention to certain other authorities. What I have read are actual cases. These constitute, as it were, precedents. I shall now refer you to some other authorities, some text writers upon this subject. And here let me say that about the time this proceeding was being instituted against President Johnson, when the public mind was very much agitated over the questions involved in that case, and there was great diversity of opinion as to what should be done, an article was written, said to have been delivered to the students of the Columbia Law College by Professor Dwight. I shall not attempt to disparage the legal abilities of Professor Dwight. Such a course would be very unbecoming in me; but I will state the fact, (which I presume every gentleman here, who remembers the circumstance, will recollect,) that that article was published,—not simply delivered to the law students and filed away, as all the other lectures were—but that it was brought to the attention of the public, just before the impeachment of Andrew Johnson, by publication in a public journal and taken up and commented upon by all the journals throughout the country that attempted to disparage and avert impeachment. It, therefore, had its animus in a desire that

the impeachment of Johnson should be avoided; and when you sit down and take that volume of the American Law Register and read the article, and compare it with another article by Judge Lawrence in the same volume, you will see that Prof. Dwight in that article, instead o appearing in the impartial character of a mere lecturer to law students' appears rather as an advocate for President Johnson. Now, if it was simply a difference of opinion between Prof. Dwight and Judge Lawrence, without any backing by reference to legal authorities on the subject, you might say it was a "stand off," one against the other, but Mr. Lawrence goes into an exhaustive examination of all the authorities upon that subject, and a study of the two articles must convince any unbiased mind that Judge Lawrence's theory that this is simply a proceeding for the purpose of removing officers and not for the purpose of punishment, and that offenses may be impeachable misdemeanors, which are not indictable misdemeanors, is made as clear as the sun light. But now, since that controversy has passed away, since President Johnson has been acquitted, since these articles of Judge Lawrence and of Prof. Dwight have been promulgated and read by all the world, there have been certain text writers who have discussed this subject. They, of course, have discussed it in the light of these articles. They have read these articles. They have cited them, and what do they say? One of these is Pomeroy—John Norton Pomeroy, a doctor of laws, one of the latest, but one of the ablest, among the text writers of this country.

Senator CASTLE. Is that Pomeroy on the Constitution?

Mr. Manager GOULD. Yes, sir; this is Pomeroy's Constitutional Law. I read now from section 724. I read from this authority very extensively in my argument on the demurrer, and I may now repeat some that I then read, but as that was some time ago it may have escaped your recollection.

Applying this criterion, we must reject the interpretation which makes impeachment under the constitution co-extensive only with impeachment as it practically exists in England. The word is borrowed, the procedure is imitated, and no more; the object and end of the process are far different. We must adopt the second and more enlarged theory, because it is in strict harmony with the general design of the organic law, and because it alone will effectually protect the rights and liberties of the people against the unlawful encroachments of power. Narrow the scope of impeachment, and the restraint over the acts of rulers is lessened. If any fact respecting the constitution is controvertible, it is that the convention which framed, and the people who adopted it, while providing a government sufficiently stable and strong, intended to deprive all officers, from the highest to the lowest, of any opportunity to violate their public duties, to enlarge their authority and thus to encroach gradually or suddenly upon the liberties of the citizen. To this end elections were made as frequent, and terms of office as short, as was deemed compatible with an uniform course of administration. But lest these political contrivances should not be sufficient, the impeachment clauses were added as a sanction bearing upon the official rights and duties alone, by which officers might be completely confined within the scope of the functions committed to them.

We cannot argue from the British constitution to our own because the English impeachment is not, nor was it intended to be, such a sanction. But the English law recognizes a compulsive measure far more terrible, because far more liable to abuse than impeachment. What the British Commons and lords may not do by impeachment, the Parliament may accomplish by a bill of attainder. If the Commons can only present, and the lords can only try, articles which charge an indictable offense, there is no such restriction upon their resort to a bill of attainder, or of pains and penalties. The constitution has very properly prohibited this species of legislation; but the constitutional impeachment was intended to partially sup-

ply its place under another and better form, by introducing the orderly methods of judicial trial, and by requiring a majority of two-thirds of the Senate to convict.

The same considerations will apply with equal force to that branch of the argument which is based upon the phrase, "High crimes and misdemeanors." Even had the words been "Felonies and misdemeanors," we should not be obliged to take them in a strict technical sense; they would be susceptible of a more general meaning descriptive of classes of wrongful acts, of violations of official duty punishable through the means of impeachment. But in fact the language used cannot be reconciled with the assumed technical interpretation. The phrase, "High crimes and misdemeanors," seems to have been left purposely vague; the words point out the general character of the acts as unlawful; the contest and the whole design of the impeachment clauses show that these acts were to be official, and the unlawfulness was to consist in a violation of public duty which might or might not have been made an ordinary indictable offense.

And he goes on to sustain that position by argument.

Since the promulgation of that authority, since that work was written, another work has made its appearance in 1880, by that celebrated jurist and law writer, whose name is familiar to every lawyer and every law student in this country and in England. I refer to Judge Cooley. Judge Cooley has published a work entitled, Principles of Constitutional Law, and thus he says in regard to impeachable offenses, page 159:

The offenses for which the President or any other officer may be impeached are any such as, in the opinion of the House, are deserving of punishment under that process. They are not necessarily offenses against the general laws. In the history of England, where the like proceeding obtains, the offenses have often been political, and in some instances for gross betrayal of public interests, punishment has very justly been inflicted on cabinet officers. It is often found that offenses of a very serious nature by high officers are not offenses against the criminal code, but consist in abuses or betrayals of trust, or inexcusable neglects of duty, which are dangerous or criminal because of the immense interests involved and the greatness of the trust which has not been kept.

My attention has been called since I began this argument to a circumstance which had not before been brought to my notice, and which has reference to this section 8 of chapter 91 of the statutes of 1878, which I have read in your hearing.

A man by the name of James Kennedy, who was a constable, appears to have been indicted in the district court of Ramsey County for misconduct in office. His misconduct did not consist of drunkenness, but of misappropriation of money which came to his hands in that position. He demurred to the indictment, which, in effect, said: "It may be true that I have taken this man's money unjustly, but what of it? It is not an indictable offense; misbehaviour in office is not an indictable offense, although made so by that statute." And his demurrer was over-ruled by the district court of this county, and his attorneys were not sufficiently confident of their point to appeal the case to the Supreme Court. This goes to show that here in the very county in which we are speaking, misconduct in office, misbehaviour in office, is an indictable offense, and has been so held by the courts; so that if the gentlemen wish to confine us to indictable offenses we have them on that horn of the dilemma.

On motion the Senate here took a recess for five minutes.

AFTER RECESS.

Mr. Manager GOULD. I will now consider another matter which throws light upon what may be regarded as the proper functions of this court with reference to cases of this kind, and I refer to that provision of the statute which authorizes the Governor to remove certain officers. I suppose that so far as the principles are concerned, on which a removal is based, it is immaterial whether the office be one of high or low degree. If a certain offense warrants the removal of an officer charged with duties of a minor and unimportant character, certainly the same offenses would warrant the removal of persons charged with duties of a far more delicate and responsible nature. But, as the offense is of less concern to the public, it is provided by law that the power of removal, and the control of these officers, be vested in the Governor instead of in the Senate. Now, the Governor is authorized by law to remove certain officers for *malfeasance* in office, or *non-feasance* in office. For misbehaviour in office, then, to put it in plain English, the Governor is authorized to remove certain officers. There is not a syllable in the statutes to tell you what constitutes misbehaviour in office, so far as relates to the removal of inferior officers. You cannot find it laid down in the written law anywhere for what particular acts the Governor may remove an officer. It is only when a certain state of facts is brought to the attention of the Governor that he is called upon in the exercise of his best judgment, in the interests of the public, without regarding the effect that it may have upon the person accused, but having in mind the public interests only, it is for him then to say whether the acts of which the person stands accused warrant his removal from office. In other words, he is to say when the facts are presented, whether or not they constitute misconduct or malversation in office. He cannot be said to be a law unto himself any more than this Senate; but he is the court of last resort. He is the official to whom is entrusted the responsibility of saying what constitutes and what does not constitute misbehaviour in office.

Thus you see that the statute deals in language which is general in its nature, and its applicability to a given state of facts, is entrusted to the judgment either of the Governor, in the case of inferior officers, or of the Senate, as to superior officers. But in ascertaining what are misdemeanors in office, or what is malversation in office or misconduct in office, or whatever you may term it, of course the officer whose duty it is to make the decision must exercise a reasonable judgment. He is chosen by his fellow-citizens because of his learning, integrity and abilities, and they trust it to him to say what does and what does not constitute a sufficient ground for removal, and in making up his judgment he may ascertain what may have been done elsewhere in similar cases, and if he shall find a case where particular action is taken and the grounds of that action are laid down and they seem reasonable and just to him, he will follow them. If he finds that somewhere else the same question has come up before some other tribunal, and they have concluded that there was not sufficient ground for removal, he will examine the reasons they give for their decision, and if it meets with his approval he will act accordingly. Precedents which may have occurred elsewhere are of no binding force upon him, nor are they of binding force upon you, any further than they commend themselves to your judg-

ment. But I take it that in questions of this kind, whether they come before the Governor on the removal of inferior officers, or whether they come before this Senate on the removal of superior officers, the thing to be looked at in ascertaining what course should be taken and in ascertaining whether the offenses charged come within the warrant of the law or the constitution, will be the effect which it has upon the public welfare, and if you shall find that the acts charged are detrimental, seriously detrimental to the general welfare, then you will say that for such an offense a man should be removed from office.

Applying that rule to this case you are to inquire what is the effect upon the public interests of this State of having her judicial officers affected with drink while in the performance of their duty, or when they may be called upon to perform judicial duties. Is that conduct detrimental to the public interests for any reason? If so, it designates itself, and carries conviction to the mind of everybody that it is an offense, a public offense, for which the officer should be removed.

A man who accepts and enters upon the duties of a judicial station, by that act obligates himself to the public that he will control his appetites and restrain his passions within proper limits. He is not at liberty to conduct himself with the same freedom as in a private station. He owes something to the public and to the dignity of his station. His public acts will command no attention or respect if his private life is vicious and debasing.

Now, Blackstone says, in fourth volume, page 140, (Cooley's Ed.):

> Another offense of the same species is the *negligence of public officers*, intrusted with the administration of justice, as sheriffs, coroners, constables and the like, which makes the offender liable to be fined; and in very notorious cases will amount to a forfeiture of his office, if it be a beneficial one. Also the omitting to apprehend persons offering stolen iron, lead and other metals to sale, is a misdemeanor, and punishable by a stated fine, or imprisonment, in pursuance of the statute 29 Geo. II, C. 30
>
> There is yet another offense against public justice, which is a crime of deep malignity; and so much the deeper, as there are many opportunities of putting it in practice, and the power and wealth of the offenders may often deter the injured from a legal prosecution. This is the apprehension and tyrannical partiality of judges, justices, and other magistrates, in the administration and under the color of their office. However, when prosecuted, either by impeachment in parliament or by information in the court of Kings Bench (according to the rank of the offenders,) it is sure to be severely punished with forfeiture of their offices (either consequential or immediate,) fines, imprisonment, or other discretionary censure, regulated by the nature and aggravations of the offense committed.

So, too, in Wharton's American Law (last edition,) section 1580,—I am now speaking generally of the offenses of which public officers may be guilty, and for which they may be indicted or punished by other process,—enumerating those things for which persons may be indicted, reads:

> Negligence in those charged with specific duty has already been considered.

And as considered in a preceding section is held to be an indictable offense.

Now what application has that to this case? Has there been any negligence attributable to this respondent? We find that in the case of Brown against the Winona & St. Peter Railroad, attorneys from St.

Paul, Winona, New Ulm and elsewhere about the country, assembled at St. Peter, the home of the Judge, for the purpose of settling a case. They were unable to transact the business at that time and it was postponed to another time. There was neglect of duty, was there not?

We find that in the case of Coster against Coster the plaintiff was endeavoring to get alimony from the defendant and wanted an order from the court for that purpose. The counsel for the parties go to the court house and there wait for the Judge to come; finally, they send the sheriff after him and get him up there, and then his condition is such that the whole proceeding turns into a broad farce instead of a court and the whole business falls to the ground. Is that neglect of duty? Is that negligence on the part of a public officer? I should say it was. I do not think you will have any hesitation in finding that that was neglect.

There are many other instances, that will appear in the discussion of the evidence, where this Judge has neglected the duties imposed upon him, and neglected them because his condition was such that he could not perform them.

I will read from section 1582.

> A man who undertakes a public office is bound to know the law and to possess himself diligently of all the facts necessary for him in a given case to act prudently and rightly. If he does not, and through mistake of law, or of fact, is guilty of negligence, he commits a penal offense It seems a hard law, but it is essential to the safety of the State.

I come now to section 1583 of the same work, in which this author, (who, by the way, I may say is the most distinguished, probably, of all authors of America upon the subject of criminal jurisprudence) says:

> It is an indictable offense for a public officer voluntarily to be drunk when in the discharge of his duties. No harm may come to the public from his mistake, but he has put himself in a position from which much harm might result, and for so doing he is amenable to penal justice.

That is a plain, fair, square and unequivocal announcement of the law as applicable to the case in hand. It is found in one of the latest works of criminal jurisprudence written by one of the ablest of law writers. He lays it down, without any equivocation at all, as a broad principle of common-law, that an officer is indictable for being drunk while in the discharge of his duties. If gentlemen want justification for voting for conviction in this case, they have the authorities in abundance; but if any Senator here is constrained to vote against impeachment in this case, it is because he ignores and chooses to defy the law as it is laid down by its most able expounders. He is actuated by some other motive than a desire to decide this case according to the *law* as he is sworn to do. "No harm my come to the public from his misconduct, but he has put himself in a position from which much harm might result." The reason is good, is it not? Suppose one of you were on trial on some charge the punishment for which was death or imprisonment, and there sat upon the bench to pronounce judgment upon you a man whose head, whose brain was confused, whose nervous system was broken down and his mental faculties destroyed by the use of intoxicating liquors; what harm might come? Possibly he will decide everything

in your favor. You may escape entirely from the clutches of the law. But the consequences of a conclusion of a different character are far too appalling to warrant such a man being allowed to sit in judgment upon his fellows. No harm, I say, *may* come. With his mind thus confused he is just as likely to decide one way as another, and, like drawing cuts, you may draw the long or you may draw the short; you may choose the lot that consigns you to the gallows or the one that would set you free. All is uncertainty; all is confusion; all is luck and chance. I ask you, gentlemen of Minnesota, do you care to entrust your lives, your reputations or your property to the keeping of a man so incapable of judging correctly? If you would not do it for yourselves, would you ask the people of the Ninth judicial district to do so? Most assuredly you would not. The interests committed to the care of a judge are far too important to remain in the determining mind of a man confused and muddled with liquor.

The PRESIDENT *pro tem.* The time has arrived for recess.

Senator HINDS. If agreeable I would move that the present session be prolonged for twenty minutes or half an hour.

Senator CASTLE. If the gentleman can conclude his argument, or make a period any more conveniently for himself in the course of half an hour than he can now, I would be in favor of postponing the recess; but if he expects to speak a longer time than that, I cannot see that anything would be gained by extending the time for adjournment. I would inquire of the gentleman whether he expects to finish at that time, or whether he will be in better condition to conclude than he is now?

Mr. Manager GOULD. According to the arrangement this morning I was limited to 6 o'clock, but I must say to the Senate that I am not through. I cannot possibly leave it now, and I must intrude upon my brother Dunn's time. I have spoken to him about it and he has consented, and if the Senate will hold a session this evening I will endeavor to wind up what I have to say in about an hour.

Senator CASTLE. Then let us adjourn.

Senator HINDS. If we can adjourn half an hour from now and then meet at 8 o'clock we will save so much time.

Senator CROOKS. Let us have the regular order.

Senator HINDS. I move that we prolong the session for half an hour.

Which motion, having been seconded, was put by the President *pro tem.*

Senator HINDS. [After conference with other Senators.] Mr. President, I withdraw my motion.

Senator GILFILLAN, J. B. I would like to inquire of the manager what his wishes are in the matter. We can adjourn now or sit half an hour longer, and I would like to consult him.

Mr. Manager GOULD. It is a matter of entire indifference to me. I will continue now, or proceed after recess. I am not so exhausted but that I can go on.

Senator CAMPBELL. I understand the manager to say that he will require another hour, and if that is the case we may as well adjourn now.

Senator CROOKS. Let us have the regular order.

The PRESIDENT *pro tem.* The motion of Senator Hinds having been withdrawn, the Senate will take the regular recess.

EVENING SESSION.

The Senate met at 7:30 P. M. and was called to order by the President *pro tem.*

The PRESIDENT *pro tem.* Mr. Manager Gould will resume his argument.

Mr. Manager GOULD. Gentlemen: I have endeavored by what I have said this afternoon to contribute somewhat towards aiding you in determining what constitutes such misdemeanors as the law takes notice of in proceedings of this character, and at the risk, perhaps, of wearying your patience somewhat, I thought I would again consider for a few moments the same topic, and I allude to another authority upon this topic, being one which I quoted in my former argument, but which, as I said before, cannot be too well kept in mind.

I now refer the court to the 4th book of Blackstone on page 121, (Cooley's 2nd volume.) I refer to this authority for the purpose of showing you what this distinguished writer regarded as a misdemeanor with reference to an officer. Classifying certain offenses he says:

> *Second.* Misprisions, which are merely positive, are generally denominated contempts or *high misdemeanors;* of which—
> 1. The first and principal is the *mal-administration* of such high officers, as are in public trust and employment.

As I said to-day, this term mal-administration had been very thoroughly and correctly interpreted by the distinguished counsel for the respondent who had just preceded me. It means misbehavior in office simply.

> This is usually punished by the method of parliamentary impeachment, wherein such penalties, short of death, are inflicted, as to the wisdom of the House of Peers shall deem proper, consisting usually of banishment, imprisonment, fines or *perpetual disability.*

That is Blackstone on official delinquencies. He comes with a host of others whom I have read to aid you in determining what are impeachable offenses. I read again from the same author. It is well to keep by us these old landmarks of the law. I read again from the same volume on page 41. I read a paragraph here. It was not my intention to read so much, but I read a paragraph in order that you may catch the tone, that you may get the idea which this great writer had in his mind as he described what constitutes misdemeanors. I have read to you what Chancellor Kent said, as a guide to enable you to determine whether a particular act is an offense, and I now read from this author:

> In the present chapter we are to enter upon the detail of the several species of crimes and misdemeanors, with the punishments annexed to each by the laws of England. It was observed in the beginning of this book, that crimes and misdemeanors are a breach and violation of the public rights and duties owing to the whole community, considered as a community in its social aggregate capacity. And in the very entrance of these commentaries it was shown that human laws can have no concern with any but social and relative duties, being intended only to regulate the conduct of man, considered under various relations, as a member of civil society. All crimes ought therefore to be estimated merely according to the mischiefs which they produce in civil society; and of consequence private vices a breach of mere absolute duties, which man is bound to perform only as an

individual, are not, cannot be, the object of any municipal law, any farther than as by their evil example, or other pernicious effects, they may prejudice the community, and thereby become a specious of public crimes.

Thus the vice of drunkenness, if committed privately and alone, is beyond the knowledge, and of course beyond the reach of human tribunals; but if committed publicly, in the face of the world, its evil example makes it liable to temporal censures. The vice of lying, which consists (abstractedly taken) in a criminal violation of truth, and therefore in any shape is derogatory from sound morality, is not however, taken notice of by our law, unless it carries with it some public inconvenience, as spreading false news; or some social injury, as slander and malicious prosecution, for which a private recompense is given. And yet drunkenness and malevolent lying are, *in foro conscientiæ*, as thoroughly criminal when they are not as when they are attended with public inconvenience. The only difference is, that both public and private vices are subject to the vengeance of eternal justice; and public vices are, besides, liable to the temporal punishments of human tribunals

Senators, I think a careful study of that paragraph will go far to enlighten your minds upon the subject of what is a public offense, and go far to aid you in interpreting this word so often referred to in this case, and laid down in the constitution here as an impeachable offense, viz. a misdemeanor.

Now, gentlemen, if I have done all that can be required of me in this case toward elucidating the terms used in the constitution in defining impeachable offenses, I may now be permitted to pass on to some other matters; but before doing so I have one more authority here to which I think I will call your attention. I wish to read from Russell on Crimes, 1st volume, just a short passage, in which this author further describes what are misdemeanors, and it will be borne in mind that these are *common law* authorities. The gentleman is a stickler for the common law, and he has paid it a handsome eulogy. These are eminent common law authorities from which I read. This is on marginal page 80.

It is clear that all *felonies* and all kinds of *inferior crimes* of a *public* nature as misprisions, and all other contempts, all disturbances of the peace, oppressions, misbehavior by public officers, and all other misdemeanors whatsoever of a *public* evil example against the common law, may be indicted. And it seems to be an established principle, that whatever openly outrages decency and is injurious to public morals, is a misdemeanor at common law.

Something has been said upon the part of the respondent in this case about the quantity of evidence that is required in a case of this kind; and it has been very strongly intimated, if it has not been directly asserted by the counsel in arguing for the respondent, that it was necessary to have a case made out beyond a reasonable doubt. I have not in my mind a reasonable doubt but what a case of that kind is made out; but I demur decidedly to the proposition that any such principle of law can be invoked in a court of this character. If I have succeeded in establishing the proposition with which I set out, that this is a proceeding for the purpose of purifying the public service, of removing officers to prevent their doing wrong in the future in the discharge of official duties, then I have shown that this is not a criminal court, and that this is not a criminal procedure in the proper acceptation of that term as it is known by jurists. If that proposition then be correct, of course the rule of reasonable doubt cuts no figure. But what if it does? Reasonable doubt is defined in the 14th Minnesota in the case of Staley. I read from page 121 of that report:

The defendant further asked the court to charge the jury as follows: "The burden of proof is on the State to prove the guilt of *this* defendant beyond a reasonable doubt by the best evidence; and in order to justify a verdict of guilty, the facts proved must be absolutely incompatible with the innocence of the defendant, and incapable of explanation upon any other reasonable hypothesis than that of his guilt," which the court refused, but gave the same with the modification of these words, "upon circumstantial evidence," inserted and read after and in connection with the words "in order to justify a verdict of guilty" as above asked; to which refusal and charge the defendant excepted.

The charge asked was erroneous, and, as modified, was sufficiently favorable to the defendant. Commonwealth vs. Webster, 5 Cush., 320; Com. vs. Goodwin, 14 Gray, 55; Wills on Cir. Ev., 149, *et seq.;* Wharton's Cr. Law, sec. 707, *et seq.*; Greenleaf's Ev., sec. 29 and notes.

Though A may point his gun at B, and shoot him through some vital part, and death to appearance immediately follow, these facts would hardly show to *an absolute certainty* that the former was guilty of a homicide, for the life of the latter may possibly have been terminated by sudden disease, an instant before, or at the very instant of the discharge of the gun, but certainly they would not with *absolute certainty* show a criminal homicide. They may have been the acts of an insane man who supposed he was doing his duty, or who was not a free moral agent. Our inability to discern the mental operations or the motives, makes it impossible for us to determine with *absolute certainty*, the character of a particular act. Hence we have to act on a moral certainly, and the law only requires that the charge against a person accused of crime be established beyond "A reasonable doubt."

It is difficult to make the meaning of this expression more clear by any circumlocution. "It is not mere possible doubt," says Chief Justice Shaw, "because everything relating to human affairs and depending upon moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the mind of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. * * * * The evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding, and satisfies the reason and judgment, of those who are bound to act conscientiously upon it. This we take to be proof beyond a reasonable doubt; because the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether"

But I say, gentlemen, that while the law is applicable to criminal trials, it is not applicable here, and I wish to call your attention on that subject to the provisions of our statute. And, first, there is the oath taken. Did you ever think, those of you who are practitioners at the bar, and others, that there is a great difference between the oath taken by persons who are charged with the administration of the criminal law and that taken by those who sit in civil cases. The juror in a civil case takes a different oath from the juror in a criminal case; and so we find, when we come to compare the oath that is taken by Senators here, before you enter upon the discharge of your duties as a court of impeachment, that you take an oath which resembles the oath taken in civil cases, but embodies none of the essential features of an oath taken by one who sits in a criminal trial. And therein lies the gist of this matter of reasonable doubt. Very largely, I say, the gist of this lies in the character of the oath taken. Let me read you the oath taken in these two cases. I read now the oath to be administered to petit jurors, empanelled for the trial of any civil action or proceeding.

You, and each of you, do solemnly swear that you will well and truly try the matters in issue in this case, according to the evidence given you in court and the laws of this State, and a true verdict give. Your own counsel and that of your

fellows you will duly observe and keep. You will say nothing to any person concerning this action, nor suffer any one to speak to you about the same but in court, and when you have agreed upon a verdict you will keep it secret until you deliver it in court. So help you God.

Here is an oath administered in a criminal case.

You do solemnly swear that you will well and truly try this case between the State of Minnesota and the accused, and a true verdict give, according to the evidence given you in court and the laws of this State.

That is the oath as administered in a justice court. Here is the oath to petit jurors in the district court in criminal cases.

You do solemnly swear that without respect of persons or the favor of any man, you will well and truly try, *and true deliverance make*, between the State of Minnesota and the defendant, according to the evidence given you in court, and the laws of this State. So help you God.

In other words, between the State of Minnesota and the person accused, you, the jurors, will make true deliverance of this man according to the law and the evidence. Your oath is, "to do justice according to law and evidence."

The statute provides in Chapter 92, section 2:

A defendant in a criminal action is presumed to be innocent until the contrary is proven, and in case of a reasonable doubt whether his guilt is satisfactorily shown he is entitled to acquittal.

Now, let me read you what Mr. Greenleaf says on this subject, and I read from the 3d volume of Greenleaf's evidence on page 92.

A distinction is to be noted between civil and criminal cases, in respect to the degree or quantity of evidence necessary to justify the jury in finding their verdict for the government. In civil cases their duty is to weigh the evidence carefully, and to find for the party in whose favor the evidence preponderates, although it is not free from reasonable doubt.

And right there I wish to pause long enough to comment upon one circumstance, and that is this: The Senate will bear in mind that in the outset of this case a rule was adopted, providing that on the part of the prosecution in this case, or on the part of the State, there should be but five witnesses to each article. We acted in accordance with that. On one occasion we wanted to introduce a sixth witness simply to identify a record; we were forbidden. The trial then proceeded until the defense came to introduce their witnesses, and they were allowed all the witnesses asked,—six, eight, nine, ten (fifteen, I think, in some cases,) witnesses to a single article. Now, the Senate will see that it would be a manifest injustice to say that you will require proof beyond a reasonable doubt when you have shut us off from introducing our evidence, and have allowed the other side all the privileges they wanted.

I read again from Greenleaf.

But in criminal trials the party accused is entitled to the benefit of the legal presumption in favor of innocence which, in doubtful cases, is always sufficient to turn the scale in his favor. It is, therefore, a rule of the criminal law that the guilt of the accused must be fully proved. Neither mere preponderance of evidence nor

any weight of preponderant evidence is sufficient for the purpose unless it generate full belief of the fact to the exclusion of all reasonable doubt.

The oath administered to jurors according to the law is in accordance with this distinction. And so it is in accordance with our statute.

In civil cases they are sworn "Well and truly to try the issue between the parties according to law and the evidence given" them; but in criminal trials their oath is "You shall well and truly try and *true deliverance* make between" (the King or State) "and the prisoner at the bar according" &c.

The oath you have taken here is the one administered in civil cases, or resembles that, and not the oath administered in courts that are administering the criminal law. I think then, because this is not a criminal proceeding, and because of the oath you have taken, the question of reasonable doubt must be ignored in this matter, especially in view of the fact that the Senate has established such peculiar rules with regard to the admission of evidence.

I wish now to allude to another subject before I proceed to the principal thing that I have to say to-night. I wish to call the attention of the Senate to this matter of law connected with this case. The articles of impeachment as you will see by the reading of them, close with a phrase of this character.

Wherefore he, the said E St. Julien Cox, was then and there guilty of misbehavior in office and of crimes and misdemeanors in office.

The counsel for respondent who immediately prceded me dwelt upon that circumstance somewhat, and seemed to think that it would have been better had we said instead of misbehavior in office, "corrupt conduct in office;" in other words, it would have been better if we had followed the language of the constitution. Perhaps so; it may possibly be so; but to that I have to say in reply, that if we had not said either one, if we had not said "misbehavior in office," or "corrupt conduct in office," and if we had not used the words "crimes and misdemeanors," —if we had left that whole part out, the articles would have been just as good, perhaps better. The Supreme Court of this State has decided on several occasions in the 4th, in the 11th and in the 18th Minnesota that it does not make any difference in an indictment what name is given to the offense. There is a case reported, I think, in the 18th Minnesota, wherein a man is charged with burglary and he is found guilty of larceny. It does not make any difference what you call the offense, but you must give the facts, and when you have stated those, you may give them any name you have a mind to. You may charge a man with arson and convict him of burglary or *vice versa*. The pleader in drawing his indictment must state the facts constituting the offense, and the court will take care of the question as to the *name* that is to be given to the offense. I will read an authority on that subject, the State vs. Coon in the 18th Minnesota, 518. I believe that is the latest case passing upon the question. I read now from page 521.

This indictment accuses the defendant "of the crime of burglary, committed as follows:"

And then states facts constituting the crime of simple larceny. This, we think is good as an indictment for simple larceny, although the grand jury have called

it by the wrong name. The case of the State vs Hinckley, 4 Minn., 345, is conclusive upon this point. "When a question arises as to the sufficiency of an indictment, the test to be applied is, whether it substantially conforms to the provisions of section 66, of the statute above quoted, [viz: Pub. Stat. ch. 105, sec. 66, p. 755, being identical with Gen. Stat. ch. 108, sec. 1.,] and not whether it conform to the precedents given in the subsequent section," [identical with Gen. Stat., ch. 108. sec 2.]

Here the offense is plainly set forth, and the omission of the pleading to term it a "crime," or to "accuse" the party of "committing a crime," in express words, cannot change the legal effect of the fact pleaded. The *facts* constituting the offense must be stated, and from these facts the law determines its nature, which cannot *be affected by any term or appellation, which the grand jury may apply, or fail to apply to it.* *Ib.* 358.

So that the counsel's criticism of these articles that we have said "misbehavior in office," and "crimes and misdemeanors," instead of saying, "corrupt conduct in office" and "crimes and misdemeanors," falls to the ground by the decision of our own courts. Now the conduct complained of here may be regarded by some as corrupt conduct in office. The term "corrupt," I think, has no technical signification. Hence where it is used in the constitution it must be held to mean what that term commonly imports in the common and popular acceptation of the term among the people. What do you mean by saying that a man is corrupt? You may not mean that he has bribed anybody or been bribed, but you mean that his life is disreputable and dishonorable; that is corruption. He is a corrupt man whose life is vicious and debased. We hear of corrupt politicians; but we do not generally attach to the charge that a man is a corrupt politician the idea that he has taken or that he has given bribes, but that he resorts to disreputable practices to gain his ends. A man who debases his intellect by the indulgence of vices, is a corrupt man, and if he is an officer, he is a corrupt officer. The term "corrupt," in the constitution has no technical signification; and the term "corrupt," in the popular acceptation of the term, means any kind of moral obliquity and delinquency; so that although we have not used the term "corrupt conduct in office," still if the Senate find that this man is a corrupt man in office, they are justified under the decision of the Supreme Court in so finding. The fact that we have not so stated it cuts no figure whatever.

Mr. ARCTANDER. Major Gould, will you permit me one question?

Mr. Manager GOULD. Certainly.

Mr. ARCTANDER. I desire to ask whether or not the managers on the opening of this case did not expressly, and in so many words, disclaim that this charge came under that part of the constitution denominating "corrupt conduct in office" as one of the grounds of impeachment?

Mr. Manager GOULD. I am not aware of any such admission.

Mr. ARCTANDER. Mr. Manager Hicks knows of it.

Mr. Manager HICKS. The managers cannot state away their case.

Mr. Manager GOULD. It is suggested, and properly suggested, that the managers, even if they had so stated, cannot state away the case of the State.

Counsel for the respondent has had the idea all along that we, on the part of the managers here, were attorneys urging on some cause in which we had a personal interest. He seems to forget that the managers stand upon this floor as the representatives of the popular branch of the legislature of the State of Minnesota, met here with the other co-

ordinate branch of the legislature for the purpose of investigating certain questions affecting this respondent. We are not here as the attorneys of anybody. We are here as the representatives of the State of Minnesota and we have no more at stake in this great cause than each particular Senator who occupies a seat upon this floor. We shall be no more deeply affected by the outcome of this trial than you are, and each of you, and we are here not like the gentleman, the paid attorney of somebody, but we are here in our official capacity as representatives performing an official duty. In that capacity no admission that we make upon this floor, any more than any admission that a Senator might make can affect this case, either *pro* or *con*.

Now Senators, I propose to diversify this argument by a slight discussion of the subject of intoxication. Perhaps it is a subject that has come within the observation of Senators so frequently that its discussion is unnecessary, but at the same time it may not be uninteresting to examine a few authorities upon the subject of drunkenness. And before proceeding to examine the authorities upon this subject I desire to call your attention to the fact that the matter of indulgence in strong drink has been from very early ages in the world's history a subject of a good deal of concern to the public men both of the church and the State. We have been referred by the honorable gentleman who precedes me to the holy scriptures;—in fact, I might say we have been referred to nearly all the books, from the Holy Scriptures to the Police Gazette. As far back then as the sacred writings, if I mistake me not, there are the edicts of the men of God denouncing the man who shall defile himself with strong drink.

Mr. BRISBIN. Has that any allusion to Noah who lived before the Lord for 950 years.

Mr. Manager GOULD. It may be. The subject of the use of intoxicating liquors has, I say, from the earliest history, been an important question in politics, in religion and in all forms of social organization. It has been denounced by the church, it has been denounced by the State, it has been denounced by moralists of all kinds, classes and descriptions. More than that, laws have been instituted to effect reformation in this direction. One of these laws is that a man who becomes habituated to the use of intoxicating liquors to a certain extent may have his property taken from him and he be placed under guardianship, and somebody be put over him to manage his estate. In determining in a case of that kind, whether a man is in the condition where the law steps in and takes charge of his affairs, the courts have been led to determine whether or not the man had become an habitual drunkard. And there are cases on record where men who have been found to have drank far less excessively than the respondent in this case, have been adjudged by the courts unfit to have charge of their own property, and have had guardians placed over them. Laws have been enacted prohibiting men from selling liquor to habitual drunkards or to men addicted to drink, and it has then become necessary in the courts to determine who was an habitual drunkard, and so we have the law upon that subject; and it has been found that men who drank no more than this respondent is shown to have done, have been found under that law to be habitual drunkards.

And that distinguished legal luminary from Marshall, who threw the light of his judicial learning and acumen over this court as a witness for

respondent—the famous Seward, whom you all recollect and who has been so highly extolled by the counsel—appears to have heard of this law and said to certain men in Marshall, "If the grand jury of this county did their duty they would indict Mahoney for selling liquor *to an habitual drunkard, to-wit: E. St. Julien Cox.*" Of course he had heard of the law and he knew of a case where that law was entirely applicable. He has been said by the counsel to be a very bright young man. That *was* a bright idea. It was undoubtedly the law of that case, and I was very much surprised that the young man who had discovered the law applicable to that case, should have the hardihood to come down here upon the stand and deny that he had ever said it, when the witnesses were abundant to show that he had said it, and have so testified. But that is a digression.

There is another class of cases where we find out about habitual drunkards or men accustomed to the excessive use of liquors, and that is those cases which arise under life insurance contracts.

Now, the life insurance companies are sharp enough to see that a man is not a good risk for them who is habituated to the use of strong drink, and consequently they insert in their policies—into their applications, in the first place, certain interrogatories as to whether the person whose life it is proposed to insure is a person of temperate habits, and then they insert in the policy that if his death is caused by the excessive use of liquor the policy shall be forfeited; and so the courts have had occasion to determine in that class of cases what constitutes an habitual drunkard. I have not the time to go through the cases of this character and those to which I have previously alluded, in which the courts have determined, as far as it is practicable to determine, what constitutes an habitual drunkard.

There is still another class of cases where the same question has arisen. Habitual drunkenness is a ground for divorce, and a man may be deprived of the comfort and society of his wife, and his children taken from him, and he turned adrift into the cold world, because he is an habitual drunkard; and the courts have had many opportunities to determine what an habitual drunkard is in cases of that kind.

Now, gentlemen, I shall not attempt to cite here and to read to you all the authorities upon these several topics, but I will call your attention to a few. I will read the case of *Magahay vs. Magahay* 35th Mich., page 210. This was a divorce case; a very short decision, and I will read you the whole opinion of the court in this case.

> We think the evidence in this case shows that the defendant has the habit of indulging in intoxicating liquors so firmly fixed that he becomes intoxicated as often as the temptation is presented by his being in the vicinity where liquors are sold.

Now, gentlemen, from the evidence that is here adduced that is exactly the condition of the respondent. Every resolution of amendment seems to vanish away as soon as the fumes of the liquor reach his nostrils. Under circumstances that would induce almost any man to abstain from the use of liquor this man falls from grace. His good resolutions will not hold out when the opportunity for indulgence presents itself.

> He either makes no vigorous effort to resist and overcome the habit, or his will

has become so enfeebled by indulgence that the resistance is impossible. We are therefore of opinion that he is, within the meaning of the divorce laws, an habitual drunkard.

I will read now from 1st Paige, page 580. The question involved in this case was whether a commission should be appointed for a man who was accused of being an habitual drunkard, and the chancellor in that case, a case in the State of New York—I think it was Chancellor Walworth, a very eminent chancellor—considers the subject and argues on the question as to the right to have the issue tried as to whether the person is an habitual drunkard.

It is certainly proper in cases of doubt to permit a party to have a trial by jury before he is deprived of his property or his liberty, either by his misfortune or his fault. I should think it a discreet exercise of the power of the court to direct an issue in all cases of doubt especially under the act relating to habitual drunkards. But a very erroneous impression seems to have gone abroad upon this subject. It is supposed by many that the prosecutor in such cases is bound to prove affirmatively that an habitual drunkard is incapable of managing his affairs. On the contrary, the fact that a person is for any considerable part of his time intoxicated to such a degree as to deprive him of his ordinary reasoning faculties, is *prima facie* evidence, at least, that he is incapacitated to have the control and management of his property.

If a man who is for a considerable portion of the time intoxicated has not the right to manage his own property, what shall we say of his right to administer justice in the courts of the State?

I now read from another class of cases to which I have referred. I have read from a divorce case; I have read from a case referring to the authority which the law exercises over a man's property in case he is an habitual drunkard, and I now read one of those insurance cases to which I allude. I read from the Union Mutual Insurance Co. vs. Reif, 36 Ohio State, page 600.

The habit of using intoxicating liquors to excess is the result of indulging a natural or acquired appetite, by continued use, until it becomes a customary practice. This habit may manifest itself in practice by daily or periodical intoxication or drunkenness.

Within the purview of these questions it must have existed at some previous time, or at the date of the application, but it is not essential to its existence that it should be continuously practiced, or that the insured should be daily or habitually under the influence of liquor.

Where the general habits of a man are either abstemious or temperate, an occasional indulgence to excess does not make him a man of intemperate habits; but if the habit is formed of drinking to excess, and the appetite for liquor is indulged to intoxication, either constantly or periodically, no one will claim that his habits are temperate, though he may be duly sober for longer or shorter periods in the intervals between the times of his debauches.

If the 126 Massachusetts is here, I will read you another. I read from the report of the case of Blaney vs. Blaney, 126 Mass., 206. This is a divorce case.

The statute which makes gross and confirmed habits of intoxication a ground of divorce does not undertake to define those terms, and they probably do not admit of precise definition. It does not point out how long continued or how frequent the intoxication must be to be pronounced habitual, or to what extreme it must be carried to be properly described as gross. St. 1870 c. 404. The evidence reported in this bill of exceptions is to the effect that the libeller, for a period of twelve

or fifteen years, had as often as three or four times a year yielded to an impulse to drink to excess. That on such occasions he became grossly intoxicated, continuing in that condition a week or ten days together; and that at such times he was or was sent to an asylum for inebriates; that when the desire for drink came upon him, he could not resist, and that a single glass would bring on excessive drinking and a renewal of gross intoxication. It was also shown that there had been no apparent improvement in his habits in this respect, and that any undue excitement would make him drink. Upon this evidence the judge was justified in his finding, or, to say the least, it is impossible for us to say, as a matter of law, that his finding was erroneous.

Now the counsel (not the one that immediately preceded me, but the prior counsel for the respondent,) took occasion to say near the close of his argument that we had established under the eighteenth article here but eighteen times when the accused had been intoxicated during his official term, and he proceeds to divide that by four, the number of years that he has been in office, and to arrive at a conclusion that respondent has been drunk but four and a half times per annum since he has been in office. That seemed pretty plausible as a mathematical proposition, but when this Senate comes to reflect upon the fact that Judge Cox started out from St. Peter in May last and was drunk when he held the spring term in New Ulm about the middle of May, in which their own witness Mr. Blanchard says he was drunk, and in which some of the other witnesses, including Mr. Jones of Rochester, says he was drunk, (and Mr. Jones very carefully, very cautiously proceeded to tell you how politely and nicely he put the Judge to bed drunk that night, after the trial of Howard against Manderfeldt;)—I say drunk then at the New Ulm May term; drunk at Sleepy Eye before he starts to the place of holding court, and drinking on his way over to New Ulm; drunk on the cars at Sleepy Eye going over to hold his term at Renville; drunk as a lord during the whole term up at Tyler, and drunk at Marshall, to such an extent that the grand jury found it necessary to make complaint against him. All that, gentlemen, was within the period from May to July. That the counsel probably would say was one drunk. Perhaps so. According to the counsel's theory of the law, respondent has been drunk but four and a half times a year. That certainly was not the half time, and I am led to believe that the counsel may be right, that the respondent was drunk but four times a year, but each occasion lasted three months, and that makes him drunk pretty nearly all the time.

Now, further, if the evidence shows that a man was drunk only four and a half times a year even, that does not get him out of the dilemma, because here comes the Supreme Court of Massachusetts, and says that because a man is proven to be drunk only at certain times, there is no presumption arising that he was sober the rest of the time. Of course that is good law and good logic.

It may be true that we have not succeeded in bringing witnesses to show that on every particular day of the 365 this man has been drunk, but we certainly have shown that he has been drunk at certain times, and if there is any law or theory to be invoked, I ask your consideration to the principle of law well known to the counsel and well known to every attorney on this floor, that when a certain state of things is once proven to exist, the presumption is that it continues to exist. It needs evidence to prove that a different condition of things existed at any subsequent time, and if the respondent here was drunk in May and June and July, right along, I say it requires evidence to show that he has ever

:n sober since. The presumption is that he has not, and there is no sumption of sobriety at any time.

In the case of The Commonwealth against McNamee, 112 Mass., 285, ich was a case of prosecution for drunkenness, the court says this:

'be defendant is charged in the complaint to have been a common drunkard m August 15, to December 7, 1872. Upon this charge he is presumed to be in-ent: that is, he is presumed not to be a common drunkard; but the jury are to be instructed that because it is proved that a defendant was drunk five times our months, and no proof is given of his condition the remainder of the four nths, it is to be presumed he was sober and not intoxicated during all the re-nder of the time.

The jury are not to be instructed that because he has been drunk r times in five months he will therefore be presumed to have been er the rest of the time there is no such presumption.

'he question is, whether the facts proved satisfy the jury beyond a reasonable ibt, that during the time specified in the complaint he was a common drunkard.

* * * * *

n this as in all other criminal cases, the burden of proof is upon the prosecu-n, and the question whether the evidence satisfies the jury beyond a reasonable ibt of the truth of the charge, is for them to settle. It does not appear how-r, that he is entitled to a specific ruling that he is affirmatively to be presumed er on days as to which no evidence is offered.

I see that I have already overstepped the limits which I had set for /self in this matter, and I shall try now to bring my remarks to a se. But before doing so, I desire to call your attention to another thority or two upon the general topic of drunkenness.

Senator CAMPBELL. Does the counsel understand that the Senate de-ed to extend his time to the limit that was desirable to himself?

Mr. Manager GOULD. Very well, sir. I see now that it is already st 9 o'clock. I desire to read to the Senate from a work on insanity Ordonaux on Insanity, State Commissioner of Lunacy, and Professor Medical Jurisprudence in the Law School of Columbia College, New rk, and author of the Jurisprudence of Medicine, on page 168.

Now, this that I am about to read, applies not only as the law of the hteenth article of impeachment, but it goes further than that, and it the effect, if it is correct (and I think it will meet with you appro-ion), it goes farther, and it shows how utterly unfit for the exercise the responsible duties of a judge is a man who is in a condition of in-ication, and whose habits of life are such that he cannot refrain. I ceed to read now.

n Ludwick vs. The Comm. (18 Penn., 172), and Comm. vs. McGinnis (20 Pittsb., L., 54), it was held that occasional acts of drunkenness will not constitute the son an habitual drunkard; but it is not necessary that he should constantly be a intoxicated state; a *fixed habit* of drunkenness will constitute a person an ual drunkard. This decision my be said to represent most correctly the legal of a drunkard. It does not require permanent intoxication of the individual e degree of producing total mental incapacity, which, physiologically, could only for a short time, since cerebral, congestion, gastritis and delirium in form would soon exhaust the system and terminate life. Nor does it again lge him to be a legal drunkard who occasionally, that is to say, at irregular vals, becomes intoxicated for a short time, and as a primary consequence of

drinking. But it requires that the habit of drinking should have become so fixed that the habit itself is the tempter to the indulgence in drink, and that the indulgence in turn, instead of satisfying the appetite, should provoke it to an insatiable demand for more, so that an habitual drunkard is one who, when craving drink, cannot be satisfied with its primary effects, but continues to need it because of the fixed habit of needing it which over-indulgence has begotten in him.

Such is that author's idea of it. The subject of drunkenness is considered by Mr. Brown in his Medical Jurisprudence, sections 347, 348 and following, and I will read some from that. I think he describes the case of the respondent here very completely. I will begin with section 346.

Drunkenness is the word in ordinary use for that state of body and mind which is produced by alcoholic liquors, and is used in ordinary every-day transactions as equivalent to poisoning by means of alcohol. Alcohol taken in large doses, and in a concentrated form, may cause death suddenly by shock; but the ordinary course of a case of poisoning by means of alcohol—and the same remark is true of either and of chloroform—is marked by confusion of thought, delerious excitement, nausea and vomiting, and ultimately induces a state of narcoticism, and in fatal cases it produces a kind of apoplexy, or causes death by paralyzing the heart.

Sec. 347. A more minute description than the above is, however, necessary of what is called drunkenness. If the quantity of alcoholic liquid consumed be very great, or if the strength of the liquid be considerable, the symptoms of poisoning may show themselves within two or three minutes after the dose has been taken.

Now it has been contended in this case that no effect could have been perceptible in the Judge at certain given times testified to, because he had just taken a drink and it had not had time to operate and produce its effect.

The first effect is generally a diffused glow spreading from a central heat, accompanied by a comfortable feeling of self-satisfaction, which is reflected upon the world generally, and even to a sad man it begins to appear "not such a bad place after all." Thought is probably more rapid at this stage—

That accounts for these cases where the Judge, when he gets a little liquor in him, is so disposed to push everything.

—just as the pulse is; but rapidity of thought does not always conduce to clearness, and soon there is a slight confusion of thought; the hilarity continues; the spirit is bouyant; the individual is talkative.

But the words stumble. The speech from stammering becomes indistinct: he feels giddiness; he sees double. There are abrupt, almost automatic, movements of the limbs. He makes up for the thickness of his speech by its loudness. He is sometimes ready to take offense at any act upon the part of a neighbor, and becomes quarrelsome. Some men, however, become still more friendly; many men become amorous.

"More friendly"—as, for instance, when Mr. Ladd was going down from the depot when he had been up there to see if Judge Cox was going to New Ulm to try a case, and he found the respondent in front of a saloon; and the Judge puts his arm around Ladd and goes and sits down upon a bench with him and says, "You just draw up any order you want and I will sign it." Very happy! Very pleasant!

I continue:

The softer flame spoken of by Burns seems to burn the brighter for alcohol. There is now a thorough want of concatenation of the impressions conveyed by different nerves. He sees his glass or bottle, and he grasps at it; but he misses it, and possibly stumbles and falls. At length the patient looses the power of speech and the power of voluntary motion. Insensibility, a sort of hideous sleep, comes on. The countenance is bloated and suffused, the eye is injected, the pupil dilated and fixed, the lips livid, and the breathing stirtorous. A man may sleep off his drunkenness, or he may reject, by vomiting, part of the poison before it is taken into his system. In cases where death ensues, its approach is indicated by pallor of the face, cold perspiration, a quick and feeble pulse, and total muscular relaxation.

It is, it seems to us, necessary to distinguish several kinds of drunkenness, and the appreciation of the distinctions which exist between each of these will go far to make the relation of drunkards to the law and to their fellow-citizens easily understood. First, there is the accidental drunkard. Any man may get drunk by accident. Children, who know little of the effects of alcoholic liquors, are apt, when these are first presented to them, to drink to excess, and it is only when the next morning's waking comes with a head full of wonderful aches instead of wonderful dreams, that the child learns that there was "death in the pot." Men may be led astray by the hilarity of some occasion, by the persuasions of friends, by physical feelings which prompt to relief by means of stimulants, and may become drunk. The various stages in an ordinary fit of drunkenness have already been described. It has been remarked, with truth, and in an ordinary fit of drunkenness, we have an epitome of an attack of mania. And it is to be remembered that during the continuance of the influence of this poison the man is, to all intents and purposes, insane. It is true that the attack is only temporary, but so are many incursions of mental disease; it is true that the cause of the aberration is one which the ordinary habits of the system will counteract and remove, but that remark is equally true of many of the causes of insanity. But, second, we have regular drunkards These get drunk when it suits them. They are sober all day, and transact their business with sense and discretion, but they get drunk regularly at night; or it may be that the indulgence of this propensity comes at rarer intervals, still, there is a regularity to be noticed in connection with their "bouts." These are really sane drunkards. They have a complete control over their passions, but they voluntarily throw the reins on its neck. They could resist temptation if they chose; they do resist temptation on all occasions when indulgence would be inconvenient or dangerous, but on other occasions they do not care to resist. Then, third, there is a class of drinkers who scarcely deserve to be called drunkards, and who must, nevertheless, be regarded by those who would understand the true relation of this indulgence in liquors to pathology. This class has got the name of tipplers. Sir David Lindsay in one of his poems speaks of some who were "ever dying and never dead," and this third class might well be spoken of as "ever drinking and never drunk."

But these men who soak or tipple very frequently come under the cognizance of the medical psychologist, although their names may not appear on the books that are kept at the police cells. It is much to be feared that this class is on the increase. Many men boast of being "seasoned casks," meaning thereby that they can drink a great deal without showing the symptoms of intoxication; but the boast is but little, for even these men cannot escape the consequences of their acts, and a decadence of bodily and mental health is the too common result of their frequent indulgence. Fourthly, we have habitual drunkards. As we have seen when considering the psychology of drunkenness, a single gratification of the appetite for stimulants is followed by renewed cravings for the same pleasures. The urgency of this craving increases, and as time goes on the measure of such indulgences becomes more excessive, and the interval between them more limited. This is not the place to discuss the large questions connected with the doctrine of the nature of volition and the freedom of the will, but no one can doubt that whether the will is only a general name for the plus quality in ruling motives or not, that motives have a great deal to do with the exercise of healthy volition or controlling power. But what is the result of repeated indulgences upon the motives of a man. The habit to indulge becomes stronger, the bodily craving grows in strength, and other motives lose their weight. In this way the moral sense of the individual becomes

obscured, the self-restraint which depend so much upon this moral estimate of one's worth are no longer guiding principles of the life; the man has become the slave of an artificial appetite, and is no longer the free ruler of his own conduct. His organism rules over him, and the rule is not that of a constitutional monarch who is ruling in conformity with the rules of health, but the tyranny of a despot who is ruling with the caprice of disease.

Think of such a man as that.

Senator CAMPBELL. What book do you read from?

Mr. Manager GOULD. Brown on Insanity. Medical Jurisprudence of Insanity by Brown.

I have already said, Senators, referring to the evidence in this case that under the rule adopted by the Senate, limiting us to five witnesses, and allowing the other side as many as they wanted, the question of the preponderance of evidence can cut no figure; but I do not feel like dropping the subject of the evidence in this case, without paying my respects, at least, to the junior counsel who addressed the court upon this subject; and what I have to say upon that matter I say reluctantly. Nevertheless I feel justified, by the very unusual course that has been pursued with reference to the matter, in saying a few words. The counsel has seen fit, evidently from a mistaken idea of the character of this court, repeatedly, from the commencement to the end of this trial, to disparage the managers and to allude to them in unpleasant terms. For that I harbor no ill-will. For that I have nothing to say, if the counsel sees fit so to demean himself. But both the senior and the junior counsel have thought proper to assail, in terms of gross vituperation, the character of the witnesses who have testified in this case for the State, and I deem it my duty, much as it may blemish the record of this trial, to express my condemnation of what has been said. I know, personally, many of the witnesses who have been brought here on behalf of the State. I know, personally, how reluctantly they came to this trial. I know the motives which actuated them, and I know they are *not* the motives which have been attributed to them by counsel.

The counsel who immediately preceeded me took occasion to assail one of the gentlemen who presented to the House of Representatives a representation on the subject of the conduct of this respondent. He even seemed to think, so had his mind dwelt upon the subject, that he had looked upon the man on the stand here and he referred to him as a witness in this case. That man has not been here at all. He has never testified a syllable in this case, and the only thing that he did was to sign a representation to the House of Representatives, that the Judge of the 9th judicial district had been conducting himself improperly, and he did that, too, only after the grand jury of the county in which he lived had brought in their resolutions of censure, and yesterday I was astonished when the senior counsel for the respondent here alluded to that man in such terms as he did. I had expected better things of the respondent's senior counsel. My sensibilities had become somewhat blunted by the brutal attacks which had been made upon witnesses before that time; but I did not expect of the senior counsel an exhibition of such a spirit. He did not confine himself even to this minister, but he attempted to make it appear to you that the motive of this impeachment was ambition for the official shoes of the respondent, and he spoke

to you of four men who were supposed to be candidates, as he was pleased to term it, for this office. Four candidates! Then each candidate must have had a fourth of a chance to get an office, provided this office became vacant; and for that fourth of a chance to get an office he would have you believe that these men traveled down here two hundred miles to perjure their souls by testifying falsely. Gentlemen, the junior counsel throughout this trial has dwelt at length upon Mr. Lind, and has seemed to wreak his spite upon him with a wonderful degree of vigor and satisfaction. I am not very much acquainted with Mr. Lind. I have met him a few times and he has appeared to me to possess all the characteristics of a gentleman. I have discovered nothing in him to warrant the opinions which the counsel seems to entertain for him. And there are gentlemen sitting upon this floor who have known that poor boy from his early childhood—

The PRESIDENT *pro tem.* I have.

Mr. Manager GOUDD. And they have seen him struggle up against adverse circumstances, to be a man among men. He has been entrusted with an important station under this government and conducts himself with credit in that station, to the satisfaction of every one who knows him, and when that man, who has no voice upon this floor, is assailed and abused, I believe it is my duty to stand here in his defense and say that the counsel's remarks concerning him are totally unwarranted. Then there is, Mr. Ladd, whom I have known for several years. He has been a member of the Legislature of Minnesota. He is a man well-known in the Minnesota valley and elsewhere throughout this State as an honorable and accomplished gentleman; and I say, without any intention to be severe, that he is a man the latchet of whose shoes the junior counsel for respondent is not worthy to unloose.

And Mr. B. F. Webber, who has been before you, who bears upon his very face the impress of gentle deportment and of intelligent manhood, he, too, has been dragged here and abused and vilified as though he were a thief, a liar and a purjurer, without the slightest cause. And Alfred Wallin, of Redwood Falls, what was said of him? Mean insinuations as to his having at one time been a drunkard himself; vile inuendoes because, forsooth, he had an honorable ambition, as every lawyer has, to attain distinction in his profession; he too, has been the victim of the counsel's unmanly vituperation, because he could not defend himself here. I have known that gentleman for many years. I remember to have seen him in the very slough of despond, his property gone and himself a wreck from the very vices which we here decry, and I have seen him by slow and steady steps, summoning all the manhood within him, rise gradually from that condition and stand upon the high pinacle of noble and sober manhood; and when I look at such a man as that and watch his career, I can but say if the respondent in this case had possessed the same character he would not have been before this court to-day.

Still more distinguished victims have fallen under the disapprobation of the counsel. A judge of the circuit court of this State, a man of unsullied reputation, well known and popular throughout the State—you know to whom I refer—the Hon. M. J. Severance. In the desperation of his failing and rotton defense, forgetting all sense of decency and propriety, but smarting under the truthful and terrible revelations of this

witness, the counsel has had the hardihood to assail this distinguished Judge. I tell you, Senators, that were M. J. Severance cut into ten thousand pieces, each particular fragment would contain more of honest manhood and nobility of character than would be found in a regiment of such beings as the counsel and his client.

A cause that requires such universal, utter and reckless denunciation of witnesses as that *must* be rotton. It cannot but be ill-founded. There is no other possible justification of such conduct. It would disgrace the purlieus of a police court, and by so much the more the high court of impeachment of a great commonwealth. I am surprised, I am astonished that any man in the profession of the law should be found to so far degrade himself as to enter into such a universal crusade against men who are in every respect his superiors.

Gentlemen, as I have said before, I appear in this case with the other managers not as a lawyer but as a representative of the people. It is not a pleasant duty. It is far from being agreeable to my taste. In some humbler sphere I would rather have, unknown and unnoticed, taken this respondent by the hand and led him into the paths of decency and sobriety, and to have assisted him in building up the shattered fortune and the shattered character which he bears. Unknown and unnoticed I could have done that with pleasure and reflected upon it in my after life as one good deed which would be recorded to my credit. But a sense of public duty impels me here.

Gentlemen, we are told that this defendant is a descendant of the Hugenots. We are reminded that the line of his illustrious ancestry reaches away back into the early ages. We are informed that his father served the government in an important military or naval capacity in the war of 1812. We are told that he has a home and a wife and children. He may expect that he will have descendants reaching down into many generations. He holds a public station, the gift of the people of his district. He is before the people in an official capacity. He has therefore every possible incentive for a correct and temperate life.

I endorse all that the senior counsel for respondent has said about the love of family and pride in the good name of our ancestors. And that feeling should inspire us to avoid whatever would bring dishonor or disgrace, and lead us to lives which, when we shall pass away, will be remembered with satisfaction by those who follow us. I endorse it all, and I say that this respondent has all those inducements which should lead a man into purity of conduct and uprightness of life.

But what do we find? We find him a wreck in every sense. All these inducements have been insufficient to restrain him from those vices that are constantly dragging him down. Distinguished ancestry watching his career from their homes in heaven, the hopes of posterity, and the eyes of the present generation and home and family and friends, *all* appeal to this man in tones most loving as well as strongest possible that he shall refrain from the course that he is pursuing. But they call in vain. It is impossible to stop him in his mad and downward career, and every promise of reformation is broken as soon as the opportunity to break it occurs. All his good resolutions come to naught and he returns to his vicious conduct as a "dog to his vomit or the sow to her wallowing in the mire." Hence I say Senators, you have, and can have no possible hope that if you relieve this respondent from these charges

he will lead a better life. His whole history forbids it. His whole life gives it the lie.

Why, counsel—the junior counsel—extolled him as the great man of the Ninth Judicial District, who loomed far above everybody else, and he gave an account of his military service and of his civil service, and he wandered all over the continent, pretty nearly, to bring up something in this man's favor. But it is for the most part a mere figment of the counsel's imagination.

His military career cuts no figure in the case. It would ill become me to say ought against a man who fought for the flag in those dark days of the rebellion, and I am the last man to do it; but when his military services are paraded here there should be a fair understanding of what they consist. The counsel led you to believe that coming here from some town he heard about the firing on Fort Sumter and rushed right off and raised a company and pushed to the front. The cold and solemn records down here in the Adjutant's office show that he did not go into the army until along in July and the firing on Fort Sumter was in the middle of April; and they further disclose the fact that having gone in in July and obtained a commission, he resigned the following February and came home, and that the next fall he enlisted again and went out against the Indians here under the celebrated Col. McPhail and performed some duties in the Indian war.

And then, the counsel says, he came home and distinguished himself in the councils of this State as a Senator or representative—I think in the Senate. There are Senators here that know the record of E. St Julien Cox while he was in the Senate. I need not animadvert upon that subject. If you want to know what his career was in the Senate of the State of Minnesota, ask the Senators who were here at that time.

And then he was elected a Judge, and his career as a Judge is now here being examined. Counsel tells us that the respondent's decisions are seldom reversed, but the last volume of Supreme Court reports tell a different story; of six appeals from Judge Cox's court in that volume, five are found erroneous.

Such, gentlemen, is the record to which you are invited by the counsel's eloquent peroration. You have here a duty far above any consideration of this respondent. This man sinks into utter insignificance when you come to consider the great and important public interests that hang upon the issues of this trial. You are called upon here now in this early period of the history of our young State to announce a principle which is to govern and control and animate the judiciary of this State for generations and generations to come. A State, now with three-quarters of a million population and soon to be peopled by many millions, will all look to the solemn records of this occasion to ascertain what is the proper thing for a Judge to do. Are you going to place upon the records of the State of Minnesota the hideous proposition that drunkenness and vice, in a high judicial officer, is not a violation of law in this State?

The sensitive minds of this Senate have, as it were, eradicated from these articles some of the most vicious charges. The Senate has seen fit to say that we shall introduce no evidence upon the nineteenth and twentieth articles. Be it so. I do not admit, and I wish here solemnly to put on record my protest against the Senate of Minnesota striking

out an article of impeachment presented by the House of Representatives. The constitution of this State provides that the House of Representatives shall have sole power of impeachment, and when, in a solemn manner, they have presented articles of impeachment here and asked your judgment upon those articles, the Senate has no duty to perform except to hear the evidence adduced and find upon those articles. I say you have no right to strike them out. Nevertheless, you have seen fit to do so in this case, and it has been acquiesced in, and thus you have shut out a blasting record against the man which, taken in addition to the articles with which he is charged and which stand proven, make up a record that should bring the blush of shame to every sensitive character.

And now in this final hour, you are called upon to say whether or no vices of this character shall be permitted and go unwhipped of justice. I feel an abiding confidence, a warm assurance that this Senate will never make such a record as would appear if you acquitted this respondent. Your children, and your children's children after you will blush with pride or hang their heads in utter shame and confusion at the record that you make upon this case; and it behooves you for your own sakes, for the sake of your children, and for the sake of the State of Minnesota, her people and her great interests that you should say here and now that the vices which have been proven in this case are against the law and the policy of the State.

The PRESIDENT *pro tem.* What is the pleasure of the Senate?

Senator CAMPBELL. I move the regular order.

The PRESIDENT *pro tem.* The Senate stands adjourned until to-morrow morning at 9 o'clock.

FIFTIETH DAY.

ST. PAUL, MINN., Friday March 17th, 1882.

The Senate met at 9 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, Buck, C. F., Buck, D., Campbell, Case, Castle, Clement, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson R. B., McCrea, McLaughlin, Mealey, Miller, Officer, Perkins, Peterson, Pillsbury, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, 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.

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, 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 *pro tem.* Are there any resolutions or motions to be offered before proceeding with the regular order of business? If not, Manager Dunn will proceed with his argument.

Mr. Manager DUNN. Mr. President and Senators: I think when I say that I approach the consideration of this important case with feelings of extreme self-distrust that I will not be subject to the criticism of a diffidence that is at all affected. I feel incompetent, mentally and physically, to perform the great and important duty that the management have assigned to me—the task of closing the series of arguments that have been made in this case. I would it were intrusted to more able hands. I would that some other, who had the power of reasoning beyond any attainments that ever I have reached, had the discharge of this solemn trust; and yet, weak and feeble as I am, to-day, and distrusting myself so thoroughly, I am impelled forward by a strict sense of duty. How well I shall perform this task, how well I shall acquit myself of this arduous labor, it will be for you, Senators, and the coming generations that will read the pages of history that will be made on this day, to determine.

The importance of these proceedings cannot well be over-estimated. Its importance to the State of Minnesota is well nigh beyond calculation. The mind can hardly grasp the momentous issues that are here involved: issues are to be determined in this matter, which will affect the State of Minnesota, for weal or for woe, as long as time shall last. Neither am I unmindful of the importance of the issues in this action to the respondent. We have been admonished on the part of the board of managers by the counsel who have argued this case so ably for the re-

spondent—both the senior and the junior counsel—that any words we might let fall upon this floor expressing sympathy or even friendship for the respondent, were purely hypocritical. We have not been allowed to express a single kindly feeling to this respondent, to give utterance to any feeling that was simply personal to us, but that it has met with the rebuke of both of the counsel who have addressed this honorable court.

I am not willing to believe that the sentiments that they utter are the sentiments of the respondent himself. I am not willing to believe that all the action that has been taken here by the counsel for the respondent meets with his indorsement or approval. The earlier actions of the counsel in his behalf were entirely disavowed by them as coming from the respondent himself. And I believe, Senators, that the rebukes that they have seen fit to administer to the members of this board of management do not meet with a responsive echo in the heart of the respondent.

The statements that I have made regarding my personal feelings toward the respondent were so made because I believed that it was proper to make them. I believed that it was my duty to make them, and I believe, and I *know*, that they come from my heart. I believe that I am able to divide myself, as it were, and to substract in my *personnel* on this floor the advocate from the manager of this case as a duty imposed. I do not appear here in the *role* of an advocate; I do not appear here in the *role* of an attorney; but I appear here in my capacity as a representative of an honorable constituency of this State, in the popular branch of this legislative body. I appear here to do their bidding; I appear here at their command. The duties which I shall perform shall be entirely gauged by the sense of duty which I deem that I owe to my constituency and to the sense of duty due by me to this commonwealth.

We have been engaged now for sixty days in the arduous work of ascertaining where is the truth. The law, that beautiful science, has been expounded to you on behalf of the respondent by the able senior counsel Brisbin. The facts have been argued at great length, with much vehemence and with a great deal of skill and ingenuity by the junior counsel Arctander. The law on behalf of the managers has been ably expounded, clearly set before you, with great succinctness and with great force, in my judgment, by my brother, Manager Gould, who preceded me in this argument. I take it, Senators, that the law of this case must be considered as settled. When I consented to divide the time that was allotted me to close this argument with my brother Gould, I did it because he was more capable, having given the subject great study and much thought, of presenting the legal propositions to you than I would be on the spur of the moment, as it were; and I believe that the law has now been so well settled that no Senator on this floor, when he shall come to cast a vote in this action, will be unable to apply the law to the facts as they have been given here before you and in your hearing, and, after that application, to make up a proper and correct judgment.

This field of law has been thoroughly explored. The domain of poetry, ancient and modern, as also the domain of theology, has been invaded by the several counsels who have preceded me to adorn and garnish their arguments. I am called to a simple duty, not, perhaps, as entertaining in the line of argument as an exposition upon the science of law, but still a duty which is of no less, if not of far greater, importance

in the decision of this case—I am to deal with the immutable logic of stern facts. They are dry, largely given to detail, will undoubtedly weary the Senate, and I trust will be patiently listened to; for without the facts upon which to apply the law you have simply a dead body without the breath of life. However well we may be versed in the science of law, however pleasant it may be to the mind to contemplate that science, and however self-satisfied we may be with our attainments in that science, yet, if we have no facts upon which to apply our knowledge, we have simply a self-satisfying portion, without other results.

With these preliminary remarks, I will address myself more particularly to the duty at hand,—realizing that I am unable, physically, this morning, to make any extended remarks by way of exordium. I first desire to call the attention of this Senate to what we are to try, to what issues are to be determined. We are to determine the issue first, charged by the House of Representatives, that the respondent, the Judge of the district court of the 9th judicial district, is an unfit person to longer continue in the enjoyment of that office. That is the naked issue. It is all there is of it. Whether he is a proper person to longer continue to enjoy and discharge the duties of a judge of the district court in and for the 9th judicial district is the momentous question to be determined by this proceeding.

I do not expect, neither does any member of the board of managers expect, and neither does any member of this high court expect that this issue is to be determined upon other than legal principles. We have been told by one of the counsel who argued this case at such great length for the respondent that if this respondent were convicted he would not be convicted on legal principles, but that he would be convicted by reason of prejudice in the minds of the members of this court. That was the statement that was thrown out to you, Senators, to reflect upon, to think over, for it was stated in the early part of that argument that not upon legal principles would this Senate record its judgment in this action, but that upon prejudice against this respondent would the votes of these honorable Senators be given and cast.

I entertain no such views, Senators. Far be it from me to ask a Senator upon this floor to vote upon a matter so pregnant with importance to this respondent and to this State, upon any other than legal principles; and if we shall be able to show you that upon those principles of law which you are sworn here to regard, and also upon the evidence which you are sworn to regard, you should find that these issues are to be resolved in favor of the commonwealth, then we shall expect each Senator, rising in his place, to vote guilty; otherwise, not.

For eighteen times during the brief career of the respondent as judge of the Ninth Judicial District, while in the discharge of official duties, has there been proof proffered here and tendered to you of what we claim to be dereliction of duty. Eighteen several and distinct times since the first of January or the tenth of January 1878, down to the 21st day of June 1881 is this respondent alleged, by proof out of the mouth of living men, to have been guilty of misconduct, misbehavior in office, which the House of Representatives have denominated to be a misdemeanor in their charges.

Think of it, gentlemen! Twice during the year 1878; six times during the year 1879; three times during the year 1880, and six times during the year 1881. It is an appalling record. Not an isolated case

which might be condoned and forgotten by a great commonwealth; not a mere casual slip from the path of duty; but a series of misadventures, a series of destructive acts toward the State of Minnesota has been committed by the respondent in this action. It is that, Senators, which you are called upon to determine. Have these things been done? Not whether it is a good thing to indulge in alchoholic drinks; not whether it is an improper thing; not whether a man ought to be a total abstinance man, or whether he ought to be a drinking man; but simply to determine whether these things which the House of Representatives have alleged against this respondent have been done. Has he once, twice, thrice, or, forsooth, the whole number, eighteen times, been gnilty of dereliction of duty?

This case has been treated by the respondent in various attitudes. During some portions of the trial I have been led to believe that there was a spirit of self-glorification on the part of this respondent as echoed by his counsel in these unworthy and injudicial deeds. There has been a spirit of levity ill-befitting the grave charges which the State makes, and there has been a spirit of vituperation and abuse exhibited by the counsel for the respondent, and poured out upon the heads of the managers and the witnesses for the State, that has ill-befitted this solemn occasion. But I wish the Senate to remember one thing, that in no instance has there been a direct denial by this respondent that any of these things are not true.

A spirit of levity, as I said before, has been indulged in. It has been said by the counsel for the respondent who argued this case in the first instance, that there was no harm in these things having been done; that no injury had come to any individual; that it was not a misdemeanor or crime or even an offense, that the respondent had been guilty of here.

And again this case has been tried by the respondent on the theory of a conspiracy having been formed against him in the district which he has the honor of presiding over as its highest and chief official officer. Persons have been accused of conspiring against him for the purpose of plucking that judicial crown from off his brow and crowning one of their ignoble selves therewith. How much credence these statements may have found in the minds of Senators, I am unable to say, but I trow not much.

Why, the counsel for the respondent even had the hardihood to say upon this floor "Since when was it a misdemeanor for a judge to get drunk?" And he went back to the days of George II and George III, and dug up one of the dissolute chancellors of that period, Lord Northington, and he said, (with a spirit of bravado, upon this floor, which I thought was ill-be-fitting a counsel who was endeavoring to represent a great and important issue) that this dissolute, debauched chancellor went to his majesty and wanted him to abolish certain sittings of the chancery court, and when asked why, we were told that the answer was that he might get drunk upon those occasions.

I have been to some trouble and pains to investigate that matter and I found there was an incident of that kind; but I found also that the historian who records the life of that chancellor, Lord Northington, places him in no high niche in the role of the noble chancellors that had gone before him and came after him. He is called in the historic page a dissolute chancellor, a debauchee; but even he had the good sense to

know that it was not befitting a chancellor even of that period to sit upon the woolsack and administer the laws of his country while he was in any other than a normal condition. He realized that a drunken man was unfit to judge his fellow man.

We have been told that the statements made by the managers in this action have been untrue, that the facts have been distorted, that we have been actuated by some motives other than a desire to do our simple duty; by some spirit of petty revenge that we desired to indulge by these proceedings against this respondent, and had distorted the facts in your hearing and in your presence, and that we have not treated this respondent with that respect and that deference and that courtesy that we ought to have done. I submit that gentlemen for your consideration without comment.

Now, Senators, I do not propose to argue this case in the manner that I would had I unlimited time at my disposal. A painter or an artist may take a whitewash brush and paint a figure upon the wall that a distance may seem to be beautiful. He has the whole space upon which to delineate his character. It does not require much skill in the artist to paint a figure that is to be viewed only from an immense distance, but the painter, or the artist, who undertakes to paint a scene that is to be viewed from a near distance, close by,—to condense and put upon canvas or into marble his thoughts and the skill of his hands, so that it will bear close scrutiny, has a much more difficult task to perform. The task that I have to perform is not to go over this whole field of testimony, analytically, as did the counsel for the respondent in a five days' speech, but it is to condense this matter, boil it down, as it were, to get it within reasonable limit, so that this Senate may be relieved from its consideration at as early a moment as possible.

Therefore, there are some articles that I shall barely touch upon, merely give them a passing glance as it were, giving them very little prominence. There are others that I shall dwell upon at some length, and I am frank to say that there are some articles that, standing alone, by themselves, no member of this board of managers would ask a conviction upon, at your hands. There are articles here which, standing alone, without backing, without surrounding, with nothing characterizing them, would not warrant a verdict at your hands which should remove this respondent from his office, much less disqualify him for the holding of office. There are others which standing alone, without prop or support, with nothing but their own naked deformity presented to your view, would warrant a verdict of guilty without a word of argument from my own or other lips. Upon those articles I shall more particularly dwell.

Take the

FIRST ARTICLE,

for instance. In January, 1878, the respondent is charged with having held a term of court in Fairmont, Martin county, while he was under the influence of intoxicating drinks. I shall not attempt, gentlemen, to enter into any discussion upon the effect of intoxicating drinks upon the mind. That was so ably set before you last evening by my brother Gould that further argument upon that topic would certainly seem to me unnecessary. On the 10th of January or thereabouts, in 1878, this

respondent went to the village of Fairmont, in Martin county, to hold a term of the District Court, the first term and the first time that he had been called upon in his judicial career to sit in judgment upon his fellow man. He came to the bench with habits such as are not commendable to the majority of men, perhaps. He came to the bench with a reputation that was not entirely unsullied in this respect. He came to the bench through solemn protestations and promises to his friends and the electors of the 9th judicial district.

He came to the bench in the town of Fairmount, "clothed and in his right mind." The friends that had known him for years gathered around him, congratulated him upon his promotion, upon the position he had achieved, and warned him of the secret enemy that would undertake to sap the very life of his judicial honor at that term of court. The evidence shows that the first three days of that term of court he was perfectly sober. No word of fault can be found with his conduct or with his actions. But the destroyer found his way into that soul and he fell. Now it may be said that this charge is not thoroughly proven. I should not have said anything about this charge, perhaps, had it not been for some remarks that were thrown out by the counsel here, personal to myself. In his argument upon this charge he stated that this matter never would have been heard of had it not been for one of the managers who was present at that term of court.

That manager could only have been myself. Because, by the evidence here, it was shown that I was present at that term of court and that I was the only manager present at that term of court. I went to the counsel for the respondent and disavowed the statement that he there made, and desired him to correct it. But his argument went on, day after day, night after night, I almost had said, week after week, and no hint from the counsel's lips fell upon the ears of this Senate in retraction of the charge that he had made. It stood; it stands; and were it not that it is a page of history, and will go down to generation after generation, and will be read, we hope, by all men, I would not deem it sufficiently important to mention. But the facts are that this respondent did conduct himself in an unseemly manner at that time and term of court, in that he did become intoxicated while upon the bench to the personal knowledge of the speaker. It was the first occasion; it was the first offense. Everybody was willing to condone it and forgive it; but it crept into the newspapers; it was the talk of the land from one end of Minnesota to the other.

The papers at the State capital obtained the news, and the respondent in this proceeding on his way from St. Peter to St. Paul overtook that courier upon the cars, and there read the history of his own shame and disgrace. The first man that he came to in St. Paul, in the rotunda of the Merchants Hotel was the manager who now addresses you. I was willing, personally, that that offense should be overlooked in this man whom I have known for twenty-five years. With others I endeavored to smooth the matter over, and made statements to the public press with a view of having the matter looked over, and he saved from disgrace. It crept into the Legislature. A committee was appointed to investigate it; and it was said by friends to the respondent "Be very careful to see that that committee *does not* investigate." The investigation, such as it was, was had, and the four witnesses that testified here upon this stand, save one, for the respondent, were called before that legislative committee

and gave about the same kind of evidence that they gave here. It resulted, as we all wanted it to result—there was no disguising it or disputing it—in a resolution of the House of Representatives that the charges against the respondent in that matter were entirely unfounded and had no truth in them.

But knowing that that charge was true, the managers placed it in these articles of impeachment. The names of sixteen or eighteen of the best citizens of the town of Fairmont, in the county of Martin, were sent to the Judge of the Sixth Judicial District, appended to a petition setting forth the grievences of the citizens of Martin county, by reason of the bacchanalian court that had been held there, and imploring him that if occasion ever demanded that one other than himself should sit upon the bench there, that this respondent of all men should never be sent there again; and I undertake to say there is not four other men in the town of Fairmont, or in the county of Martin, who could be produced that had any knowledge of that term of court, who would come down here and testify as those four men have testified. We were confined to five witnesses, whether providently or improvidently, I am not here to argue. We produced our five witnesses. We have shown just what they know about the conduct of that court. The evidence is before you, pro and con; take it for what it is worth. If, in the light of the other evidences, it shall appear to this Senate that it is of sufficient gravity to warrant a conviction, to my mind there would be justification for it; if not, there is justification for a verdict for the defendant upon that charge.

I state this, simply with reference to the spirit of malevolence that has actuated and run through this respondent's defense toward this board of managers. Another remark which my mind is called to at the present time was one made by the senior counsel in the same line, in hurling into our teeth any professions that we might have made of friendship. The managers were accused of having had a "Star chamber" performance, while they were members of the judiciary committee of the House of Rrepresentatives in this investigation; we were accused of denying to this respondent his rights in the premises. There was sought to be created in your minds a prejudice of sympathy for this respondent by reason of that so-called action. Now, I cannot stop, gentlemen, to take time to go into the history of inquiries by judiciary committees upon matters of impeachment. They may or may not permit the respondent to come before them. They may or may not call evidence for the respondent. It is a matter in their own discretion. They chose to do otherwise here.

It will be seen that to some of the charges that are made in these articles of impeachment there is no defense offered or proffered by the respondent save by way of argument and inuendo. No witnesses are called upon the stand. No evidence upon which your minds are called upon to act is produced; nothing except the bald, naked argument upon the evidence for the State is invoked to rid the respondent of the fearful fate impending over him concerning those charges. There are others in which the evidence is very conflicting and yet, viewed in the proper manner, I think there is a key to the whole labyrinth.

Now, let us consider for a few moments the

of this impeachment. It is very briefly stated. It occupied a great deal of your time in this investigation and yet when it comes to be analyzed properly, and the proper test applied to it, it is a very simple matter; it need not give rise to much thought or much reflection on your part in order to arrive at a just conclusion; it need not harrass or annoy the mind of any Senator to arrive at any conclusion which shall be just to the State and just to the respondent as to that article.

It appears that in April 1879 the respondent was called upon by the Judge of the fifth judicial district (Judge Lord) to come down to Waseca and hold a term of court for him, by reason of some infirmity of Judge Lord. Now, this article has been treated by the respondent with a great deal of care; they have endeavored hard in this testimony to break the force of the testimony for the State, and they have labored harder in their argument than they did by their testimony; and I desire, in the outset to call the attention of the Senate, before I shall comment upon this evidence, to some of the fallacies which I think crept into the argument for the respondent as to the proper method of viewing evidence of this character. I think it is proper for me to do so. As was properly and correctly stated by the senior counsel for the respondent, the evidence of intoxication is largely that of opinion. Every other hypotheesis is not necessarily excluded by actions which demonstrate to individual lookers-on or listeners that the subject is under the influence of intoxicating drink. I say, not necessarily excluded. A man may be unjustly accused of being under the influence of liquor; his actions and his demeanor, his conversation, his general appearance, may indicate to a person that he is under the influence of intoxicating liquors when the very reverse may be true. Now, we will bear that in mind, in considering the testimony in this case.

There is another proposition which the counsel lays down which I take issue with—not the proposition, but the argument in support of his view of it. I agree with him that opportunity is to be considered when you shall make up your verdict as to which of two parties have told the truth as to a certain matter. You should consider what occasions they had of judging; who had the best opportunity; who was in the best position to form a clear and correct judgment. Take the occasion of the Judge on the bench. The counsel stated that the lookers-on had the best opportunity. The spectators, the audience, the jury in the box, the bailiff at his seat, the sheriff in his castle wandering up and down the court room—that they had had better opportunity for observing the condition of the Judge than the lawyers who were trying the case. I dispute that proposition. He states that the judge on the bench is the observed of all observers; that he is the cynosure of all eyes; that no person can enter a court room or public assemblage of any kind without carefully scrutinizing him who sits in the presiding officer's chair; that his attention is naturally directed to him; that his attention goes there by force, of curiosity, perhaps. Now, while I will admit that perhaps no one enters a public assemblage, a court room or any assemblage where there is a presiding officer, without a casual glance at him who occupies the chair, I will not admit that, necessarily, they are the best judges of the condition of the man who, for the nonce, sits there.

The effect of intoxication or a deranged mind is not always to be de-

termined from outward appearances. A man may sit as stolid as a graven image, and still his intellect and his mind may be entirely disordered by the effect of intoxicants. The casual observer in a court room, so far as my experience goes, and, I think, as far as the experience of every Senator upon this floor goes, enters the court room, looks perhaps at the Judge upon the bench, takes his seat among his fellow spectators and what then is his attention directed to? Has he any further concern with the Judge? No. Is he the central figure of that court room? No. Is he performing any particular part? No; except in instances which I shall state in a moment. But the main, central figures in the court room are the parties who are trying the lawsuit, the witnesses on the stand, the attorneys engaged in their contest to obtain evidence, and the jury who are sitting in the jury box. All these present a variety of phases of character which is interesting to the casual observer; but if an observer goes into that court room for the purpose of ascertaining whether the Judge upon the bench is a white man or a black man, if that is his object when he goes into the court room, then would he be, verily, a good witness upon that point. If, having heard that the Judge holding the court was in a state of intoxication, he goes into the court room for the purpose of observing for himself whether or not that report is true, then he would be a good witness upon that point. His attention must have been called to the object, otherwise the evidence is mere vaporings and rests upon no solid foundation.

Now, why is that so? You will recollect that in the trial of this case the respondent's counsel have endeavored to draw out from the witnesses what the Judge said; what were his rulings; what particular thing did he say in this case; what particular thing did he say in the other case. They have attempted to draw that out from the attorneys but they have not attempted that kind of cross-examination upon any of their witnesses, or any of our witnesses, other than attorneys. They have asked simply the straight question: Did you hear his rulings? Yes. Well, were they clear and distinct? Yes. Any thickness in his voice? No. Everything went on as usual? Yes. But they have not attempted to give the language that the Judge used, nor to say whether his tongue was thick or his mind confused. They have not attempted to give, by that class of witnesses, anything which would indicate that the Judge was wandering in his thoughts; not at all. Why? Because they have not observed those things. They have heard some talk and their attention not being directed to the condition of the party talking, as a matter of course, it has created no impression on their minds, but when the attorneys who are engaged in trying the case, yea, engaged, as one of the witnesses put it, (for which he was severely lashed by the counsel), in attempting to control the mind of that Judge, when they come upon the stand, then, I say, their evidence is valuable and has great weight by reason of their opportunities, and must largely preponderate over the evidence of mere casual observers.

Now, in the second article, gentlemen, and which I claim here to be an article proven by such a force of testimony, not in numbers, for we have got the bare five that the State was allowed to prove this article by —not numerically speaking, but by the great force of this testimony, driving itself home, as it were, to the minds and consciences of every person who heard it,—we claim that this article is so thoroughly proven, in the first instance by the State and that the defense has so signally

failed to disprove it, that it must work in your minds a judgment of conviction.

Mr. Lewis is the first witness on that article. Oh! but, says the counsel for the respondent, this man Lewis has a grudge against the respondent; something is the matter with this man Lewis. He is not a fair witness. It is the first attempt he makes to impugn the motives and attack the character of the witnesses for the prosecution. He is not a fair witness. The Judge has beat him in some law suit. The Judge has destroyed his ambition to win some peculiar and favored case. The Judge has brought him to great trouble and expense in a certain mandamus matter. The Judge has compelled him to go to the supreme court to obtain his rights. He has to be revenged; and he must come down here and testify upon this impeachment trial for the purpose of wreaking his revenge and claim that satisfaction which is said to be dear to the soul of ever one who believes he has been wronged. Let us see, Senators, whether there is any ground for charges of that kind. Sometimes a witness is called a swift witness; sometimes he is called a volunteer witness. That sometimes characterizes his evidence. I read from the journal of the tenth day, page 20, Mr. Lewis' testimony relative to that term of court.

The term was three weeks long. In the first week of the term I should say he was sober; I might say perfectly sober, so far as the duties of his office were concerned. The second week I should say he was not quite sober, and the third week quite far from being sober most of the time during the third week, some days worse or more so than others.

Now, gentlemen, that was the evidence of this man Lewis, who, they claim, has some grudge against this respondent, to repay which he has sought this opportunity. Now, is there anything swift about that kind of evidence? Is there anything about that kind of evidence for which Mr. Lewis ought to be held up before this Senate as a man who is willing to swear to what was untrue for the sake of gaining some petty revenge over this respondent? I think not. Mr. Collister they claim to be a very honest man; they give him full credit for everything he says, I think. Mr. Hayden they claim to be a very much prejudiced witness. Now, let us see what Mr. Hayden testifies to and see whether he is open to that kind of a charge. I read from the journal of the tenth day, 35th page:

I should say for the first eight or ten days I could not notice much liquor; that is, I could not notice any signs of liquor, perhaps not until the third day of April.

And this court commenced some two weeks prior to that day.

There were other days when I thought he had some liquor, but I could not say so particularly as to that day, but as to *that* day, [the 3rd of April,] I can testify positively.

Now, is there any evidence of swift flying feet to convict this respondent here on the part of Mr. Hayden? Not at all. He gives a fair, candid statement of this matter. Therefore I say, gentlemen, that these witnesses are not open to that charge, and they must be considered so, and their evidence must be considered as evidence coming from men who desire to tell the truth, and who give no color to their evidence

by reason of any feeling of animosity or personal hostility towards this respondent. If that were the case, if there was personal hostility toward respondent, if there were personal desires to see this impeachment come to an end which should be destructive to this respondent's judicial position, why, as a matter of course, I am frank to avow that that would cut some figure in determining the weight of their evidence; but there is nothing of that kind here. There is nothing in the testimony which subjects them to criticism of that character.

Now, the great feature of that term of court at Waseca was the 3rd day of April. If we have not, gentlemen, succeeded,—if the State has not succeeded in convincing your minds beyond a reasonable doubt, (just as though this case was one of the highest importance, criminally,) that on the 3d day of April, 1879, in Waseca, while the respondent was discharging the duties of judge of the District Court of the State of Minnosota, he was in a state of intoxication to that degree and to that extent that it was necessary to adjourn court in order that he might sober up, then I say, gentlemen, that it is impossible to make any statement of facts, which would find credence in the heart or mind of any individual. That has been proven beyond a peradventure.

Now, I propose to read a few words from the evidence of this case. I will not trust to my memory in these important matters. It will be remembered that on that third day of April the case of Powers against Herman was being tried. It had been commenced the day before. Mr. Powers had been placed upon the stand by the plaintiff. His examination had been proceeded with during the afternoon and evening of that day, and on the morning of the third the cross-examination was resumed by the counsel for Mr. Hermann, Mr B. F. Lewis. It will be remembered that that examination proceeded some little time until Mr. Lewis was, in the opinion of the attorney for the plaintiff, Mr. Collister, transgressing the bounds of propriety as an attorney, and was doing that which, in the opinion of Mr. Collister, he should not and for which he had a right to call him to an account—pursuing that witness with a kind of examination which, in Mr. Collister's judgment, was improper. What does Mr. Collister do?

Now bear in mind, gentlemen, there is no breath of suspicion attaching to Mr. Collister. He stands here admitted by the counsel for the respondent to be an honest witness, and I make bold to say, that if there was an opportunity or a place where this counsel for the respondent could get a wedge under the witness in order to undermine him in your estimation, he would have done it in this case as he did it in every other case; but Mr. Collister was this honest witness. What does Mr. Collister say? He says he attempted to secure the attention of the court for the purpose of having Mr. Lewis rebuked for the manner of his examination of that witness. He says he tried to get the attention of the court. Who was the court? E. St. Julien Cox, sitting upon the bench. Did he get it? No, he failed to obtain the attention of the court. He tried it again and failed and then discovered that there was something the matter with the Judge. He discovered, as he says, that the Judge was drunk. Then he turns to Mr. Lewis and says, see the condition of the Judge; it won't do to imperil my client's rights here with the Judge in that condition, and says he, I must make a motion of some kind to have this court adjourned for a period. He obtains the assistance of Mr. Lewis, who, for the moment, had not noticed the Judge

at all, paid no attention to him. He might as well have been a graven image as a Judge, so far as Mr. Lewis was concerned.

He was intent that morning upon getting the evidence from Mr. Power and have it correctly taken down by the short hand reporter so that it would inure to his benefit in that cross-examination. He was not paying much attention to the Judge; he did not care whether there was a judge there or not so long as he got his testimony out; but Mr. Collister had need of the Judge. He had need to use the powers of the district court in the rebuke of Mr. Lewis; so he tried to get the attention of the Judge and he failed; he could not do it. Mr. Lewis assisted him, and together they make a motion for obtaining an absent witness and this finally gains the attention of the court. Mr. Lewis seconded his motion—what is called the sham motion—and he was successful. The court was adjourned. That is the history of that adjournment. They both agree to it; they both testify to the same state of facts, that Mr. Collister made the motion of his own accord and for reasons which he gave to you and which must have burned into your minds and memory as with a red hot iron; and that reason was, that the Judge was drunk at that time, and for no other reason.

Mr. Lewis testifies on the 21st page of the tenth day as follows:

A. We commenced the trial of the case that day with the cross-examination of the plaintiff, Mr Power. I was the attorney for the defense. I was interested in the cross-examination and stood up quite near Mr. Power, leaning against the corner of the judge's desk, and for the first fifteen minutes or so I did not pay particular attention to the court but paid particular attention to to the witness that I was cross-examining. After about fifteen minutes Mr. Collister, the attorney for the plaintiff, got up and spoke to me, and called my attention to the condition of the court, the Judge, and said "we must get an adjournment," and asked me to get through with the witness as soon as I could, and we would try some way to get an adjournment. I thereupon glanced around and looked at the Judge. That was the first I had noticed after I noticed him when coming into the court room. My remembrance is that he was sitting with his face towards the jury and his feet upon the bench, and his head down and his eyes closed, apparently half asleep. In a moment or two I stopped the cross-examination of the witness oefore I got through with him.

Q. Pursuant to the request of the other counsel?

A. Pursuant to the request of Mr. Collester. Mr. Collester then got up and asked the court to adjourn for an hour, until he could get a witness from Janesville,—I think from Janesville,—who was coming on the train; that he thought it would expedite the business of the court, if an adjournment was granted for that witness. I understood at the time that it was a sham motion on the part of Mr. Collester. The Judge did not want to grant the motion. He said,—I don't know but he used the term "unheard of." I cannot give the exact language; but the effect of it was that courts didn't wait for attorneys to get their witnesses present, and there was great expense to the county, in keeping the jury there, or words to that effect, and he was inclined not to grant the motion. But I think Mr. Collester pressed it the second time. I saw the court was not inclined to grant the motion, and as I was as anxious as Mr. Collester, to have the motion granted, I then got up myself and explained to the court, that I knew the witness that Mr Collester wanted, and that I thought it would expedite things; that I did not want to take any personal advantage on account of the witness not being there, and that I thought the business of the court would be expedited and the case go along as fast, and the business be disposed of as quick if Mr. Collester's motion was granted: and upon that representation, the court said he would grant the motion, and the court adjourned for an hour, or perhaps an hour and a half or two; I think it was an hour.

Now that is the evidence of Mr. Lewis upon that point. Of course

upon cross-examination there is a great deal said, but there is no material difference in his testimony as to that occurrence.

Now the evidence of Mr. Collister upon that point is to be found on the fourteenth page of the Journal of the eleventh day. After speaking about the case that was on trial he says:

> If I remember right Power was on the stand being cross-examined that morning by Mr. Lewis, and we sat in front of the Judge's desk: Mr. Lewis was near the Judge, I think, and he arose from his seat and went up to the right of the desk, the Judge sitting at the left of Mr Lewis, and leaned on the end of the desk, and got up very near the witness and badgered the witness a good deal on cross-examination. He was my witness, and Mr. Lewis was following him up pretty sharp, and I thought unreasonably so, and I spoke to him and asked him not to pursue the witness as he was doing. He got clear up in the face of the witness and had his finger pointed almost into his eyes, and I objected to it—at least, I spoke to the counsel, and asked him not to pursue the witness in that way; but he paid no attention to me, and I arose and addressed the Court and undertook to get the attention of the Court, but failed to do so.

There is the attorney of this plaintiff sitting right there within fifteen feet of that Judge upon the bench; he arises and attempts to get the attention of the Court but fails to do so. Mr. Lewis, he says, was engaged in examining the witness:

> And I then saw that the Judge was at any rate sleepy and did not hear me, and I got a little out of patience with the way the witness was being examined, and one thing and another, and I went to Mr. Lewis, passed right by the end of the table, up to Mr. Lewis and touched him on the shoulder and told him "I think we had better take a recess for awhile." Said I, "the Court is suddenly sleepy," or something to that effect, I don't know exactly what I said; at any rate I said I thought I had better make a sham motion of some kind and asked him not to oppose it, and that I would deem it a favor if he would not. He said that he would not. At the same time we agreed that in order that it should not appear strange to the jury we would continue to examine the witness for a few moments longer, and not make the motion immediately. And in the course of perhaps two or three minutes after that I arose and addressed the Court and said that we needed a witness from some place, I think I said from Janesville.

Now the Court made a response to that. The Court was not entirely an irresponsible being at that time. The Court had the power to go through certain mechanical motions and to mechanically (so to speak) make certain statements at that time. Because the witness says, the Judge said it was an unheard-of proceeding to stop a case right in the middle of it for the purpose of obtaining a witness, and upon that the counsel here argues that the Judge was not drunk.

> Then Mr. Lewis arose and said that he would not oppose it. He said it was sometimes an accommodation to counsel to have a case stop or to take a recess; it would be to him sometime, and he presumed it would be to me; hence he would not oppose it. And upon that the Judge * * turned around and spoke to the jury, telling them not to have any conversation with anybody about the case, and then the recess was taken.

Now, the fact that he spoke to the jury has been dwelt upon. Why, that is almost mechanical on the part of a judge when dismissing the jury for any recess. It is a matter that comes almost as a matter of course. To forget a matter of that kind the Judge would have to be entirely oblivious to his surroundings.

Senator POWERS. While you are commenting upon the evidence of Mr. Collester I would like to have your opinion of his statement that if it had been Judge Lord he would not have considered him drunk, and that there was nothing in the appearance of Judge Cox to indicate to a stranger that he was drunk.

Mr. Manager DUNN. Yes, sir; I will come to that. That is the statement of Mr. Collester about that. I will state in answer to the Senator upon that point, that the question was this:

Q. Now, if you had not known that Judge Cox was a drinking man would you, from his appearance on the bench there that morning, or from his conduct generally, supposed him to have been drunk or under the influence of liquor?

A. Why, no; if Judge Lord had acted the same way I should not have thought he was drunk.

Senator POWERS. And if a stranger had acted in that way he would have thought he was drunk.

Mr. Manager DUNN. Judge Lord.

Mr. ARCTANDER. It was farther along that he said that.

Mr. Manager DUNN. Well, it may be that further in the cross-examination he spoke of that. I do not see that.

Mr. ARCTANDER. It was in answer to a question by Senator Buck, Mr. Manager.

Mr. Manager DUNN. Oh, yes; here it is.

Q. Now, supposing Judge Cox had been a stranger to you,—that you knew nothing of his antecedents, and nothing of his habits at all,—then what would you have thought?

A. I say, if he had been a stranger to me, and if I had not known him at all, why there was not anything in his appearance at that time that would make me believe, necessarily, that he must have been drunk. Knowing something of what his reputation was, I think I said to Mr. Lewis at the time, "The Judge is drunk."

Mr. Manager DUNN.

Q. Why did you make the motion you made?

A. Because, for some cause or other, I supposed it was drunkenness; and I said to Mr. Lewis that the Judge was drunk; because he was unfit to proceed with business that time that he was drunk.

Q. Had you any doubt at that time that he was drunk?

A. I don't know as I had.

Q. Have you any doubt now that he was drunk then?

A. Well, if I take into account the fact that he was a drinking man, I don't think I have.

Q. From all the circumstances you saw in the court, have you any doubt now that he was drunk then?

A. I don't know as I have; no.

The answer I make to the question put by the Senater is this: I will illustrate it if I can. Two men go into a room, one knowing that the person they are about to meet there has, for instance, a wooden leg, while the other knows nothing of it. The man they meet there gets up and walks about the room. He gives some evidence of lameness; there is a hitch in his gait. The person who knows the man has a wooden leg understands the cause of his lameness, the nature of his infirmity. If he had gone into the room and saw a man that he did not know to be infirm in that particular, he would not be able to state that the man had a wooden leg, which explains his lameness. But in the other instance he would come out and say that man is lame because he has a wooden

leg. Mr. Collister's testimony is based upon the fact that he knew that Judge Cox was a drinking man, and that he was drinking at that term of court, because he testified that he had drank with him, and that there was no other reason that he could assign for the actions of the Judge.

I think it is a pertinent and sufficient answer to the inquiry. It would be impossible to distinguish the ear marks of drunkenness in a man that sits in a chair; it would be impossible in my mind for two men of equal opportunity to go into a room and say whether a man was drunk or not merely from the fact that he was sitting in a chair, occupying some grotesque position.

They could see something was the matter with him, but whether it was caused by drinking liquor or by some unknown infirmity it would be impossible to tell. But given the other premise, that the parties know the man is a drinking man, that the parties know that man has been engaged lately in drinking alcoholic liquors, and they have no difficulty in coming to the conclusion that he is then laboring under the influence of intoxicants of some kind.

Mr. Collester says he has no doubt now, he had no doubt then, that Judge Cox was drunk; but it is because he puts it in that guarded manner, and because of the answer that he gives here, replying to the Senator from Winona [C. F. Buck,] that the counsel for the respondent sets him away up on the pinnacle of honesty and calls your attention to him as the honest lawyer from Waseca. We have no doubt about his honesty. We take his evidence. We stand by it in this case, and on it build largely our hopes of success.

There was another witness to the scene there, and that was Mr. Hayden, the clerk. Mr. Hayden's attention had not been called to the Judge. He was busy with his books and papers. He was not paying particular attention to what the Judge was doing. He knew what he himself was doing, and that was all. Now, what does he say as to this matter? Mr. Hayden, of course, had no object in obtaining the attention of the Judge. He had no interest in observing what was going on there. He had made his entry in his book that the court was opened, that Mr. Powers was cross-examined, and everything of that kind. That was all the interest he took—the mere mechanism of running the court. He says (p. 35, 10th day):

A. Well, Mr. Lewis and Mr. Collester were trying this case, and the Judge was sitting on the bench, the same as the Lieutenant Governor is sitting here now, and he had his feet up against the wall, I don't know whether towards the jury or towards me, but I think sometimes one way and sometimes the other, and they got to wrangling, as you might say, over the admissibility of the evidence of Mr. Power in the cross-examination, and the Judge would ask them—don't remember the particulars now; that is, to get his language, or anything like that—I couldn't do it—because it is something that slipped my mind; but there was some rulings, anyhow, that I thought a little peculiar—the Judge as I consider, was a man of very active mind, and when a counsel would ask one question the Judge would say "do you want such and such things?" and then he would rule one way in one case and then, perhaps, different in another instance.

Then he goes on and gives the statement the Judge made as to the impropriety of the request for adjournment, about as Mr. Lewis does.

Finally he consented to the adjournment, and the Judge came off the bench and

he commenced talking to Mr. Child. Mr. Child, as I presume a good many know, is editor of the *Waseca Radical*, and I thought that there might perhaps be some trouble.

Then he says, in answer to the next question:

A. I told him I wanted him to come down stairs for a moment. * * * Well, he said he would come down with me, but after we got down in the hall I said to him, "I want you to come up street with me," or something like that "Well," he said, "I think I have enough taken for the present;" that is my recollection now. * * * Well, said I, "I want you to come up to the hotel and take a little bit of rest; you are not hardly in a condition now to hold court." * * * I took him up to the hotel and put him to bed. * * * I told him I would call him about one o'clock. I did so.

Q. How did you find the Judge?

A. Well, he was getting up when I got there. When I got to the room at the hotel, he was after getting up. I found him washing, I think, after I got there; but he was up anyhow, and going around the room when I got there, about one or half past one o'clock. I don't know the exact time; it was somewhere in that neighborhood, anyhow. I wanted to get him into the court room in time to open court.

Now, that is Mr. Hayden's statement of that occurrence. He was not interested, bear in mind, as I said a moment ago, in obtaining the attention of the court. The only persons who were interested in obtaining the attention of the court, was these two lawyers, Mr. Collister and Mr. Lewis. Mr. Hayden saw, after his attention was called to the condition of the court, what was the matter. That was the third day of April, the day Mr. Hayden testifies, and the only day that he would testify with certainty or positiveness, that the Judge was intoxicated. Now, Mr. Hayden testifies that he knew the Judge was indulging in intoxicating liquors in that town, and he says he gave evidence of having more or less liquor in him on other days during that term of court, but not so positively marked as upon this day.

Well, Mr. Newell is called upon the stand. Mr. Newell is a very candid man, a banker down in the village of Waseca, and he says he went up to the court room in order to see Judge Cox that morning, having heard he was drunk. It was a matter of notoriety there in the town of Waseca. He went there and he found the Judge upon the bench and he gives you such delineation as he can of his appearance upon that occasion. It is hard to describe a drunken man; it is hard to describe the evidences of intoxication, unless, forsooth, they be so gross that the party is unable to conduct himself aright, is unable to attend to anything; but a mere intoxication and confusion of ideas and confusion of the brain, thickness of tongue is hard to describe in words. Men will give such matters in that connection as occur to them at the moment. The effort of the counsel was to obtain all those circumstances and details concerning the exact appearance of the Judge. Some of the witnesses testify that he had red eyes—Mr. Lewis, for instance, and the counsel brings on a horde of witnesses to testify that the Judge did not have red eyes.

Now right in that connection what were the opportunities? Mr. Lewis was right in front of the Judge. Mr. Collister testified that Mr. Lewis stood leaning on the judge's desk looking him right in the eye. He was the man that had the opportunity to see whether those eyes were blood-

shot or hanging down. He was the only man of that whole coterie that had the true opportunity of observation and could therefore testify distinctly as to the condition of the Judge. Mr. Collister testifies that he was fifteen or twenty feet off himself.

Blowers, the chief of police there, testified that the Judge was, during that term of court at Waseca, in a state of gross intoxication, so much so that the night watchman was forced to guard and accompany him to his hotel. Mr. Baker was the night watchman.

Now, gentlemen, those are the witnesses that the State has produced here, as to the third day of April. Now, upon what theory does the defense attempt to parry it? They attempt to parry it first by the evidence of the great central figure, Father Hermann, and if I ever had a study in my life it was to study out if possible the inducement that Father Hermann had to make the statement that he has in your hearing upon that matter. I will not go so far as counsel did in pouring out my soul in admiration of the Romish or any other church. I will not go so far as he did in stating my belief in the honesty of every member of the church that wears its garb of priesthood. He went to that extent with this Father Hermann: he went a little further than he meant to go, but he did not take it back,—he never takes anything back, except that matter of Jack Hunt; he took that back. He went so far as to say that if the angels in heaven, those pure beings who circle round the throne of the ever-living God, where to appear in this court room, clothed in all their garments of glory, and were to contradict that cowled priest, he would have believed the priest in their stead. I do not believe the counsel intended to go as far as that; that he intended this Senate to believe that he would so do. My opinion is that if an angel came down here and made itself visible, the counsel and myself and some of the rest of this high court, would have business elsewhere. (Laughter.) We would not stay to ascertain whether the angels were going to contradict Father Hermann or not; but it is a strong illustration of the amount of faith which the counsel and the respondent put in the evidence of the Priest Hermann. I cannot, for the life of me, see the inducement that leads Father Hermann to come here and tell that story. There is so little probability in it. There is not a particle of reason for it. There is no necessity for that story.

It would have been all sufficient for Father Hermann to have come in here and testified that he was there upon that occasion; that he saw Judge Cox and that in his opinion he was sober. He might have gone as far as a great many of the other witnesses went—when it has been undoubtedly proved that the Judge was drunk—who have come here and sworn that he was *perfectly sober*—accent on the "perfectly." We have had a great surfeit of that kind of sobriety in this case by the defense; it would have answered their purpose, it would have been all that was necessary. He could have pronounced his panegyric on the priesthood. He could have elevated him to the high heaven where he put him. He could have set him up before you as a shining mark and had all the effect of the sacred garb, if he had simply come in here and testified that Judge Cox was sober. But no; that will not do. I think there is a little evidence there of fixing us. You recollect, that upon one occasion during this trial the counsel for the respondent was not ready to go on. He said he had not got his witnesses "fixed" up. He was not ready to go on, so we took an adjournment that he might get them

fixed up. I think that had been properly fixed up. Now, what was the necessity of Father Hermann's story? Can any man answer that question? What was his story? Why, he was asked if he knew what caused that adjournment. Mr. Collister, Mr. Lewis and Mr. Hayden had all testified with one accord that that adjournment was occasioned by the condition of the Judge. Father Hermann was asked what was the occasion of the adjournment. Why, in the innocence of his soul he said "I caused that adjournment." Why, I expected the next thing he would say would be that *he* was drunk and therefore he adjourned. He says "I caused that adjournment." How did you cause it Father? Why, he says, when I went into the court that morning I saw upon the table, among the papers of Mr. Collister, a piece of brown wrapping paper. I wanted very much to read it. I did not know what was upon it. There was nothing about it to attract my attention particularly, but I wanted to read what was upon that piece of brown wrapping paper. I told my counsel, Mr. Lewis, "Proceed now, Mr. Lewis, with alacrity and speed to cross-examine this man Powers who is on the stand; press him diligently upon intricate points; so diligently that you will attract the attention of his counsel, Mr. Collister, and I, knowing Mr. Collister's nervous temperament, knowing his desire to protect his witness, know that he will go to his rescue, and while he has gone to his rescue, while he is endeavoring to wrest him from your clutches, do you come back and steal that paper and give it to me." Now, that is his evidence upon that point in a nut shell.

The counsel for the respondent have seen fit to say that there was a petit larceny committed upon the papers of Mr. Collister. That is pretty nearly his exact language. A petit larceny was committed by Mr. Lewis, our witness,—to disparage him, to detract from his testimony in your minds. But just think where the petit larceny came in; admit that it was a petit larceny, for it looks a good deal to me that way, the advice to commit the petit larceny came from this man whom the counsel would believe rather than the angels who surround the throne of the living God. That was where the advice came from. "Hastily press this witness, and when his attorney has gone to his relief take that paper and hand it to me." Well, he did hasten back and he did get that paper and he read it out, and oh! I was expecting to find something wonderful recorded, something that would have given the key-note to that statement, "*I* caused that adjournment." What was written there? Why, on one side was the name "Thomas Powers," and on the other the name of "the Right Reverend Bishop Grace." That was the brown paper, and from a perusal of that paper he says he saw there was to be some new plans introduced in evidence, and he told his counsel at once, "We must get an adjournment; we must go to the office for a consultation." All right; "go to the office for a consultation," and in the next breath he says they wanted witnesses, and so he told Lewis to make a motion, not because they wanted to go to the office, but because they wanted witnesses. Now, upon cross-examination Father Hermann tells us that all the witnesses they wanted they knew of before that motion to adjourn was made; they knew all about them. That there had been an action brought against Father Hermann to recover for the building of a church, the prosecution claiming that it was built under one set of plans and specifications, and the defense claiming that it was built under another set of plans and specifications. It was perfectly patent to any lawyer,

and Mr. Lewis is a good lawyer, just what evidence he must put in to show that it was built under the plans and specifications that he claimed in his answer that it was built under. So where was the necessity for the adjournment for the procurement of witnesses, because Mr. Lewis has come upon the stand here and testified that the whole matter of these witnesses had been settled the day before and the witnesses had been sent for on the second day of April, and if we had been allowed to introduce the record here, which we attempted to do, we would have shown that the witnesses drew their pay for ten days and that they were there during all this time.

So much for the evidence of Father Hermann. I cannot, for the life of me, believe, and I do not think there is a Senator on this floor who does believe that statement of Father Hermann as to what caused that adjournment, and I do not think there is a Senator on this floor who does not believe that Father Hermann is mistaken in his explanation of the cause of that adjournment. Look at the circumstances: He says he told Mr. Lewis to make a motion to adjourn because he wanted a witness, and he got Mr. Collister, the opposing attorney, to help him, and he says Lewis made the motion. Why, in the name of all the gods at once, is not that the most ridiculous assertion that ever fell from the lips of mortal man!—that he should want his counsel, Mr. Lewis, engaged in that nefarious business there to get the aid and help of the opposing attorney to help him on in his iniquity? Is not that a statement that would brand this evidence with the brand of mistake? I will not say anybody lied in this case, except one or two witnesses, and when I come to their testimony I will give you my opinion. It is too absurd for belief that Father Hermann caused that adjournment. You are shut up; the door is closed upon that point by the evidence of Mr. Lewis, Mr. Hayden and Mr. Collister. Opposing forces meet there and agree; men who dislike him, and who in accordance with the counsel for the respondent, do not want to see the respondent convicted, to-wit, Mr. Collister, and men, according to his theory, who have grudges against him, and do want him to be convicted, agree upon that point: so when the opposing forces meet and agree that one line of action was pursued for a certain given purpose and give reasons which commend themselves to your judgment, so that it carries such weight that you cannot escape the conviction that they are telling the truth, it must stamp out the evidence of this prelate who has come here and is used as a central figure around which all the other testimony clusters in that instance.

Well, they bring another witness, Dan Murphy, to prove this very thing. Now, Dan is a good, rollicking soul down at Waseca; there is no doubt about that. Dan did not want Judge Cox to be impeached and he, as a matter of course, is willing to assist him to the extent of his powers and abilities. They have him conveniently sent out of the court room that morning down to the train. Has there been a word said by anybody, by any of the other witnesses, that the Judge sent the only bailiff there was,—for there is no evidence that there was any other,—down to the train to see if the train had come. But, conveniently, he says he went to the train and while he was gone the court adjourned; but, before he went, the Judge was as sober as any man ever was,—perfectly sober. He is one of the "perfectly" sober witnesses. He went to the train, was gone half an hour, he thinks, and came back. Well, admit it, that he went to the train and came back. But now they seek to put in

the clincher. Hayden testified, as you will remember, that he went to the hotel with Judge Cox. Now, they seek to double lock and bolt the door. Now, we have got Mr. Hayden; we have transfixed Collister and Lewis by the priest, and now we are going to transfix Hayden by the court bailiff, Murphy. What does he say? He says he went into the court room and found Jim Hayden there with his papers. He says there was nobody there when he came back into the court room except Jim Hayden. The whole institution had dispersed and gone. He met people on the sidewalk; but where do you find any evidence that he went into the court room at once on his return from the railroad train? I have looked in vain for it. So Dan Murphy's testimony may be the absolute truth, and yet cut no figure and have no bearing in this case. I always seek for methods for accounting for seemingly contradictory witnesses. I do not propose to say that Dan Murphy lied. I am going to admit that everything he stated was the truth, so far as his personal actions were concerned, and then I am going to ask this Senate and the counsel to show me any evidence that he went back to the court room immediately on his return. Let me see what he says. I read from page 246 of the defense. Very careful and very guarded was the counsel in that matter.

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.

Now, gentlemen, is there anything in that testimony to show that Mr. Hayden did not tell the truth when he says he went down to the hotel with Judge Cox? Why the whole surroundings would go to prove that he did, because he was outside; he was not inside, as when he sits at his desk. When Dan Murphy got there the whole thing had transpired. The actors had all gone; the curtain had been rung down upon that scene, and Mr. Hayden was back there to take up a new leaf in the history of that day and to go on with his duties as clerk of that court. Give Daniel credit for telling the truth; but when he tells it in that instance do not say that it militates against the evidence of the State as to Mr. Hayden.

Now we come to another man, Mr. Alexander Winston. Why he is a providential character, found down there in the village of Waseca, who providentially—by special dispensation—walked home to the hotel with

Judge Cox that morning. Recollect that Mr. Hayden walked home with him.

But here comes Winston and says "I walked with him." Now, did Winston lie? If I was standing in the respondent's position and arguing this case you would probably hear me say that Winston was a perjured villain. Did Winston lie? Not at all. He told the truth. I do not doubt that he walked home with the Judge. But the question is *when* did he walk home with him? There is no evidence here that he walked home with him in the afternoon or the forenoon. Recollect, gentlemen, his evidence upon that point. Bear it in mind carefully, for it may be called to your attention by some of your number when you come to consider this article. Mr. Winston testifies that he went over to that court-room and found that court was adjourned. Very true. Now, how many adjournments were there? Mr. Hayden testifies that it adjourned and he went and put the Judge to bed, and in the afternoon about half-past one o'clock he came back with the Judge and that the Judge apologised then and there to the jury and adjourned until evening: so there were two of those unnecessary and unusual adjournments, one right after dinner and one right after breakfast, all occasioned by reason of the unfortunate habit of the judge of the Ninth Judicial District.

Mr. Winston says he recollects the time and he fixes it in another way, and because he fixes it in another way is the reason I say, that I think he is truthful in the matter. He says that when he got down to the hotel, Judge Cox went across to the livery stable, and said he was going to have a ride. Now, it is a fact, proved by our side and the other side, that Judge Cox did go and hire a team of Darling Welch that day—that afternoon as Darling Welch testified—and rode out into the country with his boon companions, Dan Murphy and others. Now, Mr. Winston may not intend to tell that which is not true here. There is no doubt in my mind that he intends to tell it just as it was. I am going to give them the benefit of all that testimony; they can have it for all it is worth,—that Winston walked down, because it is not fair to presume that Winston would come here and perjure himself about a mere walk from the court-house to the hotel. Not at all.

Now, why do I think that Mr. Winston took that walk in the afternoon instead of in the forenoon? I find it conclusively upon my mind first from the fact that he went over to the livery barn; that is one of the indications to my mind. Now there is another one. You will recollect that good old friend of Judge Cox, that juryman of Nicollet county who comes down to Waseca, sits on the jury and draws jury fees out of their treasury while he is drawing witness fees out of Power,—Mr. Herman Lansing—you recollect him,—an old friend of Judge Cox for 25 or 30 years—I don't know but he has been through several wars with him, but, at any rate, he is entitled to a great deal of consideration at your hands. No doubt about that. What does he testify to? Let us go back. Mr. Hayden testified that he and a Mr. McConnel the hotel keeper, walked down with Judge Cox. There were two of them. Mr. Winston testifies that he walked alone with Judge Cox; that there was no one with him, so that both of the men could not have reference to the same time.

Mr. Lansing testifies that he walked down behind Judge Cox and that there were two men with him. He says, on page 270, that on the

morning of the adjournment some one was each side of the Judge on the way to the hotel. Why, the old Roman had always walked with the Judge. He had been a sort of mentor to him down there; and when the Judge would adjourn his august court to go down and take his judicial meals Herman Lansing would escort him on the way down to the hotel; but on this day he was left out; there was no room for Herman; there was a man on each side of the Judge. He had either to walk behind or in front of him, and, as a matter of course, he didn't wish to be disrespectful to the judiciary, so he walked behind him. What does he say?

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 could not say exactly who it was.
Q. Do you know Jim Hayden, clerk of the court?
A. Yes.
Q. Was it him?
A. I don't think it was

Now, Hayden testified that there was one on each side of the Judge steering him up to the hotel—he and Mr. McConnell. Lansing testified that when he walked up there, there were two men with the Judge; who they were he does not know, but he was quite certain that it was not Mr. Hayden. It would not answer to have it Hayden, anyhow. Winston swears that he walked alone with the Judge on that memorable occasion. Now those facts, gentlemen, are given by the mouths of their own witnesses, and you cannot come to any other conclusion than that this man Winston told the truth, except that he was mistaken in the time that he says he walked up to the hotel with the Judge.

It was in the afternoon, because he went to the livery barn in the afternoon and in the morning he went to the hotel and was gently cared for by his friend, Mr. Hayden. Now Winston recollects that occurrence to have been on the third day of April because his brother-in-law, Mr. Chas. Ecob, from the oil regions of Pennsylvania, was there paying him a visit, and on that day he and a neighboring gunsmith had gone out on a gunning expedition. Well, we produce the gunsmith to show the day on which they went and instead of the third day of April, it was the thirteenth day of April that they went gunning; but the counsel says, "Oh, he does not swear positively and absolutely and without a doubt that they had not gone hunting before that." But Mr. Niebelz said that the first time they had gone hunting was on the thirteenth day of April. Well, if that was the first time they had gone hunting, and that was the thirteenth day of April, it was very evident to my mind that he could not have gone hunting with him on the third day of April. So Winston is not a liar; Winston is not a perjurer; Winston has simply committed an error which all men are liable to commit when they narrate facts that have taken place long ago and which have not burned themselves deep into their memories.

Now Winston swears on the 259th page—I want to be acurate about this:

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

the walk, at the same time, but he and I were walking along and nobody with us or talking with us.

That is his testimony. Well, they bring in Mr. Bohen. He is an insurance agent, a young gentleman that casually happened in on the third day of April and saw this scene of the adjournment.

But he knows that in his opinion the Judge was sober, *perfectly* sober. He cannot give us any indication of what was going on except that they were cross-examining a witness; that was all he knows and that they took an adjournment. Take his evidence, gentlemen, for just what it is worth. It is not worth while for me to spend any time in commenting on it. Remember that he was simply a spectator there, had no interest in obtaining the ear of the Judge or in observing his condition; had no interest whatever in the outcome of the proceedings of the court. He says in his opinion the Judge was sober. Well, let it rest right there. Take it as his opinion.

Well, Mr. Forbes was a juryman. He says that morning the Judge was sober, and Mr. James Murphy says the Judge was sober. Now one or two of these men keep a sample room and something has been said about that. I will not inveigh against a man that keeps a sample room. If he wants to keep a sample room or any other kind of a drink shop let him keep it. I am willing to take his word if he tells the truth just as quick as the word of a priest.

It does not make any difference to me what he keeps. He can keep what he has a mind to. All that has been stated here by the managers with reference to the keeping of sample rooms by various witnesses, has been simply to characterize the associates of the Judge. It is not that they do not believe them. I would believe a man who keeps a whisky shop as quick as I would a man who keeps a dry goods store, if he was a fair and square man. But there is one peculiarity about all the evidence of the defense as to the third day of April, and that is this. Mr. Bohen, the young insurance agent, says the Judge looked weary and fatigued; Dan Murphy says he looked wearied; Max Forbes says he looked wearied; James Murphy says he looked wearied; and Mr. Lansing says he looked fatigued. All of them agreed that there was something the matter that morning with Judge Cox. So upon the point of there being something the matter with him, we stand as one, the State and the respondent.

But what *was* the matter with him we undertake to give you in evidence. They say it was a boil that was troubling him. Boil! gentlemen. Was there any evidence that Judge Cox had a boil on his posterior or anywhere else at that term of court? What kind of testimony do they expect this case to be decided on? They expect you to decide from what somebody said, and what somebody talked about, that Judge Cox had a boil that morning. Very well. Then they expect that their case is not to be decided upon evidence. But is there any evidence that he had a boil? We say that he was drunk; and we produce evidence that he drank liquors, and some of us have arrived at the conclusion, at our time of life, that drunkenness comes from drinking; that is just what it comes from, and nothing else. I never knew a drunken man who did not drink liquor.

Now, gentlemen, we place great stress upon that adjournment on the third day of April. We undertake to say that it is a case that is made

out beyond even a reasonable doubt,—yes, beyond the shadow of a doubt, and that conviction upon that article cannot be avoided.

Now, I might as well state right here, for the benefit of some Senators who, I know, have a very high appreciation of the judge of the 9th Judicial District, who, I know, think a great deal of his abilities and believe him to be an honest, upright man, because they have a personal acquaintance with him,—I state right here, gentlemen of the Senate, how cheering it would have been, how refreshing to the minds of Senators here, who do not desire to do Judge Cox any injustice,—how it would have lifted this Senate out of the slough of despond and uncertainty into which the evidence of Father Hermann, Dan Murphy and Bohen have plunged you, if Judge Cox himself had taken that witness stand, as did Judge Page on a former equally solemn occasion in the history of our State, and tell you in his judicial tones, solemized by his judicial oath, that upon that morning he was not suffering from the effects of intoxicating liquors. Would you not have liked to have heard it from his lips? Would it not have carried conviction to your souls that these men must have testified to that which was not so? Would not the great vail of uncertainty have been thus lifted from your minds, and would you not have come out into the clear sunshine of truth?

Yes, verily, gentlemen; and I am free to say that because he did not take that oath upon himself upon witness stand and tell this Senate the facts in that case that the presumption arises against him so strong that you can not but believe that he was guilty upon that day of being intoxicated on the bench, in the village of Waseca. Can it be doubted? Can any honorable, high-toned Senator here doubt the fact that a failure upon the part of Judge Cox to testify upon that point, that disputed point, that all-important point, that great feature in this case,—a failure upon his part to cheer up, brace up, sustain and support this prelate who is to be believed beyond the angels,—a failure to sustain him by the sworn testimony of the respondent himself must create in your minds a presumption that is irresistible that upon that morning of the third day of April he was so intoxicated as to delay and interfere with the proper discharge of his duty, thereby rendering himself incompetent to discharge them and that he has been guilty of misbehavior in office and of crime and misdemeanor.

Now, gentlemen that disposes of the third day of April.

The condition of the respondent on the fifth day of April, is testified to by Robert Taylor. No, I want to go back. That does not dispose of the third day of April. There are two points there that I want to call the attention of the Senate to that are very important. It will be remembered that Mr. Hayden testified that when Judge Cox returned to that court room in the afternoon of the third day of April, he apologised to the jury for the condition he was in, and promised them that it should not occur again. Now let us see if I am right, or if I am wrong. On page 47 of the proceedings of the tenth day the question was put ingeniously by the counsel for the respondent.

Q. Now, when he came back there at half-past one that day, he stated, did he not, that he was suffering from a sick headache?

A. He did.

Q He stated something about his condition to the jury?

A. He hoped they would excuse him, and that he would not get in such a condition again.

Gentlemen, was it necessary for the Judge to tell the jury that he would not have a sick headache again? How could he help the dispensations of Divine Providence visiting themselves upon him in the form of a sick headache? We do not hear that he apologized for that foil anywhere during this trial. That has not been apologized for. What necessity was there to apologize to twelve citizens of Waseca county for having a sick headache? What necessity was there for it? What sense was there in his telling them that he would not have another one? Nay, he says, "I will not get in such a condition again." That is what he says. I read further:

Q. Did not he say, "Gentlemen of the jury, I have got a sick headache and I am very sorry to trouble you, but I cannot sit here, and I hope it shall not occur again?"
A. Yes: and he said he didn't know it how occurred, or something like that.

Now what occurred—the sick headache? Was it necessary for the court to tell the jury that he didn't know how he came to have a sick headache, but he promised them that it would not occur again, to apologize to them for it?

Now take Mr. Lewis' testimony. I want to call your attention to that, on page 34 of the journal of the tenth day.

A. Mr. Collister and I went up after supper, half an hour or so afterward—perhaps between six and seven. We both of us tried not to have him hold court that evening, and he claimed that he was perfectly able to hold court that evening, and he wanted to go down so as to show the people—

Mark that!

-he wanted to go down so as to show the people that he was not as bad as he was, and, at that time, expressed considerable sorrow that such a thing of that kind should happen at Waseca, owing to the hostility that a certain man there had against him who would publish it; but we assured him that we would see that no publication of it got into the papers, or something of that kind.

Now, gentlemen, there is the statement made by the Hon. E. St. Julien Cox, the respondent in this case, after that drunken scene in that court, to the attorneys there, when they went down for him in the afternoon, that he was sorry that that should have occurred in Waseca; it would not have made much difference if it had occurred in St. Peter; he was sorry it occurred in Waseca, because he was afraid that a man who was editor of a paper there would get hold of it and publish it, and he promised that it would not occur again. Now, this malevolent Lewis who is accused of being an enemy of Judge Cox assured him that it would not get into the newspapers.

On motion the court here took a recess for five minutes.

AFTER RECESS.

Mr. Manager DUNN. This little incident, Mr. President, and Senators, in behalf of Mr. Lewis, is strong evidence to my mind that he is actuated in his testimony by no bias or improper motives. Judge Cox was afraid, it seems at this time, that the condition he was in would find its way into the newspapers through the enmity of one Child, who edits,

as I understand, a Waseca paper that is somewhat given to radical sentiments upon temperance and perhaps some other questions.

But Mr. Lewis assured him that fear of such a contingency need not disturb him, that he would see that it did not get into the newspapers and that he would be protected so far as he (Lewis) was able to do it. Now here are two instances that stand undenied and uncontradicted, of admissions by the Judge, for they have that force. They are not merely rambling conversations that have no force in this connection, but they have all the force of solemn admissions made by the respondent, at the time of the occurrence, that he was then and there, at *that* time, in the condition that the article of impeachment charges him with being in—that he was guilty—a confession from his own lips. Now is it possible that there was a mistake about that? Is it possible that these men have lied about that; that they have falsified about that? All things are possible under the sun, but it is extremely improbable that they have testified to aught than the exact truth in that matter. And right here again I want to emphasize the remark that I made that this was a matter which was entirely personal with the Judge. There were no other witnesses to this conversation. So far as the conversation in court was concerned the jurymen were there, but this is a matter that was entirely personal with the Judge and how easy it would have been, if it had not happened, for tho Judge to have contradicted it here, and given you the benefit of his testimony, to have placed it by the side of the other witnesses in the case, so that the great vail of uncertainty which the counsel claims enshrouds this incident could have been lifted.

Now, there is one more witness. I had almost forgotten that. There is a witness whose evidence has, perhaps, inadvertently crept into this charge, and whose testimony has made, perhaps, but little impression upon the Senate as to this charge. It was obtained through a series of questions put to the witness as to the condition of the Judge in Nicollet county. It was the witness Charles O. Ware, the short hand reporter who has been wont to travel with Judge Cox through his judicial district attending to the duties of his office. It will be remembered that he testified he had seen Judge Cox intoxicated upon other occasions in the discharge of official duties. That will be found on page 501 of the evidence for the defense. There was some little explanation desired to be made by this witness qualifying the word "occasions." He said he desired to explain that, and he did it in this wise:

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.

Now that is a bit of corroborative evidence as to the other witnesses that almost escaped my attention, although I had made a minute of it.

In the hurry of the moment I was likely to have forgotten it. So we put that with the evidence of the witnesses Collester, Hayden, Lewis, Newell and Blower and it makes an array of evidence not perhaps numerically strong, but an array of evidence that is incontrovertibly strong in its detail of facts and circumstances.

Now, upon the 5th of April it is in testimony here by Mr. Robert Taylor that he had a motion pending before Judge Cox, or pending at that term of court, and that he and Gen. Edgerton and Mr. Bently came up there to argue it; that at that time Judge Cox was manifestly under the influence of strong drink. Perhaps not drunk,—not maudlin, perhaps, not so but what the machinery of life was going on, and, apparently to a casual observer, in its wonted course, its proper manner; but Mr. Taylor, was, as I said before, one of those parties who was deeply interested in gaining control of the mind of the man before whom he was to plead his cause; he was interested in controlling his mind to the extent of having him appreciate the matters that he was attempting to present to his view. He testifies that Judge Cox was under the influence of liquor to such an extent that he actually mistook the position that Mr. Taylor was taking, so far as to the side he was on; that he thought he was arguing with Gen. Edgerton, whereas he and Mr. Bently were opposed to Gen. Edgerton. Gen. Edgerton stood alone, Mr. Bently and he opposing. And he gives indication of it in the manner in which orders were made that were inconsistent with each other,—that could not stand together; one or the other was a nullity.

I will not stop to argue that particularly; but we find that he is corroborated by Mr. Lewis. He thought the Judge was under the influence of liquor that day, (page 22 journal 10th day.) And by Mr. Hayden (page 51 journal 10th day) who thought that the Judge had taken considerable liquor when the motion was argued.

Now, in defense of that, Father Hermann comes up again and testifies that he recollects that occasion; that was the afternoon, I think, that the Powers and Hermann case had been given to the jury, and he says the Judge was *perfectly sober*. But he noticed a peculiarity there. He noticed that this young man Bently was so gracious in his treatment of the court, so kindly spoken to Gen. Edgerton, and he made up his mind there was a young man it would do to take stock in; and there was another young man there, and he remembered how he argued, and that he pleaded so inartistically and so unsuccessfully in his attempts to obtain the attention of the court, that the court made a sarcastic remark to him. Great Heavens! Is the court there to make sarcastic remarks to counsel? Is it the province of the court to make sarcastic, cutting, biting, humiliating, insulting remarks to counsel who have business before that tribunal?

We had read here yesterday, in your hearing, authorities from the State of New York, where a judge was impeached for sarcastic and humiliating remarks made in court to counsel or suitors. But I only speak of that to show that there was something that attracted the attention of even this great and good Father Hermann upon that occasion, and that the possibilities are, and the probabilities are, that Mr. Taylor is telling the truth.

Oh, but Mr. Taylor has a grudge against the respondent, they say. Oh, yes; Taylor is a weak man, a man of very moderate strength, a very weak man, hardly able to present a case properly to a court, hardly able

in the feebleness of his mind to grasp a proposition with sufficient force and clearness to present it to a person to have it weighed and decided. Gentlemen, some of you know Robert Taylor. I have no personal acquaintance with him, but there are Senators here who know how much that remark of counsel is worthy to be considered here. He appeared on the witness stand at least as bright as the average attorney of Minnesota. I think he would measure up with the attorneys of our State as a general thing. There may be some that tower, like Saul of Tarsus, head and shoulders above him in the ranks of the profession, and there may be others who are at his feet. At any rate he did not to my mind seem to be a man who was incapable of elaborating a proposition which he desired the court to take into consideration.

This is a very mild witness, for he does not want to say anything that is improper as for instance take a specimen of his testimony.

A. Well, it is pretty hard to describe the appearance of the man; his eyes were somewhat red and he talked indistinctly; he talked as if with a thick tongue, and in the remarks that he made as we were arguing the case, I was convinced that he was not aware of what side of the question each of us was on. I think that he mistook the position that I occupied when I was arguing the case. 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 he seemed to think that General Edgerton and myself were opposed to Mr. Bently, and his general appearance and the manner in which he spoke was such as to convince me that he was intoxicated.

There is something further about this. There is an admission here on the part part of Judge Cox. We not only have Robert Taylor, B. S. Lewis and James S. Hayden, but we come before you here, gentlemen, armed with the official oath of the respondent himself, and we ask to put that in evidence before you. Robert Taylor testifies, and it is uncontradicted, that—

After court adjourned we went to the hotel. Judge Cox was quite lively and talkative with different ones in the room.

Do you remember the authority that Manager Gould, who preceded me, read last night relative to the different indications of intoxication, among which were that the party would sometimes be quite lively and talkative?

Judge Cox was quite lively and talkative with different ones in the room, and he was not engaging in the conversation, but sitting in the room, and he came and sat down beside me, and requested that I should not say anything to Judge Lord about what I had seen in the management of the court.

"That I should not say anything to Judge Lord about what I had seen in"—what? "In the management of the court." Now the counsel very properly stated to you that the manager would draw the inference from that that something was going on there that would not redound to the credit of Judge Cox, and that for that reason the Judge did not wish it spoken of.

But, he says, very adroitly, that Judge Cox knew that he had conducted the business of the court that term in such an admirable manner, that business had been pushed with such rapidity—the whole machinery of the court had been run at such an extremely lively rate (saving

the dollars and cents of the tax payers of Waseca county)—and the judgments which he had given there were so commendable to the judgment of every citizen in that and the surrounding counties, that a comparison of the work would be derogatory to Judge Lord and would show his imbecility—because the latter was feeble, and was not, perhaps, able to do business with the rapidity with which Judge Cox did it, and that Judge Cox did not desire to hurt his feelings by odius comparisons.

Out upon all such statements as that made by the counsel here! There is no testimony of that kind here. The only safe and proper inference that can be drawn from that is under the circumstances that had gone before it, for you must judge of the circumstances in the light of its surroundings. You cannot judge it isolated. You must judge it in the glare of all the light that has been thrown upon it from the beginning to the end of the article. You cannot draw any other inference than that he meant the same thing that he did when he said he did not want his conduct to get into the newspapers, when he apologized to the jury for being in a certain condition—that he meant to convey to Mr. Taylor his sorrow and contrition there upon the spot for the way in which that court had been managed, so far as it had come under the observation of Robert Taylor.

Now, Robert Taylor was not a swift witness. He does not give you his understanding of that remark. He makes the statement, and lawyer-like, allows each Senator listening to him, to draw his own conclusion. What conclusion, other than the one I have drawn, can be rationally or sensibly drawn.

And again here is one of those elegant opportunities—and I want to insist upon it upon every occasion—and I shall from this time forth—here is another excellent opportunity for the judge of the ninth judicial district to clear his judicial ermine by a statement under oath upon the witness stand that he did not mean to convey to Mr. Taylor that which we infer that he meant, but that he simply meant to convey to him the idea that he did not want Judge Lord to be annoyed with the odious remark that his court had been conducted better than Judge Lord's had ever been.

Oh, where is the Judge of the Ninth Judicial District that he does not aid us in this hour of need? Where is he that he does not help us to clear away this smoke and fog that the counsel tells us surrounds this case? One glance from his eagle eye, one word from his judicial mouth would have dispelled this charge as the rays of the sun dispel the mists of the morning.

Now this testimony goes farther than the testimony of the witness here that he was under the influence of liquor more or less during that whole term of court. There is no doubt about it; that is, after this time,—not the first part of the term, but after this time. Why, there was a witness there who is now in this room, an honorable Senator sitting upon this floor, with a vote upon this matter, by whom, but for the fact that he was a Senator, and that we did not desire to place him in an unpleasant position, and but for the fact, among other things, that we were confined to five witnesses, we could have proven most distinctly what occurred on the morning of the Powers and Hermann case; because the record discloses—and I am not talking outside of the record—that that Senator was the foreman of that jury and stayed there during the

whole proceeding, and he was also the mayor of Waseca and the man who, as we could have shown, had we been permitted, had given orders to Marshal Blower to lock up the Judge of the ninth judicial district if he found him on the streets in another of his drunken bouts. Do not say there is a preponderance of evidence against us on this charge, but when you come to vote, vote upon this charge under the law as it has been expounded and laid down here, and upon the facts in the case as I have attempted here to elucidate and delineate them before you from this mass of testimony.

There is another case in these charges, gentlemen, which I deem of great importance, and which the managment shall insist strongly upon as one of the strongly proven cases, and upon which we shall confidently claim at your hands a judgment of conviction, and that is

ARTICLE THREE,

the trial of the case of Wells vs. Gezike in Brown County.

We bring before you there, gentlemen, a statement of facts which should cause the blush of shame to mantle the brow and cover the cheek of every honorable attorney who has ever had occasion to practice in the courts of our land. The spectacle of the Judge of the Ninth Judicial District, so overcome by his devotions to his god Bacchus that he is unable to comprehend the mere machinery of the court in which he is attempting to administer justice,—that he is unable to make a single dot with his pen or to cross a *t*, or to do any of those mechanical things that every Judge should at least be capable of doing. Suitors and litigants coming from a long distance,—honorable men, filling honorable positions,—to have their matters determined before that court, arrive in the town of New Ulm only an hour or two after the court had adjourned and find the Judge of the Ninth Judicial District in a state of besotted drunkenness, in an alley, leaning over a fence, in no condition to do business,—in such a condition that he said, as was testified to by one of the witnesses, he was "God damned drunk." I say, gentlemen, that spectacle is enough to cause the blush of shame to mantle the brow and cheek of every attorney in this Senate, and of every attorney in the land. The condition of his Honor is discussed among the attorneys, and the next morning they conclude that they will try the case.

The Judge says he will try it in the morning if they will get somebody to write the testimony for him. He knows full well that the poison of the debauch that he is then undergoing is working its way through his system, and that the dire effects will not have entirely vanished by the next day. But here is a matter of moment; here is a matter of importance; here are gentlemen occupying high positions, gentlemen who have had large business matters entrusted to their care at great expense, who have come there to try an important lawsuit in which the sum of eight thousand dollars was tied up in the clutches of the law, and it could only be unlocked by the keys-judicial.

The next morning they meet for the trial of that case. They agree they will obtain a clerk or some person to act as an amanuensis to take that testimony. They met in the court-house of the county of Brown, in the village or city of New Ulm. They proceed with their case. They meet with railings on the part of this Judge as to certain papers. He sits there, as it were, a being unconscious of what is going on, and final-

y the case is submitted through the instrumentality of this unsworn officer in whose honesty and integrity all citizens placed implicit confidence except the Judge. The Judge attempted to throw some discredit upon him during some of his maudlin moments by claiming that he had been engaged in some false election matters sometime, somewhere, nobody knows when. Now that is the scene. If that is proven, gentlemen, is it a misdemeanor, is it a misbehavior, is it an offense within the meaning of the law as it has been expounded and laid down before you? Now, is it proven?

We do not ask a conviction upon that article, gentlemen, or upon any other article, unless the evidence convinces you that the State has made out a case. We ask for no prejudiced votes in this matter. We ask for no votes here given upon any ground except as I stated once before, that legal evidence has been presented and has convinced your minds. They say this is not a court. We made the statement that the district court was always open for the transaction of certain business, except the trial of issues of fact. The counsel for the respondent in his lighter moments discovered a mare's nest in his argument of this case. He discovered a fatal defect. Why, he said, gentlemen, what of the statute which says the district court is always open for the trial of demurrers, etc., except issues of fact? Why, he says, this was an issue of fact. He had no right to try that case. His whole proceedings were a nullity. He was not even a court or a judge at that time. Now, if Manager Gould will hunt up that authority for me—(I do not know that it is necessary here)—that portion of our statute which permits parties to try issues of fact in vacation by stipulation or agreement, I will show the contrary of that. Any issue can be tried before a judge by agreement, and the records in this case show that this was tried by agreement in vacation by the court. It was an equity case. They could not have had a jury on it if they wanted one ever so bad, for there are certain classes of cases, as all lawyers know, that cannot be submitted to a jury. They require only the judgment of the court upon the law. They are called equity cases, as distinguished from law cases, and no jury is permissible. This was a case of that kind. It was to determine the rights of certain parties as to certain money.

There was no dispute about the facts. It was simply and purely a legal proposition to be submitted to the court as to who had a right to some two thousand dollars that had been realized from the sale of a bankrupt stock of goods.

What is the defense to this article, gentlemen of the Senate? Is there any evidence here? Yes, witnesses are brought upon the stand. Persons are brought here who testify for the defense; and in the comments that I shall make upon this evidence, gentlemen, I wish you to bear in mind the statements that I made this morning relative to the opportunities enjoyed by the respective witnesses, in order that you may make a proper and correct judgment, for it is largely a matter of opinion.

In this case, however there was something more than the mere graven image of Judge Cox. Here were certain actions, certain doings, certain speeches of his, certain remarks. We are met in the outset of this case gentlemen by the argument of the counsel upon an attempt to break down the evidence for the prosecution. To break it down—how? Break it down by slimy innuendoes and slurs against the witnesses for

the State. We bring here as a witness the Hon. Martin J. Severance, the judge of the 6th judicial district. He was well defended last night upon this floor by the learned manager who preceded us in this argument against the vile innuendoes of the counsel for this respondent. I do not know that I can add a word which would assist you in making up your judgment as to the credibility of his evidence, to what has been said; but I believe it is my duty, standing here, as I do, a resident of the 6th judicial district over which Martin J. Severance presides as a judge to add my word of condemnation to the slanderous epithets that were thrown out here in regard to that gentleman.

If this were a mere jury trial and the words that were spoken here vanished into thin air the moment after they were spoken, merely creating an impression upon the ear of the listener, producing their effect upon the mind and consciences of the jury and were then buried in oblivion, it would not be worth while to spend time in rebutting the slander and the calumny heaped upon these gentlemen. But, gentlemen, we are here making history. Here is the recorded page, here *is* the scribe that sets down the thoughts and the words that emanate from the lips of the counsel, and no man shall be allowed to go upon that record blackening the name and the character of my friend Martin J. Severance without my putting myself on record in condemnation of such language and sentiment. Remember the vile innuendo that was thrown out by the counsel for the respondent in his opening argument, as to Judge Severance. He obtained his seat upon the district bench of the Sixth Judicial District, he said, under circumstances which caused much unfavorable comment. Because certain matters relative to the honor of the State in issuing bonds for a certain indebtedness was to come before a certain tribunal, he said his seat was obtained under circumstances which created unfavorable comment, insinuating and desiring to hold forth to to the world that in order to obtain the seat he had sold himself in advance.

Well, gentlemen, who ever knows Martain J. Severance, aye, any one that *ever* knew him knows that a statement of that kind is as false as it is possible to paint a pictured falsehood. I have not the words to give proper utterance to my loathing of that kind of argument. Martin J. Severance is accused of being a vain man and that his vanity and pride has been seriously wounded by the respondent E. St. Julien Cox,—that he has said of him upon some of his pilgrimages when he was engaged in trying law suits in the Minnesota Valley "I do not learn my speeches from Demosthenes and Cicero and practice them in the morning before breakfast in front of a looking glass;" that a remark of that kind coming from the lips of this respondent here had so seriously wounded the vanity of Martin J. Severance, had so cut him to the very quick that he failed even to recognize his Honor, the Judge of the 9th judicial district for two long years, because of that remark. Martin J. Severance a vain man! Why, he thinks so little of this world's baubles and titles that he will hardly permit the attorneys of his district to prefix the title Honorable to his name since he went on the district court bench, and every time I do it I know that I am honoring the office in placing those letters there and at the same time that it is not even with the cordial approbation of Judge Severance.

He went into the army as a private, and fought his way from the ranks up to a commission. Nobody hears him called Captain Severance

as they may hear of "Captain" Cox. He scouts the idea of a title making a man any more honorable or noble. He walks uprightly through his judicial district, and his name is a synonym for uprightness and for purity of character in every household therein, and recollect *that* isnot a pocket borough created for an individual. It is one of the old districts formed when the fundamental law of our State was formed, and brought into being with the commonwealth. That old judicial district was not created as was the ninth judicial district for a purpose and for an individual to fill. To be a judge of that judicial district is honor indeed for any man. That bench has been filled by an Austin, by a Dickenson, and by a Waite, all honorable men, against whom the breath of suspicion or the foul slime of slander has never been found to uplift its head. Call Martin J. Severance a vain man, who would take offense at things of that kind! Why he had to be urged to take the position of judge by the members of the bar of that district, and he said he would enter into no unholy contest with politicians for that position, but when his name was brought forward for the office of judge of the sixth judicial district, persons of both political denominations—democrats and republicans—united in instructing their delegates to each convention that was held to put no other man in the field than Martin J. Severance, of Mankato. A district which is capable of electing its republican judge by some three thousand majority, ignored the political aspects of the occasion and elevated him to the woolsack, and he sits there to-day, an honor to the judicial arm of our State and to the people who placed him there, and now he is sneered at and cried down by the counsel for the respondent in this case in this unholy, and I was going to say unlawful manner, because fearless of consequences he tells the truth to you, Senators. It is for fear of the effect his testimony has on your minds; only that and nothing more.

He gives you a statement of the Wells vs. Gezike case. They called him a swift witness, one desirous of wreaking his petty revenge upon this eminent counsel who has rivalled him in the ranks of the noble profession of the law in the Minnesota Valley for twenty-five years. Quite so. He has *rivalled* him just about in the manner that the fleas tried to get away with Dean Swift as our friend Brisbin told us—although he *was* unanimous he never did him any harm. Now I want to read a word or two from his testimony to show whether he was a swift witness (journal of the 16th day, page 37.) After detailing the statement that he and Gen. Cole went there, he says:

The WITNESS. After consultation with the other attorneys on both sides of these causes, I went in search of Judge Cox myself.

Q. State where you found him?

A. I traced him about until I found him standing in an alley, the first alley I think back of Main Street, in New Ulm, leaning on the fence talking with somebody in the back yard.

Q. State his condition at the time.

A. I approached Judge Cox for the purpose of ascertaining whether he would try these causes. Judge Cox was then very much under the influence of liquor, very much. We sat down, or I sat down on the seat of an old wagon body that was lying on the ground, and Judge Cox either sat on the seat with me, or on the wagon body, and we talked the matter over.

Mr. ARCTANDER. What was that last?

A. He either sat down on the seat, with me, or on the side of the wagon body, I don't remember which. He said he wouldn't try the cases; he said court had adjourned, that he wouldn't try the causes. I urged him to do so, and after talk-

ing with him some time he said he would, finally, if we would get somebody to write the testimony; that he could not write the testimony. I am very sure that something was said there about writing the testimony: that he would try the causes, if we would get somebody to write the testimony.

Then he goes on to say that he saw no more of him that night. We now come to the following morning.

Q. Did you see him the next morning?
A. I did not see him the next morning, until it was about in the vicinity of nine o'clock, when we went to the court house to try the causes.
Q. State his condition at that time?
A. He was very much under the influence of liquor; very much indeed.

He then details the manner in which the cases were tried; after which he says:

All the attorneys engaged in the trial of these cases upon the part of the plaintiff, were conducting them upon the theory that it was necessary that the plaintiff should have a lien upon the property in question in the action, in order to maintain their suits at all. There were attachments and had been executions levies, especially in my case, and, I think, in the others. The papers were all in court, the writ of attachment and all files, and the undertaking for attachment laid, I think, on the Judge's desk, if not on a table near it. The Judge took up the undertaking and wanted to know who was the author of this "deuced" or "infernal" thing, or something of that kind.

Now that is the evidence of Judge Severance, and we are told by the counsel for the respondent that because the Judge made that remark the vanity of Judge Severance was wounded, that his great mind was moved by a maudlin remark of a maudlin drunk Judge—"who was the author of this deuced or infernal thing?" Why, there is no evidence that Judge Severance was the author of it. It seems that it was an undertaking instead of a bond. The Judge in his swaggering way wanted to know who was the author of that deuced or infernal thing.

Now we go a little farther and we come to the cross-examination where we find the counsel endeavoring to make the witnesses testify that this matter of attachment was a fatal matter at the time. But the Judge explained that to my mind very satisfactorily. I do not know as I will find it here exactly, but I think I can find it. However, I will not take the time to look it up. I will state it. I think I can do so about as it is.

There was an attempt made by the counsel for the respondent to show by Judge Severance that this attachment was a jurisdictional question in the case; that without the writ of attachment the case could not have been maintained. The Judge explained that in this wise: They were endeavoring to ascertain who had the right to certain money. The attachment was simply the foundation for the case, but the attachment had been entirely superceded by the levy of execution in that action. So that while the attachment might have been the foundation of the action up to that time, yet when the execution was issued, the attachment interest and vocation was lost and gone, and the execution took its place and stead. They were trying there before the Judge at that time the question who was entitled to the proceeds of that bankrupt stock of goods, and the Judge railed at the attachment. Now it is not disputed

that he said something of that kind about that attachment. They have not assumed to dispute it.

We have also the evidence of Mr. Pierce. Mr. Pierce is another one of the witnesses who seems to have fallen, for some reason unknown to me—perhaps not unknown either—under the ban of the displeasure of the counsel in this case. We are met here with such statements as to Pierce as that he is a "monumental liar." Not content with that he gathers strength as he goes along, and calls him "a shyster by birth, by education and by practice." Dignified language to be heard in a court of this great gravity! Dignified language to go upon the page of history! Dignified language for a counsel to indulge in at the expense of any gentleman standing fair and unimpeached before this court.!

And is there anything in Mr. Pierce's testimony to warrant an assertion of that kind? It may possibly be that the counsel himself has had some personal difficulty with Mr. Pierce. It might possibly be that a consultation of the 26th Minnesota Reports on the 25th page might open up a field to the eye of any observer and give some reason why the learned counsel should have this feeling of bitterness towards Mr. Pierce. I do not say it is so; I trust not. I trust that he is led away by the zeal with which he is governed in the trial of this case, for I admit that he has shown zeal unparalleled for his client,—*unparalleled*, I say, for I have never known an attorney to be more indefatigable in his efforts to be successful than the junior counsel in this case,—zealous in season and out of season; zealous, I think, sometimes, to the detriment of his case, zealous to the detriment of his case when his zeal disturbes his better judgment and he descends to abuse of the witnesses for the State. Gentlemen, is there any witness that has come upon this stand here that has *desired* to appear here? Has Mr. Pierce shown himself to be a volunteer witness or a swift witness? I understand that Mr. Pierce is an honorable member of the profession in this city, that he occupies a good position at the bar here, that large interests are entrusted to his custody and keeping, that his clientage is not small, that he is considered a capable man in all respects for the transaction of the most important trusts, and why he should be singled out for this vituperative abuse is beyond my ken. There must be something underneath. They called him a swift witness. Now, let us see if he is a swift witness. They have called Martin J. Severance a swift witness, but we do not find that it is true.

On pages 64 and 65 of the journal of the 10th day is to be found the evidence of Mr. Pierce on this matter. He says:

Q. Well, you may state to the Senate in your own language, without the necessity of questions, the condition of the Judge and the method of that trial?

A. The simple facts of the case: On the evening previous to this trial Mr. Severance and Mr. Cole arrived on the train and we were desirous of taking the case up that evening. We found that Judge Cox, who had taken a recess at noon of that day, had got on a spree and he was not fit for business that evening. An arrangement was made that we should try the case before him in the morning if he was in any condition; if not, we should go into the land office and agree upon a person in the land office who was a clerk to go into the court and act as a kind of an amanuensis of the court to take down the testimony and the points and make a complete record of the various matters that were designed to enter into the case. It was largely documentary; I think there was very little oral testimony in the case. On the morning following, Judge Cox came into court and was apparently laboring under a continuation of the spree that he had been upon the day before; appeared in fact to have been on it all night and was in no condition whatever to

do business. His manner and conduct indicated that he was almost entirely under the influence of liquor. So much so that by common consent of all the attorneys in the case we installed this special representative of the court, as an amanuensis or a clerk or referee or whatever you want to call it; I can't give it any name except that he was a man taken out of the land office by our common agreement and placed in the clerk's desk. Judge Cox occupied the bench. We produced our testimony, made our points, and while it was going on the Judge was constantly talking, making rules and orders that were disregarded entirely by the members of the bar who were engaged in that business. I recollect especially Judge Severance, who represented the other party to this case, in regard to a writ of attachment. The Judge wished to see the writ or the paper connected with it He read it a few minutes and mumbled over something.

Q. Which judge wished to see it?

A. Judge Cox wished to see it. He looked over it and seemed to be ignorant of the fact that we were not designing to have any decision made by the court at all, but simply taking the matter down, putting it in such form as to be acted upon afterwards. He seemed to be so under the influence of liquor that he didn't understand that, and voluntarily undertook to pass judgment at once upon the merits of those records and make his decision right there against Judge Severance. And the Judge remarked to him that he didn't care about hearing from him at that time, or words to that effect.

Q. Please distinguish between the gentlemen?

A. Mr. Severance. That they didn't care about his decision being made at that time, and requested him to keep quiet, and the rest of them talked to him in just about the same way as we would to any irresponsible person. I do say it, with emphasis, that in the situation he was there, he couldn't have been recognized as a responsible person, much less qualified to act as judge. It was a very humiliating situation, and it was only our urgency to have the matter disposed of—all having come from a distance—that we thought of this scheme of getting the record in such shape as to be finally presented to the court and acted upon.

Now, gentlemen, that is the evidence of Mr. Pierce in his direct examination. He simply went on in response to the question and gave that testimony. Now, is that in accord with the testimony of Judge Severance? Is that in accord with his testimony? Judge Severance has testified, and the testimony has been read to you, about the same state of facts. One other circumstance connected with this evidence here is that Mr. Pierce told him to stop talking or something of that kind. Judge Severance testified that he did; that something of that kind occurred. We have treated the whole matter as a matter before the court nominally, but in fact there was no court there. Nominally, there was a judge there in the person of E. St. Julien Cox, but in truth and in fact *that* E. St. Julien Cox was not E. St. Julien Cox in his normal, proper condition at that time to do business at that court.

Now, Mr. Lind testifies to about the same state of affairs. He describes the condition of the Judge by a peculiar term, and in his testimony for the first time, do we find the German word *katzenjammen* in this case. It is used by Mr. Lind in his testimony. He testifies he was there the day before, that Judge Cox was drunk on a spree and that on the next morning he was suffering from the *katzenjammen*. Mr. Pierce calls it a continuation of the spree. Mr. Webber testifies to the same thing—that he was intoxicated. Mr. Goodenow testifies to the same thing.

Now, that is the evidence upon that case. I do not desire to go into any very extended argument as to the facts there, as they are all in a nut shell so far as the witness for the prosecution are concerned. The question in your minds will be, do you believe these witnesses that the defense have brought on?

They have brought one witness, Blanchard, as to the occurrence there

who is undoubtedly entitled to some consideration. I do not deny that. He is entitled to some consideration at your hands, but not to the *same* consideration as I said before, because he did not have an opportunity of getting at the movements of the mind of Judge Cox. Now what did he do? He came in there with his books and records. He handed those out to the attorneys as they wanted them and they were taken down by the amanuensis Mr. Goodenow, that is, the substance of them; they were marked Exhibit A, Exhibit B, etc., and offered by the defense and objections raised by the opposing party but no objections decided as a matter of course. Now, Mr. Blanchard, it is true, testified that the Judge did not rail nor take hold of the paper, and that he had no appearance of being intoxicated, not even appearing to have the katzenjammen. Now there is no dispute about his being drunk the night before—I think I am right; he did not swear that he had the katzenjammen. If I am wrong I don't want to mistate it. Let me see.

Mr. ARCTANDER. Mr. Blanchard said he was not intoxicated.

Mr. Manager DUNN. I know he says he did not even have the *appearance* of being drunk the night before. That is what Mr. Blanchard testified to. It is very singular, gentlemen, because it is an agreed fact on all sides that he *was* terribly drunk the night before. All the attorneys knew he had and that was the reason the clerk, Goodenow, was employed. It is a very singular circumstance that Mr. Blanchard's keen powers of observation could not have discovered that the Judge had been on a spree the night before. Mr. Behnke testifies that he was perfectly sober, "perfectly" sober. Mr. Gezike testifies that he was perfectly sober; no doubt about it; and I think there is one other witness, Mr. Fitzgerald, of a fame we might say not unspotted, who testifies to the same state of facts.

Now, gentlemen, the only way in which I can account for Mr. Blanchard's testimony is this: This happened in 1879, some three years ago. Mr. Blanchard is, perhaps, not a good judge of anything except deep seated drunkeness. That is my opinion of Mr. Blanchard. Because when we were up in that country on that "smelling expedition" that we have been accused of going on, we could never get Mr. Blanchard to admit that Judge Cox had been drunk during the time Blanchard was clerk of court until we got him down to the Rosalia Wildt case, and as to that he said it was a fact that the Judge was drunk, and that in fact he was drunk all through that term of court, and there was no use in denying it.

The PRESIDENT *pro tem.* The hour has now arrived for the noon recess.

Senator BUCK, D. Mr. President, there are some matters which some of the Senators desire to bring to the attention of the Senate before the adjournment.

Senator GILFILLAN, J. B. There has been a suggestion made by several of the Senators, and I think by some of the counsel, that we ought, perhaps, to determine something with reference to the close of our session. The order which has been adopted contemplates, I believe, the closing of the argument this evening. Then the question arises as to when the Senate desires to enter upon the consideration of the case, whether to-morrow or whether it shall go over until next week; and it has been suggested that it ought to be determined at this time, or as early as may be.

I have no particular choice in the matter, except, I might say, generally, that I still entertain a desire which I have entertained for days, and perhaps weeks, that we may approach the conclusion as speedily as possible. So far as I am concerned, if counsel closes today it would be entirely agreeable for me to enter upon the final consideration of the articles either to-night or to-morrow morning. Inasmuch, however, as many of the Senators reside at a distance from the capital, I feel like deferring largely to their wishes in the matter, and have nothing further to add until we hear from those Senators who may reside at a distance.

Senator JOHNSON, A. M. So far as I am concerned, Mr. President, it is very desirable that we should get through with this trial and render our decision upon the several articles this evening, if possible, and if we were to be able to do so it would give me an opportunity to reach home on Saturday. If we occupy Saturday in voting it will throw me over until Monday, and, so far as I am concerned, inconvenience me. However, if it would contribute to the public interest, or anything of that kind, to defer my wishes to those of other members of this Senate I shall cheerfully do so; but the arrangement I have suggested would be more agreeable to me. I would rather work all of to-night in order to get through than to hold over to-morrow.

Senator AAKER. Mr. President, I would inform the Senator that we shall probably occupy this evening, but I shall be in favor of voting to-morrow, and if we do not get through to-morrow of taking a recess over Sunday until Monday and then to begin and continue until we get through. For my part I cannot get home any how without considerable difficulty, and I think many of the other Senators are in the same fix, and I think it will be better to occupy to-morrow and Monday continuing until we get through.

Senator JOHNSON, A. M. I am not in favor of an adjournment. I will stay, if it be necessary, a month without an adjournment, but I think we ought to get through this evening. If the counsel gets through with his argument at six o'clock, as was arranged, I think there will be time enough for us to vote upon the articles and decide the whole thing this evening, so that we can all go home to-morrow. It will probably accommodate us all to have an opportunity to start for home to- morrow morning, and some of us would like to take an early morning train.

Senator BUCK D. I suppose it would be well for us to adopt some rule. I am not posted as to what the intentions of the Senators are as to speaking of or making argument upon the different articles when they are to be voted upon, or whether they will be ready to vote at once. For my part, I shall be ready to vote whenever the counsel closes his argument upon the other side, if the rest are, and if there are any explanations or arguments to be made, I think it would be well now to limit the length of time to be used in explanatory speeches to, say five minutes, or if the Senators have opinions which they desire to file, let them briefly, within the five minutes limit, state what their views are and then file their opinions afterwards. I am anxious to have some definite rule adopted now, so that this evening there will be no jangle when we come to act upon the matter. I think it better to determine it now, because it may determine the course that some of the Senators will pursue between now and the evening, in regard to the matter. I was in hopes that Senator Gilfillan J. B. might possibly have an order which he

would offer in regard to that matter. I see that he has not, so it leaves us somewhat at sea.

The PRESIDENT *pro tem.* I would suggest that we ascertain from Mr. Dunn, definitely, whether he will be able to conclude his argument at six o'clock this evening.

Senator BUCK, D. My remarks were made of course on the supposition that it was the understanding that he would complete his remarks by that time. I made them subject to no other arrangement.

Mr. Manager DUNN. Well, Mr. President, and Senators, it is placing me in a very narrow position. I suppose the ocean *might* be bailed out with a tea spoon, but it would be pretty hard work to do it. The case stands right here, gentlemen. I have been moved by considerations of economy of time and expense to close this argument to-day. I have been moved by the desire that my brother manager, Gould, should have an opportunity to expound the law relative to this case, (for which I knew he had made careful preparation), to make an agreement with the Senate that this argument should close to-night. I feel that if I do so I shall be recreant to the trust that has been committed to me. There has been a seven days argument—

The PRESIDENT *pro tem.* Could you do it justice Mr. Dunn, by occupying a few hours this evening?

Mr. Manager DUNN. There is a question of physical endurance that I must take into consideration. I am feeling feeble to-day. I got but two hours rest last night, and I feel that I would be recreant to my trust were I to say that this argument would be closed to-night. I feel that it would be virtually admitting, in behalf of the State of Minnesota, that there was no force in the Board of Managers that were entrusted with this prosecution, and that there was no ability to answer the argument of facts that has been made by the junior counsel in this case. A thousand considerations press very heavily upon me. There is a conflict, a war within me as to whether I ought to cut this argument off short, as it might be done—as shortly, almost, as if it had never been commenced—and leave the matter there, in order that Senators may cast their votes, dispose of their business and go home; or whether I ought to fulfil and carry out as best in me lies the trust that is committed to me by the House of Representatives and by the Board of Managers. I do not *know* that a word that I shall say here in the line of argument will *influence* a single vote upon this floor. I am arguing this case, however, with that view. I am arguing this case also because it is proper to argue it, because it is lawyer-like to argue it, because it *ought* to be argued, so that Senators who may vote guilty upon these charges (because that is the side I am arguing), and who, in the future, may be called upon to give a reason for the faith that is in them when, perhaps, they shall not have the opportunity, nor the time, nor the patience to analyze the testimony to explain why they voted thus and so, may have the argument that I have made upon this evidence to exhibit to their constituents and to others as a reason for the votes that they have cast. It may be a difficult matter to explain in the future, when called upon, and perhaps the argument I am making here may be of some assistance to them. I know it would be to me were our positions reversed.

Now, the matter is entirely in the hands of this Senate. This Senate has adopted an order that argument shall close at 6 o'clock. I stated at

the outset that I did not desire that my promise should be non-elastic and entirely inflexible. The matter is entirely with the Senate, but I do say, and I speak it feelingly, that I ought not to close this argument now in justice to myself, in justice to this Senate, in justice to the House of Representatives and the State of Minnesota, whose mouth-piece this moment I am.

Senator CASTLE. Mr. President, I have a resolution to offer which will, perhaps, bring the question up. It is as follows:

Ordered, That upon the close of the arguments of the counsel the court at once proceed to the consideration of the case. Any member may explain his vote and consume therein not exceeding / minutes of time, and may file his opinion in writing upon the case with the clerk at any time within ten days of the final adjournment.

I merely offer that for the purpose of bringing up the matter.

Senator GILFILLAN, J. B. Mr. President, I offer this order as a substitute, merely for the purpose of bringing the question up in the two forms. I am not particular which is adopted.

The PRESIDENT *pro tem.* The secretary will read the substitute offered by Senator Gilfillan, of Hennepin, for the information of the Senate.

The Secretary read as follows:

Ordered, That as soon as the managers shall close their argument, the Senate, sitting as a Court of Impeachment, go into private consultation upon the articles of impeachment.

Senator GILFILLAN, J. B. Mr. President, in drawing that I was not aware that the Senator from Washington was preparing an order, and I am not at all particular which one is adopted; but I gather from the intimations of Senators, so far as they have expressed themselves, that they desire a continuous session of this Court from this time until the matter is finally disposed of. Then it seems to me that the next step to be taken ought to be that we go into private consultation and there determine just what course to pursue in the matter, and in that private session to determine how much time shall be allotted to the several members of the Court, either verbally to address the Court or to read an opinion, and the time that should be given them in which to file their opinions, if they so desire, with the Secretary, after the final adjournment; deferring all matters of that kind until we shall have gone into private consultation. I think that is the usual precedent, but I am not at all particular about that. It can be determined now, or after we go into private consultation.

The PRESIDENT, *pro tem.* I believe that none of the orders have been seconded.

Senator POWERS. It seems to me, Mr. President, that neither one of the orders touch the matter that was under consideration, not perhaps directly by way of order or resolution, but a matter that concerns us more a great deal than a private session, and I want to just make a few remarks on that subject, and that is, the subject of the time to be allotted or allowed to the State in winding up the arguments.

Senator GILFILLAN, J. B. Will the Senator allow me to call his attention to the fact that on yesterday morning an order was entered giving the State time until six o'clock this evening for argument.

Senator POWERS. I am aware of that, and that is the very point I am speaking on.

Senator GILFILLAN, J. B. And if there is no change made in that order it would stand.

Senator POWERS. I am aware also that after that was passed several honorable members of this court that I can see here were talking that over. I, myself, expressed the opinion to them that it was one of the fatal mistakes that we had made in this case, after allowing the other side six days and longer—if they had wanted it they could have had nine—to then come out and say to the managers "you shall have less than two days in which to close your side of the case." Suppose they fail in making out a case? Suppose that when it comes to a vote here there are not the necessary two-thirds who will vote the respondent guilty? What can the managers say? What will they be likely to say? What will the State say? Our constituents? Why, we could have made out a case if you had given us time. You gave the other side six days; you would have given them two weeks probably if they had wanted it, but you muzzled the managers in this case, you shut them down to less than two days.

Now I am perfectly willing, so far as Mr. Dunn is concerned, that he should quit talking now, that he should quit talking in the middle of the afternoon, that he should quit talking at six o'clock or any other time that suits him. I am *not* willing to shoulder one iota of the responsibility that will be thrown upon this Senate if we say to the world or allow the managers to say to the world that we did not give them a chance to prove their case.

Now I speak with more feeling and positiveness, because I believe—and I would just as soon say it now as at any other time—they have largely failed to prove their case, and I shall vote so when it comes to discussing my right to talk a little upon my vote in explanation of it,—not to go home and spend ten days of my time in writing what I shall say, when we have a reporter here to take it down. I do not know that I shall want to say one word, but if I do I shall claim it as a right—to get up and briefly explain why I vote for or against the guilt of this respondent. And feeling as I do, having listened carefully to the evidence and taken down every particle of it that I deemed essential and read it over and over, again and again, I want again, I say, to throw all responsibility off myself, and I hope it will be thrown off the Senate, so that no person can say, neither those who believe in the guilt of this man from newspaper reports or other evidence, or from hearsay stories or mere rumor, nor any others, that he could have been adjudged guilty and would have been but that we choked down the prosecution and would not allow them time. After allowing six days to the other side, and as much more time as they wanted, if we will not allow the prosecution a chance to present their case and go over the evidence, all I have to say—

Senator RICE. I rise to a point of order, Mr. President. The gentleman is not speaking to anything that is before the Senate.

Senator CAMPBELL. Let us hear him out.

Senator POWERS. I will say with reference to that point of order that neither one of the orders which were sent up here had reference to the subject which was under discussion. I would just as soon be choked down by Senator Rice as by anybody else, but desire simply to say that

I want to go on the record as assuming not one iota of this responsibility. If these gentlemen are not to be allowed to do their level best to present this case to the Senate in behalf of the State I will not sustain a particle of the responsibility.

Senator RICE. Does the chair understand the point of order?

The PRESIDENT *pro tem.* There is nothing before the Senate, because neither of the orders have been seconded.

Senator BUCK, D. I seconded it, Mr. President.

The PRESIDENT *pro tem.* I heard no second at the time, and mentioned the fact then.

Senator GILFILLAN, J. B. Mr. President, I was going to ask the secretary to read a second paragraph, which I offer as an addition to the order introduced a short time ago.

The SECRETARY read as follows:

Ordered, That as soon as the managers shall close their argument, the Senate, sitting as a Court of Impeachment, go into private consultation upon the articles of impeachment.

Ordered, further, That the time for argument by the honorable managers be extended so as to include the evening session of to-day.

Senator CAMPBELL. Mr. President, I do not like to permit all that has been said by the Senator from Fillmore to go without an answer. With all due deference to his opinion I think he has not stated the case correctly. If I have any recollection on this subject at all, it is that this court adopted rules that should govern the final argument in the case, and that those rules provided that two counsel upon each side should make the argument; that afterwards the honorable managers asked for a modification of that rule so that they might, without occupying more time than was allotted to them under the first rule, be represented in the final argument by three speakers instead of two; and as a condition of that modification they fixed upon the time within which they would close their case. They fixed, themselves, the time that they desired to occupy in their closing argument; and it was upon that consideration that the Senate or this Court of Impeachment, so modified the original rule as to permit more than one of the managers to speak upon the closing argument, and accepted the time as fixed by them during which they desired to speak.

Senator RICE. If time is going to be spent on discussion such as this, I think the consent of the Senate should be asked, for you are certainly not talking to the point.

Senator CAMPBELL. Senator Powers had the floor, and Senators who desired—

Senator RICE. I rise to the point of order mentioned, which is certainly good. I ask for a decision by the chair.

Senator CAMPBELL. I will be through in a moment. I ask permission of the Senate for a moment further. I do not wish to be understood as wishing to infringe upon manager Dunn's time. To some extent he should have indulgence, because a portion of his time was granted by the Senate last night to the honorable manager from Winona, Major Gould, and I think that manager Dunn should be indulged to some extent,—at least to the extent that we permitted manager Gould to occupy his time. But I do think that in consideration of the great length of time we have been occupied here, and in consideration of the

promise of the honorable manager, that he should make it convenient to close his case to-night, especially as it has been declared before he has finished his argument, that at least one Senator upon this floor has made up his mind that a case has not been proven.

Senator POWERS. I wish to remark that I said I thought *some* of the charges had not been proven. And I will say further——

The PRESIDENT *pro tem.* I understood you to say you included all the charges.

Senator CAMPBELL. So did I.

Senator POWERS. Well, I did not say so; that is, I did not mean to say it.

The SECRETARY. "Largely failed," were the words.

Senator GILFILLAN J. B. I desire to say right here, Mr. President, that I hope no Senator will go so far as to advance any opinion upon any article or any specification until the arguments shall have been closed and we go into final consideration on the articles.

Senator CAMPBELL. It certainly seems in bad taste.

Senator POWERS. Well, it is a matter of taste, and I shall use my own judgment.

Senator CASTLE. With reference to the matter under consideration, I have offered my resolution for this reason; first, that it is desirable to proceed at once with this business. I have hung around this Senate about as long as I care to, to the neglect of my private business. I believe I may say right here, without reference to the record, that I have been here every day on which testimony has been taken and nearly every day of the argument, and I desire to have immediate action, and I believe it is the desire of every other member of the Senate. So much for that. With reference to the matter of explaining votes, I have left a blank for this reason, that the time ought to be limited. So far as I am concerned, I think it is eminently desirable that the time should be limited to a short time. I think it is not desirable that this protracted trial should be wound up by the members of this Senate by an acrimonious discussion on the facts. My own judgment is that five minutes would not be sufficient. It is a right that every Senator has, to explain his vote in this tribunal as a Senator. I also limit the time with reference to the period within which opinions might be filed, to ten days. I believe it is right in courts of last resort that each and every member of that court, if he desire to do so, may file his opinion. It was to limit the time within which that might be done, that the second provision of the order was made. One word more with reference to a secret session. I know that if there be anything that it is desirable to shut out from the world that it would be advisable to go into secret session. It might be advisable to go into secret session in the discussion on the adoption of this order. That might be proper; but I insist that it would be highly improper that we should be in secret session when we come to determine the issues involved in this case, or to express our reasons for the votes that we shall give. I hardly think it is consistent with our system of administering justice or with our civilization that we should proceed with a star chamber business for the determination of the guilt or innocence of any man at the termination of a trial of this character.

Senator CAMPBELL. Does the Senator understand that the resolution of Senator Gilfillan goes to that extent? I certainly do not.

Senator GILFILLAN, J. B. I am opposed to the discussion of any of these matters in open session. I think as soon as the argument shall close we should at once go into private consultation and determine the order of our further procedure. Then we may fairly exchange our views. I think the court ought in justice to itself, as a jury, determine some questions in private consultation, and this is one of them. Just how much time will be given to each member to explain his views, to address the court or whatever else—I do not want to discuss that question now; but the substitute simply provides for two things. In the first place, that as soon as the arguments shall have closed the court will go into private consultation. Having done that we may take up any subject we please, and settle the order of procedure, and then throw the doors open or keep them closed as we please, and we can then discuss with propriety whether we shall further remain closed until we conclude our consideration of the questions and have cast our votes, or whether we shall throw the doors open. In either event, I apprehend that our proceedings in secret session become a matter of record, and as soon as we shall have concluded the secret session it becomes known to the world. The secretary—

Senator POWERS. I would like to ask the Senator if we have a right to cast this vote in secret session?

Senator GILFILLAN, J. B. I think we have. Every single vote in the Judge Barnard case was taken in secret session. Even the entry of the judgment in that case was done in secret session.

Senator CASTLE. Pardon me, Senator, it is a matter of public record, open to the eyes of the world, not only the vote but the discussion of the question,—not only the articles, but the very specifications.

Senator GILFILLAN, J. B. In what?

Senator CASTLE. In the Barnard case.

Senator GILFILLAN, J. B. That is all right. As soon as they got through with the discussion of the question of guilty or not guilty, they determined upon the entry of the judgment and it was entered. They then said the matter will now be spread upon the record and be open to everybody and so it was, but their vote was taken in secret session.

The PRESIDENT *pro tem.* How was it in the Page case? You were here.

Senator GILFILLAN, J. B. In the Page case we retired in secret session as I recollect. I think that when we came to vote upon the several articles we then voted to open the doors and go into open session, and that we voted in open session. That is my present recollection of the precedent established in that proceeding, and not a statement made from any recent reading of the record. Now the first point is that as soon as the argument is closed we should go into secret session and determine for ourselves what shall be the mode of procedure. The second point is to enlarge the time of counsel if they desire it, so that they may have this evening's session to discuss the question further. If the counsel desire that vote to be taken separately, the question can be divided.

Senator CASTLE. Here is the order of procedure in the Page case.

Senator EDGERTON offered the following order, which was adopted:

That the Senate proceed at 7:30 o'clock P. M. this day, to vote upon the articles of impeachment preferred by the House of Repaesentatives against Sherman Page, judge of the tenth judicial district.

Mr. DORMAN moved to amend, and the amendment was lost.

Mr. EDGERTON here offered the following:

Ordered, That the Senate adjourn *sine die* at 12 M., on Monday, July 1st.

Upon reassembling, after recess, Mr. Donnelly introduced an order providing that Senators should have the right "to submit their opinions in writing upon the final question by delivering the same to the clerk within fifteen days hereafter, who shall cause them to be published with the proceedings of the court."

Well, that was adopted. Mr. Gilfillan offered the following:

Ordered, that in proceeding to vote upon the final question upon the several articles the Senate will vote upon them in the following order:

Giving the order.

Donnelly moved that it be suspended, which was lost.

Gilfillan withdrew his order.

Senator Gilfillan, C. D., moved to vote upon the articles of impeachment in their order.

All in open Senate.

Senator GILFILLAN, J. B. That was all in open session; I recollect it.

Senator CASTLE. That was all there was about it. I might say that was immediately upon the final argument of Senator Hinds, before any other business was transacted.

The PRESIDENT *pro tem.* The question will be upon the adoption of the order as offered by the Senator from Washington. Are you ready for the question?

Senator GILFILLAN. Is the resolution seconded?

Senator BUCK, D. I seconded the resolution of the Senator, and I desire to say a word on it. I seconded the motion of the Senator from Washington and I desire to say one word about it.

Senator GILFILLAN, J. B. I was about to make a point of order—that the substitute to the order offered by the Senator from Washington would be first put and voted upon.

Senator BUCK, D. I want to detain this Senate for a moment, and what I say is said for the purpose of protesting against the assertion that we have no right to discuss this matter in secret session. It is the first time I have ever heard the statement made that a court of this character had not a right to deliberate upon the law and the evidence, or upon the law alone, in a secret session of the Senate. I repeat, it is the first time I ever heard it. Now, our functions here are two-fold—as judges and jurors; and I say that history, the world over, so far as I have had anything to do with it, goes to show that it is a usual custom for courts and juries to meet in secret session and discuss the matter to be decided, and then publicly to announce the result to the world. I make these remarks for the purpose of protesting against the statement that we have not the right to do that. When we come to vote upon these articles I am ready to do so in open session, but we have a right to discuss these matters between ourselves quietly, and I desire to protest against the statement which has been made here that we do not have that right.

Senator MEALEY. It seems to me this whole discussion is premature. I think that if we deal with one thing at a time we shall get along better. So far as the learned counsel upon the part of the State is concerned, he wants more time. We may have the power, no doubt we *have* the power, to dictate as to the length of time any member shall speak in explanation of his vote, but I do not believe we have that *right*, and I think we had better wait until the managers get through with their case

before we undertake to say that a man shall speak only one minute or five. The gentleman who has just taken his seat said he was ready to vote as soon as the management had finished. So am I; but in order to get through this week, it may be necessary to curtail the time which members may desire to consume in explanation of their votes,—to reduce it to five or ten minutes as the case may be; but if the case should go over until next week they could have more time, and I would say right here that I presume I am as anxious to get home as any Senator on this floor. I think that what we started out in the first place to ascertain was whether we should have an adjournment or go on. I think the Senate should continue in this matter until Saturday night, and if we can get through by doing so to prolong our session until 12 o'clock, and if we cannot get through this week, then we should adjourn only until Monday morning. Let us finish this thing before we go home. But so far as the managers are concerned, I cannot think of abridging their time. I do not think I have any right to do so, and I think we had better go on as we are going until the argument is finished, and then this matter will come up at its proper time.

Senator GILFILLAN, J. B. The proposition is to enlarge the time, not to abridge it.

Senator HINDS. Mr. President, it is clear that we are very near to the end of a very important trial, and I think we had better close it up with care and deliberation. We should not hurry the end, because that is the most important part of the whole. I think that the first question we should determine among ourselves is whether any Senator desires to make an argument to the Court; if he does, whether he desires one minute, an hour, or a day, I certainly think he ought to have it. But I think that that should first be determined, not whether the majority desired to argue it or deliberate over it, but whether any Senator does. If he does, I think every other Senator should conform to his wishes. If any member thinks he can enlighten the Court or any member of it, or wishes enlightenment himself by discussion or the calling out of discussion upon any particular point, I think it should be indulged in, and that, too, whether it takes one hour, or a day, or a week longer. It will end soon, any way. It is manifest that there are Senators who do desire to discuss these questions. For my own part I am ready to vote just as soon as the arguments of the managers close without one word, but, at the same time, if any discuscion arises and leads to the propriety of a discussion on my part, I am ready to indulge in it. I am ready to hear what others may wish to say. I am willing that it should be either openly or privately.

It makes no difference to me, but as the Senator from Blue Earth has well said, the deliberations of juries upon evidence that they have heard, the deliberations of courts upon evidence that they have heard, the deliberations even of referees upon evidence which they have heard, is private. It may be indulged in privately and all go into the record, as it did in the Barnard case; but I think that we should first determine whether any member of the court desires to discuss it. If he does it will take time, and I do not think we ought to limit that time in any way whatever.

Senator HOWARD. It appears to me, Mr. President, that if we take up one article and dispose of that, it will be whether the manager for the State is to be allowed any further time after six o'clock, and if so, it

would be proper for him to learn of it as soon as possible that he may know how to act.

So far as I am concerned the defense has had every advantage they have asked for. I do not see why Manager Dunn should not be allowed sufficient time in which to finish his argument. I have no idea that he is going to use up any more time than may be necessary or than would be proper. Our old friend here from Fillmore [Senator Powers] will stick by me on that, and I think he is right, and that Manager Dunn should be allowed additional time in which to conclude his argument. In respect to the other matters of discussion in secret session etc., that may be settled afterwards; I am not particular. A great many men begin to see daylight now. There is one thing that I would have been pleased to have seen, and it would have been a great accommodation to a great many, if it was discovered that we could not finish this week, and that is a recess, so as to give some of them a chance to go home. But if any of you propose to go on without an adjournment I will be with you.

Senator GILFILLAN, J. B. I again submit that these discussions are all premature. The questions raised by the resolution of the Senator from Washington, and the discussion of them, can be more properly deferred until the close of the case, and then let the Senate at once retire to private consultation and dispose of all these questions. The substitute which is offered simply looks to one thing, and that is, that at the close of the argument we go into private consultation. The paragraph which was added to it enlarges the time of the counsel if they desire it, so as to give them this evening's session. But I think this whole discussion is premature. We ought to postpone it until the close of the argument. Then let the court retire for private consultation and dispose of all these incidental questions to suit themselves.

Senator WHITE. I move that the resolution lie on the table; or else, I give notice of debate. We are fooling away time. I hope that the manager will be as expeditious as possible, and I believe we will let him finish his argument if it takes all day.

Senator POWERS. If any gentleman who voted for that resolution today will add to it what the Senator from Olmstead has said, I will be exceedingly glad to vote for it.

Senator CASTLE. Sufficient unto the day is the evil thereof.

Senator MILLER here took the chair to act as President *pro tem.*

Senator GILFILLAN, J. B. I would like to suggest this. This substitute proposes to add to the manager's time this evening's session, and if he does not get through we can enlarge the time then. We are not limiting it, we are enlarging it, and we can enlarge it again if we desire to.

Senator WILSON. Mr. President—

Senator CAMPBELL. I call for the yeas and nays.

The PRESIDENT *pro tem.* Notice of debate has been given, and there is nothing before the Senate that I know of.

Senator JOHNSON, F. I. I move that we take a recess.

Senator AAKER. Counsel would like to say a word. I would like to hear what he wants to say.

Mr. Manager DUNN. I must reiterate what I said—

Senator RICE. I move that we go into secret session. We are all out of order. I am disgusted with this method of conducting our sessions. We have rules preventing any discussion whatever on any orders that

may be offered, unless we go into secret session. I said I thought we ought to go into secret session if we proposed to have any discussion on this matter. I made my point of order, and it was perfectly good, but the chair refused to recognize it.

The PRESIDENT *pro tem.* One moment. Under our rules there is nothing before the Senate now. Under our rules we have to take a recess until half-past two o'clock, unless otherwise ordered.

Senator MEALEY. I withdraw the motion if the manager wants to say anything.

The PRESIDENT *pro tem.* He has just taken his seat.

Mr. Manager DUNN. I could not very well stay on my feet when so many Senators were standing up to address this court. I want to say this then, that I will be obliged for an extension of this time until 10 o'clock this evening, but I do not want to feel in the argument of this case that I am handicapped for time.

Senator D. BUCK. Time will be extended.

Mr. Manager DUNN. It will be when we come to it, no doubt. The time now stands at 6 o'clock. If this Senate desires, as a body of deliberative men and a court, to say to the House of Representatives that we shall not be given such opportunity as we think we need to present this case, why, we must bow in submission to the edict. The considerations which moved me to the statement I made yesterday have, by this thin Senate, largely dissipated themselves. I was in hopes that we would have a full Senate to-day, and I have been endeavoring to condense my remarks, but, gentlemen, if any of you have ever plowed a field of this dimensions—some of you *have* plowed it—but those of you who never have know not the difficulties that are encountered in condensing this argument, which I feel I *ought* to make in justice to myself, as the closing argument of this case; and if you have never felt the terrible feeling caused by an effort to condense an argument such as this into a brief space of time I simply pity you. You do not understand it. *I* understand it. I *must* make this argument or I must go down to posterity upon the records of this court as having failed in my duty. *I* want all the time that is necessary.

The PRESIDENT *pro tem.* Take a recess until half-past two o'clock.

AFTERNOON SESSION.

The Senate met at 2:30 P. M., and was called to order by the President.

Senator CAMPBELL. Mr. President, at the noon recess there was a resolution and a substitute pending. A motion was made to lay on the table, and I did not understand that it was adopted. I was going to move that it lie upon the table, subject to be called up at the proper time, and that we now proceed to business.

Senator WHITE. The motion to lie on the table was not seconded that I am aware of. I gave notice of debate.

Senator CAMPBELL. Very well, that is entirely satisfactory. I was not aware that there was any disposition made of it at all.

The PRESIDENT. It seems, then, that the motion to lie on the table is withdrawn. The honorable manager, Mr. Dunn, will proceed with his argument.

Mr. Manager DUNN. Mr. President and Senators: When we took

the recess at noon I was discussing the third article constituting the trial of the case of Wells against Gezike, in Brown county, in January, 1879. I was discussing the effect of Mr. Pierce's evidence—and it has been read in your hearing—disclosing no indications of a desire to be biased or colored by any feelings of prejudice against the respondent as was charged by the respondent's counsel in his argument, and showing the details of that evidence and wherein it agrees with the evidence of Judge Severance. Mr. Webber's and Mr. Lind's evidence was also commented upon to some extent.

We are met in the threshhold of this charge with another attack upon the credibility of one of the witnesses for the State—Mr. B. F. Webber. His evidence is sought to be attacked because it is claimed he is interested in the removal of the respondent; because he is a prospective candidate for the position that Judge Cox now occupies. I think the conclusion that the counsel arrived at from the evidence upon that point is wholly unwarranted. I think that it was a very unfair conclusion and a very unfair method of discussing the evidence of a very fair witness, and I will refer to it right here. All the evidence from which counsel could claim such an inference might properly be deducible is found upon page 40 of the 11th day of the journal, in words following. After a somewhat lengthy cross-examination a question was asked of Mr. Webber:

Q. And the objection would be good only as to that portion which was within the corporate limits of the village?

A. I must be excused from passing upon that question. If I had looked it up, I would give an opinion with a great deal of pleasure.

Q. Well, as you expect to be judge after Judge Cox—

A. No, I don't, although I would like to have it.

Q. Well, are you not a candidate?

A. I don't know what you mean by a candidate. If you mean that I would like to have it in case there was a vacancy, I am, and otherwise I am not.

Q. You have had recommendations gotten up and presented by yourself or by your friends to the Governor for that position?

A. I have never got up any, and not, to my knowledge, have my friends.

Q. Will you swear that your friends have not, with your knowledge, presented recommendations to the Governor for you to be appointed judge after Judge Cox?

A. They have not to my knowledge.

Now, I contend, Senators, that no conclusion and no inference can be drawn from that evidence which should detract in the least from the full and entire credence that should be given to the evidence of Mr. B. F. Webber. It is an unfair charge, because a lawyer is of sufficient prominence in his district, that his name may have been spoken of in connection with the highest judicial office in that district, because he may, in the desire to have an ambition gratified (an ambition which every lawyer cherishes, or ought to cherish), to one day sit upon the judgment seat within his judicial district or territory; because that ambition may be cherished, I say it is an unfair conclusion to draw that he would come into this court and for that petty and paltry reason violate the oath that he takes in giving his evidence. But it is of a piece with that kind of defense I spoke of in the first part of my argument—that there was a conspiracy formed here to oust Judge Cox.

Now, Mr. Webber, under this article is a very moderate witness (page 26 of the 11th day.) After giving the circumstances of the trial, just as

Mr. Severance and Mr. Pierce have given them, the question was asked "What was the condition of the Judge at the time you proceeded with the trial?" The answer was "He appeared to be intoxicated or partially intoxicated, at least." Now that is all he gives upon that point. The changes are rung in the argument all the way through upon Mr. B. F. Webber,—that his evidence is clouded by an improper desire to succeed the respondent in the event of the respondent's removal. Mr. Lind is attacked in the same way. He is called "the henchman of Mr. Webber;" and you will remember the exceedingly beautiful picture that the counsel drew of the poor ragged and crippled boy that appeared in New Ulm at a certain time, of how he was taken by the hand and fostered and cared for by the Judge of this district, and how he was admitted to the bar under his auspices and direction, and how he had been instrumental in assisting him in business, sending him clients and recommending him, and how by his assistance he had finally attained to the dignity of an official position under the government of his adopted country. You will remember how pathetically counsel told that, and then with how much vehemence and malevolence he undertook to show you and wickedly claims that this man Lind was actuated by base and unworthy motives and what a return it was for that kindness. Now, I submit, gentlemen, there is nothing in evidence here that can convince you or any fair minded man, that Mr. Lind has told other than the truth. He has certainly exonerated Judge Cox in every instance where in his judgment Judge Cox was not blameworthy. He has not attempted to do aught here except to give a plain unvarnished tale of the circumstances of the Gezike case, in fact he is the most mild witness of all. He says Judge Cox was afflicted with what they called the "katzenjammen."

Mr. Goodnow is the other witness. Mr. Goodnow is brought upon the stand as one of the parties present at that occurrence, and testifies distinctly that he was there and that Judge Cox was intoxicated at that time.

There is nothing swift in his testimony, but the same old attack is made upon Mr. Goodnow that is made upon Judge Severence; that is made upon Mr. Webber; that is made upon Mr. Lind; that is made upon Mr. Ladd; that is made upon every witness, almost, that thus far has been called upon the part of the prosecution. It is an attempt, not to deny the facts, but to traduce and vilify the witnesses. He is asked if he was not instrumental at the time when the celebrated white-washing resolution was adopted in the House of Representatives in 1878 as to Judge Cox's inebriety at Fairmount, in obtaining and procuring witnesses to testify against Judge Cox;—if he did not have a room at the Merchants Hotel at that time, and invite the witnesses in there, and even go so far as almost to get into an altercation with them because he found they were going to testify strongly in favor of Judge Cox at that time.

Now, gentlemen I say this is simply characteristic of this defense. There is no denial, no attempt at denial, except by casual observers who have not the opportunity that gives their evidence any very great amount of weight or credit; but it is characteristic of this defense to traduce and vilify the witnesses, to belittle them, in order to make this Senate believe that they are not worthy of credit; that the State has been guilty of bringing down here upon this important trial, witnesses of unknown

character,—witnesses whose character can be smirched, whose character will not bear to have the clear sunlight of day let in upon it.

This is another case, gentlemen, as in the former case, where I am satisfied the minds of this Senate would have been much relieved of the doubt and uncertainty,—some of them at least,—if his Honor, the Judge had seen fit to deny it under oath. It is another one of those cases, gentlemen, where you find, perhaps, strong witnesses disagreeing. I don't admit that that is so in this case with the exception of Mr. Blanchard,—upon whose evidence I have commented, and the weight that ought to be given it,—but it certainly would have been a rich treat to me, and doubtless it would have been to many of the Senators present, (or that ought to be present) if Judge Cox had gone upon the stand and testified himself as to those occurrences.

How easy it would have been to have gone upon that witness stand and testified that "Upon that occasion I was not intoxicated; upon that occasion I was not even suffering from the effects of a prior intoxication; upon that occasion my mind and my sensibilities were under complete control; that I knew just what I was doing, that I simply took that course of taking the evidence, because I had, as it has been intimated by some person here, counsel or somebody else, (not by any witness), that I had a lame hand and was incapacitated from writing." What a relief it would have been to us if we could have had that evidence, clear-cut and well-defined, produced here by the respondent in this case; but no, he expects this Senate to decide this case—when he had the opportunity of clearing up that mist—he expects them to decide this case without the aid of his evidence, which might have been, but has not been thrown around it.

In concluding what I say upon this article, gentlemen, I am firmly of the conviction that this is not one of those articles about which my distinguished friend from Fillmore gave his opinion just before the recess. I do not think this is one of those articles in which we have "largely failed" to prove our case. I think it is one of those articles in which we have entirely succeeded in proving our case; and I commend it as such to the judgment of the members of this Senate—that it is a case in which we have entirely succeeded. I see the gentleman from Fillmore east looking at me as to the remark I have made. By the "gentleman from Fillmore" I mean the gentleman from Fillmore *west;* I do not think the Senator from Fillmore east was here when we had our discussion before dinner.

I cannot see, gentlemen, how, in the absence of the explanation which might have been made and which was in the power of the respondent to make, when you shall be called upon to rise in your places and say guilty or not guilty upon that article,—when there is the evidence of Severance, Pierce, Goodnow, Webber and Lind standing in juxtaposition to the testimony of the other witnesses (for the defense)—how you can say that that article is not proven. Are you prepared to say that Judge Severance has come upon this stand and wilfully falsified his word under oath? Are you prepared to say that? Is any Senator prepared to say it? Is any Senator prepared to say that Judge Severance has come upon this stand and told that which is not true, either by mistake or otherwise? Do you not believe that Judge Severance *knows* whereof he affirms? Do you not believe that he *knows* when he sees the respondent in a drunken condition? Do you not believe that he

has a judgment upon those things that is equal to that of any man in the State of Minnesota or elsewhere, and that when he testifies that this man was absolutely intoxicated there,—so much so that he was not conscious a part of the time,—not entirely unconscious, but not conscious strictly speaking, of the duties he had to perform,—I say do you not believe that he knows of what he was affirming? Or, do you think he is mistaken upon this point and that Mr. Blanchard is the man that knows?

Judge Severance and Gordon E. Cole were the men who were directly interested in obtaining the "control of the mind of the Judge;"— I use the same words that were used by one of the witnesses for the prosecution here,—Mr. Wallin. It was an excellent statement and a phrase that exactly expressed my ideas on this occasion. Judge Severance was one of the two men that were engaged in obtaining the mind of that Judge, if it could be obtained. He was in that predicament there where he testifies that he was compelled to tell that Judge to stop his talking, or words to that effect. Do you not believe that Judge Severance was ashamed of that proceeding? We are asked in taunting tones why Gordon E. Cole was not produced here as a witness. We are told that we did not dare to produce Gordon E. Cole because he would only have gone as far as John Lind went,—that he had the "katzenjammen." We are told that Gordon E. Cole would not assist our case, and that he was kept here on subpœna, day after day and day after day, and that finally he was dismissed, and that we in hot haste sent up for what counsel is pleased to call "the little man Goodnow" to take his place. Now, that is an assumption entirely upon the part of the counsel, and I do not propose to have it stand upon the page of history here without a contradiction. The facts are that Mr. Goodnow was subpœnaed for the first day of this trial. The first or second day, which was it?

Mr. Manager HICKS. The second day.

Mr. Manager DUNN. It was one of the early articles; and the facts are, also, that inasmuch as Mr. Goodnow had business arrangements which compelled him to return home, we permitted him to go,—he agreeing to appear here whenever we should notify him by telegraph that he was wanted,—and he drew no pay. I am informed by my associate that Mr. Goodnow was not subpœnaed. There was a subpœna issued for him and the marshal made the trip clear to Pipestone and when the marshal arrived at Pipestone to serve the subpœna, Mr. Goodnow was here and he answered the purpose and came here; and we allowed him to return to his home in order that he might attend to his business—being a banker in the village of Pipestone and having his bank upon his own hands at the time to take care of, it was inconvenient for him to be here; and to accommodate his personal business we permitted him to go home and sent for him when we wanted him, by telegram and he responded and was the witness produced here.

Now those were our five witnesses. Recollect gentlemen that five witnesses was the limit. Whether that order was wise or unwise we will not now discuss, but that was the limit that the State had placed upon us by this Senate. We lived up to it religiously and strictly. And how was it when it came to the defense? There was no limit placed upon the counsel for the respondent. Gordon E. Cole was also subpœnaed by the defense, and sat there day after day waiting to be sworn. They were not limited to five witnesses. Whenever they

wanted an extra witness they had him, and did not stop to ask for him, sending off their subpœnaes where and when they chose; brought the parties down here at the expense of the State and every witness that was brought here was sworn and rightfully sworn. I find no fault with it. But the argument cuts both ways. Why did not we produce Gordon E. Cole? We could not. We had our five witnesses and no more. They had the opportunity to produce Gordon E. Cole, and they failed to produce him. If any inference or conclusion is to be drawn from our neglect, how much stronger is the inference from their neglect to call Gordon E. Cole. But the fact is they did not want him any more than they wanted Judge Cox on that article.

There was one little remark made by the counsel for the respondent, in a deprecating way to this Senate, which rather surprised me. He seemed to deprecate the fact that the people of Minnesota and the west generally, were very much given to worshiping great men, or so-called great men,—the titled men of the land; and in that connection, he took occasion to warn and caution this Senate against giving undue credibility to the evidence of Martin J. Severance simply because he was a judge.

Senator CROOKS. Because what?

Mr. Manager DUNN. Because he was a judge. He did not want that testimony to weigh in the minds of this Senate more than the testimony of the humblest man in Brown county. So far as those two men tell the truth, as a matter of course, one man's oath is no better than the other's, but it struck me as being peculiar, that he should inveigh and warn this Senate against any prejudice of that kind, when it is notorious that the list of witnesses produced here by the respondent, bristles all over with "colonels" and "captains" and self-dubbed "judges," and all of that kind of paraphernalia. There is "Col." McPhail, and there is "Col." Baasan, and there is "Judge" Brownell, and there is "Judge" Porter and "Captain" Webster, and I do not know how many corporals and sergeants; but there are all kinds of official titles, seemingly paraded by the respondent for the purpose of convincing this Senate, or of carrying some weight, that their witnesses are witnesses of the highest character. Well, I will not attack the character of the witnesses for the defense. They must stand here on their merits as witnesses, and the Senate will judge of them upon their merits, and not because they have been judges of probate or are self-dubbed judges, or captains, or colonels or what not. They must stand on their own merits. That is what we ask for Judge Severance, the judge of the 6th Judicial District,—that he shall stand on his merits as a man, and we are willing to offset him against these men,—Blanchard, Behnke, Rinke and Fitzgerald,—that excellent quartette.

Gentlemen, I now take up

ARTICLE FOUR,

the matter of Brown vs. the Winona & St. Peter Railroad Company—a case that had been tried before Judge Cox at a general term of court held at New Ulm, and a verdict of $6,000 had been rendered by the jury against the Winona & St. Peter Railroad Co., and in favor of one Brown. Judge Wilson was the attorney for the Winona & St. Peter Railroad Company, and Mr. Thompson was the attorney of record for the plaintiff, Mr.

Brown. After that case was tried, there was a desire to make a motion for a new trial. Previous to any motion being made for a new trial, there must be a basis for it, there must be a foundation laid. That, under our practice, is what is technically termed a "case," containing the pleadings in the action, the evidence given before the court, the charge of the court, the exceptions taken by counsel, and such other matters as may appear to be pertinent to a proper presentation of that matter to the Supreme Court of the State if it should become necessary. This "case" had been made and served by Mr. Wilson upon the attorney of the plaintiff, Brown—Mr. Thompson. There had been some thirty odd amendments proposed by the attorney, Mr. Thompson, and his associate counsel, Mr. Pierce, to the proposed case by Judge Wilson. It was necessary, before that could be considered as the case upon which the Supreme Court was to pass, that it should be signed and allowed by the trial judge before whom the evidence was taken, in that instance, Judge Cox.

Notice was given by Judge Wilson to the opposite attorney, and Judge Cox was notified that on the fifth day of August, 1879, they would appear before him at his chambers in St. Peter for the purpose of settling that case. They appeared there, Mr. Wilson coming up from Winona, Mr. Pierce from St. Paul, Mr. Thompson from Sleepy Eye, and Mr. Webber from New Ulm.

Mr. Wilson arrives there in the morning, Mr. Thompson and Mr. Webber and Mr. Pierce arrived there in the evening. They meet together for the purpose of settling that case. As a matter of course, if parties can agree upon disputed points, there is no necessity for the operation of the judgment of a Court, but there must be a Court there for the purpose of submitting that matter to; it is a matter which is for the court to determine, and for the court to sign—the Court in the body of the judge of the court. The Judge is found, and proceeds, not to the court-house (as Judge Wilson testifies), because it was thought by him and others knowing the condition he was in, that if they could get his presence in the parlor of the hotel, they would be able to control his actions, at least there would not be so much of a public spectacle. His presence is obtained at the parlor of the hotel, and then it is that they think, if they can get an intimate friend of his, on old political and personal friend—A. J. Lamberton, a merchant of St. Peter—to come and assist them to control the Judge, they would get along very nicely. That arrangement was entered into, and they go on and attempt to settle that case. They settle, probably, a large proportion of it between themselves, because attorneys can agree upon matters between themselves where neither party is gaining advantage, but in the settlement of a case, just as soon as there is an exception or amendment proposed by one party which gives him an advantage over the other party, then there is a breeze, then there is trouble, then there is war between those attorneys; because, a ruling, or an exception, creeping into a case inadvertently, or being allowed in a case inadvertently by the attorney, might in the end be destructive of the rights of his client in the particular matter. They went on with this settlement and tried to agree. They knew the condition of the Judge and they so stated. They desired to avoid, if possible, any reference of that matter, in his then condition, to the Judge.

But they arrive at a point where judicial determination must be had. Mr. Pierce and Mr. Wilson could not agree any longer. Both of them

perhaps somewhat impetuous, both of them somewhat urgent, both of them desirous to make their case as near right as possible and as they understood it, but they arrive at that point where they cannot further agree, and they refer it to his Honor the Judge who sat there, and the Judge would not decide it. They tried in every way to have him decide it, but he would not. Finally, Judge Wilson told Mr. Webber "I will not go further in this matter; you can see the condition that the Judge is in, as well as I." Mr. Webber, Mr. Pierce and Mr. Thompson, all agreed with him as to the condition that the Judge was then in; that he was not in a fit condition; that he was in no condition whatever to exercise that judgment, that discretion, and that learning, which it is necessary to exercise, and which he is sworn he will exercise in all matters that are brought before him. The result was, that they left, in disgust. They were compelled to make another journey over this road, to consumate the business which ought then and there to have been consummated, and which but for the dereliction of the Judge of the Ninth Judicial District would have been then and there consummated. We are not shut up in this case to the evidence of these four men, but we have the evidence ef Mr. Lamberton,—the life-long friend of Judge Cox—the man that has stood by Judge Cox, through thick and thin—the man who has been his right arm, you might say, in that Ninth Judicial District, and in the county of Nicollet,—a man whose friendship has never failed him in every time of trial and in every time of need; but the time has finally come when the action of this Judge has actually alienated the friendship of A. J. Lamberton to that extent that Lamberton is willing to come down here and testify to that transaction in all its naked and wicked deformity. He is not an interested party. He is not "a candidate for the Judge's shoes." He is not ambitious of wearing that "Judicial hat." He has no particular axes to grind. Yes, he has too, why, certainly ! he has got something to do with Winona and St. Peter lands. Mr. Lamberton testifies that they do not belong to the Winona & St. Peter Railroad Co.; that they belong to a man by the name of Barney. But it is enough to lug in here as a make-weight against Mr. Lamberton's evidence, that some man by the name of Barney, some day or other, built some road for the Winona & St. Peter Railroad Co., and because they hadn't any money to pay him, that he took some lands; and because he has those lands and is trying to sell them to get his money out of them and Jack Lamberton is doing what perhaps he ought not to do, telling folks that they are good lands when they are not, something of that kind, that therefore his evidence is discredited.

Senator CAMPBELL. He has nothing to do with the lands of Mr. Barney; it is his brother.

Mr. Manager DUNN. I believe it *was* his brother,—his brother was the agent. Well, that is near enough. That is the position in this case; if he can get his *brother* mixed up in this some way, it ought to discredit his testimony. A man ought not to be believed if he has a brother that has anything to do with the Winona & St. Peter Railroad Company!

But they go further, and they ask if Mr. Lamberton hasn't helped Judge Wilson to select a jury, when a case in which the railroad company was interested, has been on trial. He said certainly he had. These things are brought in here for the purpose of endeavoring to belittle his testimony, to make you believe that he has sworn to that which is not so. Well, the same old theory is carried out in this instance also.

There is no evidence, mind you, produced against him. But Judg Wilson is not to be believed. Why, Judge Wilson is a man who is th attorney for that great "anaconda" that the senior counsel so vividl portrayed here which is encircling and enwraping in its venomous coil the whole commonwealth of Minnesota,—yea the whole Union,—th railroad system.

Judge Wilson is the attorney for the Winona & St. Peter Railroa Company—that corporation that is so largely interested, in the estimatio of the respondent, in having him removed from this high office, becaus of some evil that he may do them. Now Judge Wilson hardly need at my hands any justification; he hardly needs that I should say a wor in answer to any insinuations of that kind, made by the counsel for th respondent; but it has gone upon history's page. That argument o counsel is a page of history to-day, and it cannot be left uncontradicted Thomas Wilson is one of the eminent lawyers of the State of Minneso to-day. You all remember the high encomium that the senior counse here paid to those great men that had gone before—gone up to "Heaven high court," that had been the foremost men of the bar in the earl days; of the great credit he gave to those great men. Well, don't let think that all of our great men are dead. There are some men on th earth to-day,—once in awhile a man,—and there are some men tha walk this footstool to-day that have as much learning and as muc knowledge, as much honor, as much virtue,—as much of everything tha goes to make a true and noble man, as a great many men that are dead I have no question about that. And Thomas Wilson is one of thos men. He paid a high compliment to my old friend, (some of us re member him), Judge Sherburne, and another high compliment to ou old—especially *my* old friend—Michael E. Ames, who were the foremos lawyers here. Judge Sherburne, when I came to Minnesota, was upo the territorial supreme bench. Michael E. Ames was a practicing attor ney at the head of the bar so-called. He paid a very high compliment to those gentlemen. He spoke of those gentlemen as gentlemen who ha assisted in building the fundamental law of our land. He spoke of them as men who knew what they were doing and knew that fundamenta law that they were building had no reference to a certain section of th statute. My friend, the Major, (Manager Gould,) last night didn't com ment upon that; if he did I didn't catch it.

A certain section of the statute which they claim was in force in 185 that section of the statute which provides that every misbehavior i office is a misdemeanor punishable by fine and imprisonment—tha those great lights that have gone, Sherburne, Ames, (and I looked for him to put in that good old friend of mine, Willis A. Gorman, I looked fo him to put him into the catagory for he was as great a lawyer as either of the two named, and as good a lawyer, but he left him out, perhaps unwittingly, couldn't get them all in) tha these great men would never have concluded that tha section of the statute could have anything to do with the constitu tion. I want to call the attention of the Senate to the fact that Thoma Wilson, the witness that was here before this court of Judge Cox, wa also one of these great constitutional builders. He helped to lay th foundation of our commonwealth He helped to build that fundamen tal law under which we enjoy so many liberties in this State of Minne sota, and he was a member of the last House of Representatives, and a

has appeared in testimony, he was a member of the judiciary committee; and as the counsel has remarked here, was the man that "bulldozed" that judiciary committee; he was the man as the counsel brought out here in evidence that did make a speech in the House of Representatives whereby he expressed his dissent to the striking out of certain articles that certain other members of the House desired to have stricken out. Well, he being a member of that constitutional convention, and a member of this judiciary committee, and a member of the House of Representatives, and a man who voted that Judge Cox was liable to impeachment by this Senate, and ought to be impeached because he had committed acts in contravention of his duties as a judge, bringing himself immediately within the purview of that statutory provision, which they claim was invoked to help out "the lion's skin," —I say he having all those attributes is certainly entitled to just as much weight and consideration as some of these wonderful lights of the past ages that have gone on before.

But Judge Wilson is very cautious in his evidonce in this case. He gives no evidence of an uncertain sound, it is true. He calls things by their right names. He is not one of those kind of men that is afraid to say that a man is drunk if he believes him to be drunk. He does not gloss it over with "under the influence," at all, or "slightly intoxicated;" not at all. If he thinks a man is drunk he has that stern stuff in him that is not afraid to *say* that he is *drunk;* and he *does* say that he was drunk; he says he was *terribly* drunk upon that occasion. No mincing of words there; and that they could not proceed upon that occasion because he was drunk. Jack Lamberton comes into court and he says that he went into that court and found Judge Cox sitting at the head of the table and the lawyers around him, and that Judge Cox was talking foolish and jabbering away like a parrot. That is Jack Lamberton's evidence. "Jabbering away like a parrot," and Jack Lamberton told him "if you would shut up your mouth we would get along with this business." Now, what do you think of such conduct, Senators, in a judge? Is that one of the cases that has "largely failed" in proof, I ask? Is that one of the cases in which the State has largely failed in its proof? No evidence to contradict it. They say this is a case where they were cornered. We got every man there was present. Why they couldn't bring any evidence against that case. There was no one there but Wilson and Pierce, and Thompson, and Webber, and Lamberton. We got them all. They were obliged to submit to whatever those men say.

Gentlemen, when you come to vote upon that article, each one of you, recollect that we did not get them all. There were six men present and we got five of them. *The sixth man was E. St. Julien Cox.* Why has not the sixth man been brought upon the stand in his own behalf to explain to this Senate? Why are they allowed to come in here and plead in defense of this article that Wilson is the paid attorney of a corporation; that Pierce is a swift witness that has some designs against Judge Cox; that Thompson,—well, they don't say much about Thompson,—but that Webber is a man who desires to succeed to the Judgship; and that Lamberton is the brother of the man that has something to do with Barney's lands, that sometime or other belonged to the Winona & St. Peter Railroad Co.? Gentlemen, will you not hold them to the record in that case? Won't you ask yourselves that question when you come to vote upon this article? Why did not the respondent give us the

benefit of his evidence there? Ah! but we are met with another defense there. Why, they say, this was not a proceeding in court; Judge Cox didn't know anything about it, not at all. Why, the senior counsel says, suppose that these parties had gone up into the woods, where Judge Cox was deer-stalking, and had found the Judge sitting on a stump, and they had said to him: "Judge, we have come up here to settle a case and now let us go to work and get to business,"—would that be a court? Well, that would be just about as much a court as this was.

Now let us turn to the evidence with reference to that. I will go a great ways, if Judge Cox had no notification, whatever, that this case was going to be tried. I will go a great ways in saying that that possibly might be some excuse, provided he had not actually entered upon the discharge of his duties; but he *had* notice.

Now, on the 4th, 5th and 6th pages of the 11th day, Judge Wilson, in answer to my questions, says:

Q. You may state a little farther, Judge, as to whether the matter was really opened before the Judge, and an attempt made to carry on the business?
A. Yes sir; we proceeded some distance and for some little time.
Q. There was no objection made as to want of notice or anything of that kind?
A. Oh, no sir; there was notice. We had noticed,—I had noticed the case, and in pursuance of my notice, Mr. Pierce of St. Paul, Mr. Thompson from Sleepy Eye, and the attorney from New Ulm, were all there on my notice.

Senator CROOKS. I would ask the counsel, is this the bar-room case at the Nicollet House?

Mr. Manager DUNN: Yes, sir; the settlement of the case of Brown vs. the Winona & St. Peter Railroad Company in the parlor of the Nicollet House. I want to state right here the reason why they went into that parlor—because that is a little important. I said some might think that that would have some bearing upon the case. In my judgment it ought not to have, but I will read this,—not just now however.

Now, upon cross-examination the witness is asked:

Q. Now you are not prepared to swear of your own knowledge that Judge Cox had any notice of this matter coming up before him?

The witness then says:

I cannot say that I know of my own knowledge. The way this thing is invariably done in our office is this; I never give this notice myself: I have a clerk who does. I knew nothing of the matter until I came up here, but our rule of practice is that a notice is given to the opposite attorney, or rather, first, we generally get from the Judge the time that will be convenient, but if the notice is given to the opposite attorney, our invariable rule is to notify the Judge, so as not to get there at a time when he is not at home but still, inasmuch as I did not do it myself——

And then there is a break in his testimony.

Q. You cannot tell whether it was done in this instance or not?
A. No; that is our rule but I cannot say in this case, whether that was given, but I have no doubt in my own mind
Mr. Manager DUNN. You mean you did not give it personally?
A. I did not give it personally; it was given in our office and that was the invariable rule.

Mr. ARCTANDER. If that was an order to show cause why it should be settled, and was given by the Judge, the order would be on file in the clerk's office?

A. Undoubtedly that should be the rule and I know of no reason why it should not be so.

Q. When you came up there and met Judge Cox first, do you remember of having any conversation, in which he stated to you that he had just returned from a hunting trip?

A. I don't remember that. I won't say anything about it for I don t remember any such conversation.

Q. Do you remember that Judge Cox first refused to go on with the matter at that time?

A. No; Judge Cox was ready to go on when we left.

Q. When what?

A. When we adjourned and separated. It was not on account of the Judge s wishes that we did so.

Now, see how fair Judge Wilson is in his testimony. He testifies as to the condition of the Judge upon the trial of this case. He says: "I have no reason to doubt that Judge Cox was sober all through the trial (page 9) and I have no doubt he was; I saw nothing to make me think to the contrary."

Now, that is the Judge's evidence as to the condition of Judge Cox at the time the *trial* was had, but that was some months before this settlement of this case in the Nicollet House parlor. (Reading.)

Q. During the proceedings how did Judge Cox act when you went on with him?

A. Well, now I can't tell what he said, or what he didn't say; I simply can tel, you that he acted as if he was terribly drunk.

Q. Was he sleepy?

A. He sometimes was not sleepy enough; he said too much.

Q. That was rather the trouble than his being sleepy?

A Now, Mr. Arctander, I can't tell; I know that I felt terribly disgusted, and all of us did; and we went home mortified; that is the fact. He was terribly drunk; there was no doubt about that: and he got worse after he started. We thought he might get better, and if he did we could worry along, but instead of that he got worse.

Does the Senate believe that evidence is true? That is Judge Wilson's testimony as to the notice.

Now, take Mr. Webber's testimony on the 11th day, page 29, and you will find that he saw Judge Cox and *told* him about that very matter. It seems that the Judge came down that very morning, and Mr. Webber testifies that he arrived in St. Peter about 8 o'clock but he could not say definitely.

Q. In the morning?

A. In the morning, on the morning train.

Q. What condition did you find the Judge in?

A. I thought he was intoxicated.

Q. Did you attempt to settle the case? Did you appear before him with the other attorneys to settle the case?

A. Yes, sir.

Q. Did you have any conversation with the Judge on the matter before you went into court?

A. I don't recollect that I did.

He testified in another place, (page 34) in answer to this question:

Q. It was a regular proceeding of the district court?
A. Yes, in a sense.
Q. Of which the Judge had had notice, had he?
A. I had spoken to the Judge about it. As I said, I wasn't the attorney of record, and this matter in regard to time had been arranged for him and not for me.
Q. At what time had you spoken to the Judge about it?
A. A few days before, but I don't remember just what time.

Now, Senators that is making what any attorney would call a *prima facie* case, that the Judge had notice. There is no direct evidence, I say of any person who actually served any notice upon the Judge that day. There is no evidence from personal knowledge that the Judge got notice except the evidence of Mr. Webber, who testifies that he *told* the Judge that the matter was to be settled at that time.

But the Senate will recollect that the counsel stated in his argument that we had given them notice to produce a certain letter, and that they produced it to the managers; and that when we got it we found it was marked by the Judge as having been received on the 5th day of August. (this day), and that therefore we refused to put that letter in evidence in this case. Now any attorney within the sound of my voice will bear me out in this proposition that if we make a prima facie case of notice,—and when you find the Judge there, that is sufficient to make the prima facie case, if the Judge is there, acting as Judge, or *trying* to act as Judge, the law will presume that he is there by virtue, at least, of some notice from the parties; or, if not, that he has waived any defense of that kind. But we prove him there acting, and we prove by Judge Wilson that he had notice, so far as he knew,—it being the invariable rule of his office; we prove by Mr. Webber that he had notice because he told him that they were to meet there that day. And we find him there actually at work.

Well, now, they go a great ways on the other side to state things; they make evidence in a long 6-or-7-days' argument. Why, if that argument was culled, and pruned and trimmed, of everything that is not legitimate, it could have been delivered here in about a day and a half, instead of five days. Now the facts are just these. They did produce that letter and it was marked on the bottom in Judge Cox's hieroglyphics "August 5th." "R. August 5th." I had that letter in my possession and I sent to Judge Wilson at Winona and obtained the answer to that letter. That letter from Judge Wilson to Judge Cox is dated on the 24th day of July, from Winona. I have got it right here if anybody wants to see it, dated the 24th day of July from Winona.

Judge Cox answered that by postal card from Sleepy Eye or New Ulm, I am not certain which, on the 26th day of July, acknowledging that he had received Judge Wilson's letter, and though it might be somewhat inconvenient for him, that he would be in attendance on the 5th day of August. That postal card is right there among those papers (exhibiting papers), over Judge Cox's own signature, and I know it well enough to swear to it—I have seen it enough.

Now, we are not called upon to put that in evidence at all. It would be simply rebuttal. We had proven the Judge there, we had proven the business going on, the court in session there, that he had notice according to Judge Wilson's testimony, that he had notice according to Mr. Webber's testimony, and if he denied that he had notice he should

have produced some testimony here. The sixth man should have gone on the stand and cleared up that mystery of notice, and failing to do it he is foreclosed and concluded upon that point. There is no loophole to escape, and that conviction must follow upon that article is as clear as any proposition that can possibly be made clear.

Now, we have another case,

ARTICLE FIVE,

Long's mandamus, so-called. That is another case in which the party here stands — I was going to say convicted upon his own confession, for on this day they admit he was drunk. But they say it was not a court proceeding. There was nothing there which called for the discretion or the judgment, or the learning of a judge; there was nothing for which he could be convicted; that was one of the days that he had a right to get drunk; he had a right to exercise his "manhood" and get drunk on that day; that was his day. What business had that old Long up there from Waseca to interfere with the hilarity of that occasion? What business had a suitor at his court to come in there before his honor and desire that certain proceedings might be certified to in accordance with the mandate of the highest court of our State? What business had he to intrude upon the privacy which the Judge had wrapped himself in, upon that memorable day in August?

Why, gentlemen, do you believe that that is a defense to that accusation as stated in that article? That he had a right to be drunk; that Mr. Long had no business to be there that day? That is no defense. And the next defense is, that what he did was not judicial. Now, what did he do? Let us see what he did do. Judge Cox had failed and refused to certify and allow a case which had been tried in Waseca county between one Albrecht and one Long. There was some dispute between him and the attorneys who tried the case. *They* had agreed; *they* had stipulated that that was a true record of the proceedings had in Judge Cox's court. Upon that record they had made a motion for a new trial and Judge Cox had heard that motion upon that record and had decided the motion. An appeal was desired to be taken from that order refusing or granting a new trial; I don't know which, and it don't make any difference whether it was granted or refused; but an appeal was desired to be taken from that order. But before the Supreme Court would hear the appeal there must be a foundation for the motion. There must be a basis for the motion. There must be something upon which the order granting or refusing should be grounded; some grounds for hearing the motion. And that was the case as settled.

But Judge Cox, said: "That case isn't correct, and I won't take the word of you two gentlemen upon that point." And, by the way one of them was this immaculate Judge Brownell that has been introduced here, this wonderfully nice Judge from Waseca that came up here to help his friend out. He would not take the word of these two gentlemen. He said, "I won't certify to that." Mr. Lewis was compelled to go to the Supreme Court and the case is reported in the Supreme Court reports known as the case of the State versus Cox; it is in the 26th Minnesota. I can give you the page if anybody desires; 26th Minnesota.

That matter was determined in the Supreme Court, and a peremptory writ of mandamus was issued directly to E. St. Julien Cox. Is that all? No; something more. I it had been in no judicial capacity that would have been enough; but it did not stop with E. St. Julien Cox; it was directed to "E. St. Julien Cox, judge of the ninth judicial district, acting in and for the judge of the fifth judicial district." That is a judicial paper, setting forth that they, the Supreme Court, being willing that justice should be done in the premises, after patiently hearing, etc., they do order and direct you, E. St. Julien Cox, judge, etc., that you do certify immediately upon the receipt of this writ of mandamus, to the case of Albrecht vs. Long, and that you do certify it as of the date of the 24th day of May; giving the date; I think I am right in the dates, but I will not stop to look up the record; that is entirely immaterial. But it was to be dated as of a day long prior to that. Now what was he to do? Was he to simply sign a paper? Not at all. He was to sign and certify to the paper when he should have ascertained what that was. Not any paper; he was not merely commanded as they claim to sign his name, as might have been done to a piece of blank paper, and that was the case that had been agreed upon and settled and upon which he had heard the motion for the new trial; that was what he was to sign, and he was to sign it in a certain way, and he was to sign it as of a certain date.

Now, gentlemen, did that call for any discretion? Did that call for any judicial discretion or judgment! Could Mr. Long have appeared up there and presented to him an order vacating and setting aside a judgment in his own court, and tell him, "Here, sign this?" Would he have signed it? No; why not? Why, he would have said "this is not the paper I am called upon to sign; I am called upon to sign a certain paper; bring on that paper and I will sign it." He had to exercise his reasoning powers; he had to exercise what little judgment he had to ascertain whether that was the paper that he was to sign.

Well, Mr. Long comes there and the Judge greets him with, "Hallo, here you are with your writ of God-dammus!" That is the way he greeted him. *Elegant conversation!* An elegant way for the Judge of the District Court to treat a suitor in his court and a dignified manner to speak of the mandate of the highest court of our land! High toned! Dignified, elevating, not calculated to demoralize or debauch; not calculated to bring disgrace on his office; oh, no! That is the way he greeted him, and it is not denied. But he served the writ upon him and the Judge coolly threw it down into the road; he was not signing any papers to-day he said. He threw it down into the road; trampled under foot the mandate of the Supreme Court of this land.

Mr. Long, finally in the extremity to which he was driven, having come there some 40 miles to obtain that signature to that paper was told that if he could get Jack Lamberton to help him he could probably get the signature of E. St. Julien. This is the same Lamberton that Judge Wilson invoked,—the aid and assistance of this same terror; this same evil; this same man that has something to do with the Barney lands, is again invoked,—this bad man (?) Lamberton, because he has got something to do with the Barney lands, and is a brother of Harry Lamberton, of Winona. Bad, bad situation he is in! But he is told, "If you can get Jack Lamberton,"—somebody on the street met him—they know Jack up there at St. Peter; "why you needn't think you can do

anything with him, he won't sign anything; he is drunker than a lord to day; you can't do anything with him; he may be drunk for a week; but if you go and get Jack Lamberton, if anybody can do anything for you he can." So he hunts up Jack Lamberton and he asks him if "he won't please come and assist him and aid him in obtaining the signature of the honorable Judge of the 9th judicial district to the paper which the Supreme Court of this State have commanded him to sign." Oh, what a humiliating spectacle!

Well, he gets Jack and enlists him into his service, and Jack goes and gets Cox. He finds him in a saloon. He knew the place to find him; that is the natural place to find him, that is his place of resort, the place where he takes the most comfort and resides, it seems, at that time at least. He gets Cox and gets him up to his store and they have considerable words there about it. And the Judge refuses to sign it. Lamberton says he told him: "You must sign it;" after he had read the mandate of the supreme court, and looked the thing over. "Well," the Judge said, "Jack, if you say it is all right I will sign it." "Well," said he, "it is all right." And so he signed it. Who was the judge, Jack Lamberton or E. St. Julien Cox, at this time? "Jack, if you say it is all right I will sign it. "Oh, yes; I will put faith and credit in you Jack Lamberton; you are my friend and you would not get me to sign a wrong paper. It is true you are not an attorney of record here; it is true you have got nothing to say about this matter: but you can be my master for the time; I will take your word, if *you* say it is all right, Jack, I will sign it." Well, Jack knew it was right and he knew that the Judge would get into difficulty if he didn't sign it; and so the Judge signed it.

We introduced the paper here to show its condition of drunkenness. The signature was drunk, and the title that is written under it is not in Judge Cox's handwriting. Jack says he thinks the Judge told him to write it. Very likely he did. He has never, perhaps, except upon two or three occasions lost the power of articulation and lost entirely his senses. But certainly, his brain has been shown in this instance, to be terribly muddled. He could not read it to find out whether it was right; but he asked Jack if it was all right and Jack told him it was and he signed it.

Now, gentlemen, is not that article one that the State has certainly proven? Was it not a judicial act or an act of the Judge in his official capacity? If it was; if that act was done by Judge Cox in his judicial capacity, then he was acting in the disposition of certain matters and things then and therein pending before him as such judge, as this article of impeachment charges. Was not that pending before him? Was it not a matter that required his learning and his skill and his ability? Was it not a matter that required all of the functions of a judge? Every one were necessarily called into play there in the mere fact of ascertaining whether that was the correct paper for him to sign and whether the mandate of the Supreme Court was in that form that he ought to obey it. He had two judicial acts to perform there. He had to perform the act of ascertaining whether that mandate was in correct form, and he had also to perform the judicial act of determining in his own mind, for that is all there is to judicial acts, the act of determining—he had to perform that act to determine whether that was the proper paper for him to sign. There is no evidence against this, gentlemen. I don't ask them

why they don't bring Judge Cox on this charge. I will not put that question to this respondent here at this time; why don't you bring Judge Cox upon that charge, because the counsel admits in his argument that the Judge was drunk; it is admitted all the way through. But they seek to avoid it,—to avoid its keen stinging thrust,—to avoid certain conviction that must follow by these petty technicalities, that it was not a court; not a judicial act.

The next article, gentlemen, is

ARTICLE SEVEN

known as the Dingler case. That is an article that I am very frank to say before this Senate is not very strongly proved in my judgment. And yet I say that there is enough in the proof to warrant any Senator in voting guilty upon, to justify any Senator in voting guilty. And that there is enough in the proof given under that article so that if a Senator votes not guilty he cannot be upbraided by his conscience. I state that openly. Now is there enough there to warrant a Senator in voting guilty? Let us see.

We have produced under that article Mr. Lind, Mr. Webber and Mr. Ladd. Here is where the grand picture came in; that picture of the crowns; those old Norse kings up there upon the west coast of Norway that had cast their crowns before them, and they were racing after them like madmen, as it were, with the wind blowing their coats up over their heads. Our special artist portrayed it here in pretty good shape. I don't know as I could do as well as he did. But that was about the picture that our learned friend drew here before you. He seemed to want to draw the conclusion that Judge Cox's judicial hat was in the distance and that he himself was not running after it but that Ladd and Webber and Lind were running after it. He has all these three men grouped, as running after that judicial hat. Well, I don't wonder that that kind of argument produced some merriment in this Senate. I don't wonder that it produced considerable levity, and I don't wonder that it was seized upon by our friend here who is so clever at caricatures, for there is no place in this whole evidence where either Mr. Webber, Mr. Ladd, Mr. Lind or Mr. Wallin, have been or are chargeable with any bias in their testimony by reason of any desire to obtain Judge Cox's place.

Mr. Lind, it seems, had a case pending in Judge Cox's court, in December, 1879, wherein the county commissioners had laid out a road through certain territory claimed to be owned by one Dingler. From the determination of the board of county commissioners, upon the question of damages, or some other question, Dingler had seen fit to appeal to the district court. It came on for trial one afternoon. A jury was empanneled and the trial was about to be proceeded with when Mr. Lind made a motion to reverse the order of the commissioners by which the road was laid out *in toto*, because a piece of the road ran through a village which had been incorporated some years before, over which the county commissioners had no jurisdiction to lay roads; that was the question before the court. Well, now that is not, perhaps, a question that might be determined in a moment; it is a question that might require testimony—some consideration. No one would blame Judge Cox for taking thought, for holding a matter of that kind under advisement

until he should be satisfied in his own mind as to what should be done; but Mr. Lind testifies that he was upon that evening, in his judgment, under the influence of liquor; and that he made certain queer orders that night in that behalf; that he made an order that that portion of the road running through Redstone should be vacated and the balance of the road should stand. Mr. Lind testified that that struck him as being a very strange order to make. He says that he argued to the court that the order was an entirety, it could not be severed; that the order must be reversed in whole or sustained in the whole, and could not be reversed in part and sustained in part. It must be either reversed or sustained. Well, that is a question; there is no doubt about that, as to whether or not the county commissioners had jurisdiction, but it was because of the order that the Judge made that night and of his actions and demeanor that Mr. Lind said that he was intoxicated.

Now I am very free to confess, and very free to say, that the mere fact that that order was made or was not made that night, would not necessarily carry conviction to my mind that Judge Cox was intoxicated. Not at all. That might be explained. It might very possibly be that he was in doubt, (for he is not one of the very great lawyers of the land if he is a Judge.) He might very possibly have been in doubt as to what his true course was; but these witnesses testify that there were certain actions of the Judge—Mr. Ladd testifices to it and Mr. Webber and Mr. Lind—that there were actions of the Judge—indications—they cannot explain them. You might as well try to explain, in words, a dying groan, as to explain in words the drunken action of the Judge or any other person, unless as I have stated before in this argument, there is something absolutely grotesque or absurd. The mere fact that a man is intoxicated, may or may not be discernable by the average man. But Mr. Lind was interested in getting at the true merits of that case and in controlling the mind of the Judge; he testifies that he was intoxicated. It is true that Mr. Davis, the attorney on the other side, testifies to the contrary. But Mr. Davis is not a very clear witness upon that point. Mr. Davis says that he thought that he was *comparatively* sober. He slipped out the word "comparatively," in some way. And when questioned a little further about that, I think by one of the Senators, I think the Senator from Fillmore, west, asked him what he meant by comparatively sober, he took it all back and said that he guessed he used that word a little injudiciously. That was Mr. Davis' testimony. It is not a very pleasant position to be in to have to take his words back so soon after having given them utterance. Mr. Hatcher testifies he was perfectly sober; but Mr. Hatcher is very unfortunate in this, that he was not there all the time, and he testifies that he knows he was sober that night because he went home with Judge Cox; and that Judge Cox talked with him on the way home and stated that Dingler was a fool for undertaking to reverse that order when he might have had a road, and could have himself paid for his damages besides.

Mr. Myers, a juryman, testifies that he was sober. Mr. Harff testifies he was a juryman and also went home alone with the Judge. There is a little peculiarity there but there is no reason for me to say that either of those two men lied. They are simply mistaken about it. One or the other may have gone home with the Judge but it was rather amusing to see the avidity with which the counsel for the respondent caught on to that little bit of testimony. Before the witness could be allowed

to leave the stand it had to be hammered in again. Well, now there are two men directly opposed. One swears that he went home with him and went home with him alone. The other also swears that he went home with the Judge at same time and alone; one of them is mistaken. It is a long time ago. Don't lay the charge of purjery or wilful lying at the feet of either of those two men; they are mistaken, that is all.

Senator Gilfillan, C. D., here took the chair to act as President, *pro tem.*

Mr. Ware testifies he was sober; Mr. Lehr testifies he was sober; Mr. Koelfgen testifies he is sober.

Now, gentlemen, I would like to call your attention to the order in that case and I will not be but a moment; to show that Mr. Lind's evidence must be correct upon that point about those two orders. On page 453 is that order. Mr. Collins read it here but I am going to make bold to read it again. It won't take but a moment. Now, Mr. Lind testifies that the Judge made an order that night that the road should be reversed so far as the town of Redstone was concerned and sustained as to the balance. And in the morning he came into court and reversed the order of the night before and that at the same time he made an order reversing the order for the road in its entirety. The motion was on the night before. "Appellants here moved the court to reverse entirely the order." Now they don't make a motion to reverse in part:

The appellant here moved the court to reverse *entirely* the order and decision made herein by the commissioners 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."

Motion argued by the respective counsel. *Motion taken under advisement.*

There is where they made a great point. Mr. Lind says the Judge made that order that night. My theory is just this: He did probably make the order and I think the order itself shows he made it as stated by Lind; but the order, perhaps, was never entered upon the book. Everybody knows just the way orders are made in court. The court says: "Mr. Clerk, enter an order so and so." The clerk has a lot of foolscap paper upon which he enters his minutes and the next day the minutes are recorded and made a record; permanently. Now, that was probably the order he entered that night that Mr. Lind speaks about. They don't appear upon the book except in this way, and I think I am right from the very language of this order; that Mr. Lind is certainly correct about that transaction.

Now, in the morning, the order of the court is that "the appellant's motion in this action is sustained." Now, what was the appellant's motion? The motion was that the order should be reversed, "and that the order of the county commissioners in laying out the road as far as it relates to the south half of section 35 is concerned be reversed." Now, that was the village of Redstone. Mr. Lind testifies that the order was made that night, reversing the order as to that part; which would necessarily leave the other part in full blast. Now came in a further 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 of this road is reversed for the reason that the county commissioners had no jurisdiction of laying out said road."

Now is not the theory of Mr. Lind thoroughly borne out by that order,—by the very words of it? What was the necessity of any further order? None at all. These witnesses for the defense that I have spoken of, with the exception of Mr. Davis, are of the class of witnesses that had no real opportunity to judge of the condition of the Judge's mind that night; Mr. Lind, Mr. Davis, Mr. Ladd and Mr. Webber were present; the only parties that were competent to judge of the condition of the Judge's mind upon that night when that motion was heard; because Mr. Lind was interested in getting the control of his mind. Mr. Davis was, likewise. Mr. Webber and Mr. Ladd knowing the Judge's peculiarities and knowing the Judge's aptitude perhaps to be in his cups at certain hours, they noticed particularly the condition of the Judge and they don't hesitate to say that in their judgment he was intoxicated. It rests largely in opinion, and resting in opinion, gentlemen, it is for you to determine which set of witnesses ought to be believed.

I will not contend, as I said before that a verdict of conviction must necessarily follow on this article. But I do say that any Senator voting guilty upon that article can justify himself to his conscience and to his oath, under this evidence. And I say that any Senator voting not guilty upon that article can likewise justify himself. I intend to treat these articles fairly as they come up before me; to treat them just as I would like them to be treated if I were in the place of the respondent in this case.

Senator CAMPBELL. If the speaker desires a recess I am willing to take a five minutes recess if the Senate will indulge him.

The PRESIDENT *pro tem.* That will be taken as the sense of the Senate unless objection is made; the court will take a recess for five minutes.

Mr. Manager DUNN. (Resuming.) The next article gentlemen, which invites our attention is

ARTICLE EIGHT,

known as the trial of the Kelly case, at a general term in New Ulm. That is another article that stands in my judgment about in the same condition as to proof as article seven; it is one of those articles upon which as I said with reference to article seven, Senators can justify themselves to vote guilty or not guilty. To my mind, viewing it as I do, taking into consideration the opportunity of the men who were present and the opportunities they had to discover the condition of the mind of the Judge I should have no hesitancy in claiming and do have no hesitation in claiming that this case is clearly proven. I believe there is no claim in that case, that the Judge was intoxicated up to a certain period in the trial of that case. Mr. Webber testifies upon the 41st page of the 11th day, in relation to that case, that he was present at the time of the trial of the McCormick-Kelly case, in May, 1880. "Mr. Lind was the attorney upon the part of the plaintiff, myself upon the part of the defendant. The case lasted a part of two days." "Was he intoxicated

both days or only one day? "He was intoxicated, I think, on both days but not as much the first day as the second day."

That is his testimony. It is very short and the cross-examination occupied some little time, but it revealed nothing that was new; nothing that would be necessary for me to review. It was simply an endeavor to obtain some statement or some opinion by Mr. Webber, or some peculiarity in the action of the Judge; and Mr. Webber invariably says that he cannot describe the actions of a drunken man. They are indescribable. It is something you carry in your eye and something that you see but you cannot come upon the stand and describe it. He bases the fact that he thinks the Judge was intoxicated also upon certain conflicts in the charge that was made. That "the Judge didn't seem to have a clear understanding of the case; that he seemed to be consused in his mind and confused in his understanding of the case in instructing the jury."

Mr. Lind's testimony on page 38 of the fifteenth day is about to the same effect. He testified that he was intoxicated at that term of court and particularly in the case of McCormick against Kelly. The condition of Judge Cox during that case was that he was intoxicated in the latter part of the case. Upon the witness being turned over to the counsel for the defense, Mr. Arctander made the statement that he had no desire to cross-examine him upon that head. Now, they bring upon the stand to contradict those two attorneys who were engaged in the trial of that case, Mr. Rinke, a merchant of Sleepy Eye. He said that he heard the charge and that the Judge was sober. But he fails to remember that he heard anything else than the charge; he cannot give a word of the charge, cannot tell anything about anything else that occurred there in the court room, and cannot tell exactly when the charge was delivered. Mr. Baasen, a lawyer of New Ulm, was interested in that case to some extent. The case had been tried before him as a justice of the peace. A verdict had been given and the case had been appealed by the plaintiff, McCormick, I think it was, to the district court. And he was interested. He said he therefore stood by to see what would be the rulings of the court above on the case that he had decided. But still Mr. Baasen testifies to one significant feature, and that is that he don't remember that he heard the charge of the Judge. Now the charge of the Judge is the very thing that a man would want to hear if he wanted to know what kind of rulings would be made, in the case that had been appealed from his court, wherein it was claimed that he had erred, that he had held the law so and so as a justice of the peace, and the case being appealed the charge of the court to the jury is where the court lays down the law; it was where he would want to know whether he was sustained or not. But he did not hear that. So that my theory, gentlemen, of that is, that Mr. Baasen was actuated by the same curiosity that actuates other men that go into a court of justice to hear what is going on. He says he heard the lawyers talk, but how the Judge ruled upon a single point he don't know and he don't tell you, and he don't pretend to tell you; he makes no effort to tell you how the Judge ruled.

Mr. Wm. Kelly, a witness, gives the Judge a good character on that occasion. He thinks the Judge was sober. Mr. J. J. Kelly, the party defendant, say he thinks the Judge was sober. Now, this was a case, gentlemen, of opportunity and nothing else. The opportunities that these men had, all these "lookers-on in Venice" there have thus the

same opportunity to judge of the workings and condition of the mind of the court as these lawyers who were endeavoring at all times to see that that mind worked steadily along upon its proper level—was not biased one side or the other; that the ideas were not confused. Which class of witnesses then are entitled to credit here at your hands? That is the question for you to decide. I have stated in that connection all that I can state with this exception, that there is a little evidence in the Supreme Court of our State as to that case. That case was appealed to the Supreme Court, and the judgment that was rendered there was reversed, reversed by reason of error of the court in the charge to the jury. That is where the difficulty occurred according to the evidence of Mr. Webber and Mr. Lind; that the Judge was intoxicated when he charged the jury. The case is reported in the 9th Northwestern Reporter, page 675.

Dickinson, Justice, says:

> The court further instructed the jury in the following language:
> A vendor may warrant against a defect that is patent and obvious. * * * You sell me a horse, and you warrant that horse to have four legs, and he has only three. I will take your word for it.

Then other charges were given inconsistent with that. Now the court says:

> In fact, that the instructions to the jury were thus inconsistent, and calculated to mislead or confuse rather than inform and guide the jury is, in itself, a sufficient reason why the verdict should not stand.

Now, that would seem to bear out the testimony of Mr. Webber and Mr. Lind to a very large extent. That is the record of our own Supreme Court. The fact that they have testified, that in that charge Judge Cox was not in his normal condition; that he was under the influence of intoxicants to such an extent that he was confused in the charge that he gave to that jury and the highest court of our land, five of the Judges concur in saying that the charge of the court to the jury upon that night in that case was misleading and "calculated to mislead or confuse rather than inform and guide the jury."

Now, it strikes me that that is pretty good evidence as to the condition of the Judge that night taken in connection with the evidence of Mr. Webber and Mr. Lind. Not that a man might not in his sober moments,—understand me I don't draw the conclusion from the fact that Judge Cox may have erred in charging the jury, that he was intoxicated—I don't want this Senate to draw the conclusion that for that reason, of necessity he must be intoxicated,—but, I say taking that in connection with the testimony of those two men who knew him well,—these men that had been with him term after term; had seen him intoxicated and seen him sober, taken in connection with their testimony, it presents a very strong case for your consideration. Those were some of the reasons that Mr. Webber and Mr. Lind gave for thinking he was intoxicated; because he was confused; that he could not understand the requests that he was asked to give. And the Supreme Court say that those instructions were inconsistent with each other, just as Mr. Webber testifies; and that they were calculated to confuse and to mislead rather than to instruct and guide.

Now, in order to parry the effect of the evidence of Mr. Webber and Mr. Lind, the counsel asked them if they made certain allusions in their briefs—if Mr. Webber made any allusion in his brief, to the condition of the Judge: and he says he did not. And they desire to draw the inference from that that because he failed to make any allusion to the condition of the Judge in his brief to the Supreme Court, that therefore his statement was false. Now, what lawyer is there that would do a thing of that kind? What lawyer is there that would do so voluntarily? Even to save a client a hundred dollars? Why, he would find himself entangled in the meshes of a large and commodious law-suit. He might find himself entangled in the meshes of some jail by reason of having committed a contempt—a contempt of the court in which he practiced. You can draw no inference from that.

Mr. ARCTANDER. Will you allow me to call your attention to the fact that it was not whether they called his attention to the Judge's condition but the contradictoriness of the charges.

Mr. Manager DUNN. My idea is that the condition of the Judge was also called to his attention. That was the impression that I got at the time. Perhaps I am wrong about that. I don't want to misstate any testimony here. There is enough of it that is crushing in its effect without giving in anything that is not testimony. I don't want any of it; I don't propose to.

Now, gentlemen, I will not use any further time over this case; I am not going to ask you to waste any time over it, particularly in hearing this argument. But this case of McCormick against Kelly is supported, as I said before, by the evidence of Mr. Webber and Mr. Lind. They are contradicted, it is true, by these other witnesses. That is not what would be called a gross case of intoxication, notwithstanding there is no question in my mind but what the Judge's condition at that time forced the defendants in that action to the Supreme Court. There is no question but what this evidence satisfies you that the Judge's condition at that time forced the defendants to carry their case to the Supreme Court at a large expense.

Senator POWERS Does not the defendant in the case testify that he was perfectly sober at the time?

Mr. Manager DUNN. Yes, sir; Mr. Kelly testified so.

Senator POWERS. He testified he was perfectly sober?

Mr. Manager DUNN. Oh, yes; all these witnesses testified he was sober; they all with singular unanimity testify that he was sober; but the question is which one had the best opportunity to judge whether he was sober or not, the lawyer or the client? What do the clients know about a charge? What had the client to know as to what ought to be charged by a judge? What had the client to know as to whether it was good law or bad law, or whether his charges were inconsistent or anything of the kind? All that the client could see was that he was a talking man—that he talked, that is all he could see.

Is it possible that a man that merely sits and looks on, without having his attention called to the fact, of the condition of a person who is *claimed* to be intoxicated can tell as well as one who is engaged in some transaction with the individual that calls for an operation of the mind? Let me try and illustrate this. I go into the bank with a roll of bills; my frined from Fillmore, west, goes in with me—I lay down a roll of bills and ask the teller to count that money. There are bills of 5's, 10's,

50's and a hundred dollars in that roll. The teller proceeds to count them. My friend from Fillmore don't know what denomination the bills are. He don't know the amount of them, he simply stands there talking with me perhaps, I am watching that teller, that is my business. That is my money. I see him count 5's for 10's, 5's for 50's, and 10's for 100's; and make up an aggregate that is entirely defective, I say: "Count that money again, Sir. You have made a mistake." He goes on again and counts it. Commits the same kind of errors only not the same exact errors. Is there anything in the looks of the man that betrays any want of sense of what he is doing? No. He stands there like a man counting money; he stands there going through a performance of counting money. What is there at work? His hands? They work well. What is in fault? It is the mind that is in trouble there. We go out into the street; I ask my friend, the Senator, did you notice anything the matter with that teller? "Oh, no, no; he was all right. I didn't notice anything the matter with him. He was in good form and good shape." "Are you sure of it?" "Why, certainly, didn't I stand and look at him when you was in there? Didn't I see him count your money? And go back and give you credit for it? Didn't I see him go through all those performances?" "Yes, but there was something the matter with him; his mind was at fault." He did not have the full control of those faculties which are called forth by the exercise of the mind. How did I know it? Because I was dealing with the mental qualities of the man. I was not dealing with the physical man. Who is the best judge of the condition of that man, my friend or myself? Who is the best judge; who would you believe upon the witness stand? Not that either of us would lie, but given that class of opportunity, which would you believe, a man that was engaged in obtaining the exercise and the control of the mental qualities of that mind, or the man who simply looked on and saw that the physical condition of the man appeared all right?

Now, alcohol does that very thing; befogs the intellect, beclouds and mystifies the mind. Here were these lawyers. They were taking charge of their clients' interests. Mr. Webber was Mr. Kelly's attorney; he was taking charge of his clien's interest. He knew when the judge was charging the jury that there was something wrong with that keen intellect that Judge Cox carries when he is sober. He knew that that intellect was muddled, and troubled in some way. And he knew that he had had something; that there was something the matter with him at least. He attributed it to intoxication. Mr. Lind was of the same opinion. As against the testimony of these lawyers are you to take Mr. Kelly's word, that sat at the table and looked at the man's physical appearance and says that he seemed to be doing what a judge ought to do? He was no more capable of determining what his mind was doing, than would be a babe unborn. Where is the opportunity; who had the best opportunity? If you would believe the man that was engaged in using the faculties of the mind of the man who was counting his money as against the man that stood by and saw him count it, you ought certainly to believe the persons who were interested in the operation of the Judge's mind, as against those who simply stood by and saw the machinery of the court run. It is not necessary that a court should be drunk in his looks. It is not necessary that a judge give evidence of intoxication in his physical form in order that great injustice might be done to some

suitor or some litigant. Injustice was done in this case. Mr. Kelly had a verdict there, that he ought to have had perhaps. But at least it was obtained at a great cost to Mr. Kelly, caused by the case being appealed to the Supreme Court and reversing that judgment on account of the clouded condition of the brain of the Judge; somebody had to pay the bill.

The next article we will consider gentlemen, is

ARTICLE TEN,

the citizens papers of Lyon county.

The facts, gentlemen, in this case appear to be about as follows: That on the 12th day of May, 1881, a special term of court was ordered to be held by the respondent at the town of Marshall, in Lyon county. And it is in evidence that those special terms of court were publicly proclaimed so that the world in that little district had notice of it. Upon that day appeared in that town some gentlemen who desired to be made citizens of the United States. One Ole Skogan, Charles Marks and William Marks, had been notified by the Judge himself in his order that upon that day they might come there and they would find the court there in session through whose agency they might obtain their citizens papers.

They met there. They expected to find the court; they go to the office of the clerk and they find no Judge. One of them goes after the Judge and finds him. Mr. Skogan brings him into court and he is naturalized. Another one goes after the Judge at another time. Now right here I want to digress and remark that it seems from the evidence here that Ole Skogan went after the Judge and also that Wm. Marks went after the Judge. The counsel for respondent laid a great deal of stress on that fact that both of these men went after the Judge. That is a fact, and if we had not been forbidden to bring the sixth witness on this article we would have shown the fact that they were not naturalized at the same time although upon the same day. We desired to call Charles Patterson, the clerk of the court, upon that charge, but the Senate in its wisdom refused to relax the rule. We had exhausted our five witnesses in proving the charge and that is the reason why that discrepancy appears here; no discrepancy in fact. It was on the same day but not at the same time.

This man Skogan was naturalized first, as I understand it. That is what the clerk says. Well, they appear there in that court with the Judge, Mr. Skogan says, in a state of intoxication. Judge Weymouth is in there with him. He don't testify that any other persons were there. But Judge Weymouth was there. Mr. Skogan don't know who else were there. Afterwards Mr. Marks desires to be naturalized and he goes and finds the Judge; he finds him in the saloon. The Judge is induced by his persuasions to come to the court house. On the way to the court house the Judge of the 9th judicial district asks Mr. Marks if he has got any money, if he has got a quarter and if he has he had better spend it for whisky. And they step into a saloon, the Judge and this embryo citizen of the United States and they take their drink together. And the Judge was then intoxicated; so he says—this witness Marks. They appear there in the court house,—the man is naturalized in some shape probably; as good a citizen as he would have been if he

had been naturalized with all the forms and formalities known to our laws. He is naturalized and during the time of the naturalization the Judge gets into a melee with him and strikes him in the face. Well, this man Marks don't like that kind of treatment very well, and he resents it; and he backs the Judge up in a corner and the Judge tells him he could knock him some distance. I want to read a little of that evidence on the 16th day, pp. 5–6:

The Judge wanted to know if I had a quarter, going up the street.
Q. What did you tell him?
A. I told him I had.
Q. Well, what did he say?
A. Well, he went into the next saloon and spent the quarter.
Q. Whose quarter was it?
A. It was mine.
Q. Who drank?
A. Well, the Judge and myself.
Q. At that time was the Judge intoxicated or was he sober?
A. Well, he was wild.
Q. Well, when you say "wild" what do you mean by that?
A. Well, I think he had some whisky in him.
Q. Well, what was it you drank?
A. We drank brandy, I think.
Q. You went up to the conrt then, did you?
A. Yes, sir.
Q. And who was present in court?
A. The clerk of the court, Mr. Patterson and the Judge and Charles Marks, a brother of mine, was there.
Q. Did you see Mr. Hunter, the deputy sheriff, there at any time?
A. Well, I didn't know Mr. Hunter at that time; there were several men in there.
Q. Did the Judge do anything about it that you remember of?
A. Not what I know of.
Q. Did you have any trouble there with the Judge at that time?
A. Well, the Judge slapped my face.
Q. What did the Judge do that for?
A. I could not tell.
Q. Was the Judge standing up or sitting down when he slapped your face?
A. He was standing up.
Q. Close up to you, was he?
A. Yes.
Q Did he strike you pretty hard?
A. Well, it smarted pretty well for a while.
Q. What did you do then?
A. Well, I took hold of him and asked him if he was going to slap me any more.
Q. What did he say?
A. He said he wouldn't.
Q. Did you take hold of him pretty solid and severely?
A. Well, I took a pretty good hold on him.
Q. Where did you take hold of him?
A. Up towards the collar of his coat.
Q. Did you push him back?
A. I did.
Q. What did you tell him?
A. Well, I asked him was he going te slap me any more and he said he wouldn't; and he said he thought we had better quit that fooling.
Q. That is all you told him, was it?
A. That is all.
Q. Well, did you think it was fooling when he slapped your face?
A. Well, I thought it was pretty rough fooling.
Q. There was nothing to call for any fooling, was there, between the court and you; you hadn't been joking with him, had you?

A. I wasn't talking to him at that time at all.
Q. Well, what was his condition at that time, do you think?
A. Well, about the same as it had been right along.
Q. Then, after that what occurred, anything?
A. Nothing what I remember, the Judge went out and I went on about my business.

Now, that seems, gentlemen, to be the statement of William Marks. Chas. Marks, the other witness, was present and saw the occurance. C. M. Wilcox, a person that is entirely disinterested in that matter, as are all these witnesses,—testifies to the same fact.

This occurrence took place at Mr. Wilcox's store; he testifies that he saw the occurrence and heard the blow. And Mr. Hunter also testifies that he being the deputy sheriff, went up there to see about the crowd, and just as he got there he saw this affray, and he turned his back upon it rather than to witness it.

Gentlemen, we consider that that case, denied only in the incidental way it is, is certainly a very strong case.

Now what are the denials? The denials are that Mr. Weymouth was there. He testified that the Judge was not drunk. All right; Mr. Weymouth is entitled to his opinion. But that would at least only refer to the time when Ole Skogan was naturalized. It could by no possibility refer to the time when the other men were naturalized, because he was not there at that time; and they were here at different times. Mr. Seward and Mr. Matthews and Mr. Andrews testify that the Judge came to their office to ascertain whether they had any business, and that they found that they had not, and therefore the Judge said he would not hold any court.

Now, gentlemen, that may all be true. I am not going to deny that those three men have told the truth about that, that he went to their office at some time that special term was to be held; but I am going to ask this Senate if there is any evidence that the Judge was drunk at the time this naturalization took place. If there is I am certainly going to ask this Senate to convict this respondent upon that article. If there is evidence that he was intoxicated at that time I am going to this Senate with a full and fair expectation that your verdict will be guilty, upon that article, when you shall come to record your votes.

Now, what is the defense other than these witnesses? Why, the defense is this: That this was not a court. It was a mere matter of form; no judicial act, no order needed to be made. But the counsel knows better than that. The counsel ought to be ashamed of himself, for stating here as an attorney upon his honor that in the naturalization of a citizen no order need to be made. Why gentlemen of the Senate, the order that he shall be made a citizen is the very order that has to be made by the court. It can only be made by the order of the court.

Now let us see. You will remember that the counsel for the respondent claimed that it was decided in the MacDonald case that it was a matter that could be done before the clerk. Now, let us see if that is so. Perhaps it is; I do not think it is. (24 Minnesota. page 48.)

Upon the information of Luther M. Brown a writ was issued by the Supreme Court of the State of Minnesota, dated February 20, 1877, and directed to John L. MacDonald, commanding him to appear before said court upon a day named, to show *quo warranto* he held and exercised the office of Judge of the eighth judicial district. The defendant responded by answer to the information and writ, at the time

designated, and the case was thereupon referred for the purpose of taken testimony. It was conceded that the defendant had received a plurality of the votes cast for the office of judge of the said district, at a regular election held November 7, 1876, but it was maintained that the defendant was not eligible to hold said office, because he was an alien by birth, and had neither before nor since the said election declared his intention to become a citizen in accordance with the naturalization laws of the United States. To establish the fact of his naturalization the defendant offered in evidence the following record of naturalization proceedings had in the District Court for Ramsey county:

STATE OF MINNESOTA, DISTRICT COURT, SECOND JUDICIAL DISTRICT, COUNTY OF RAMSEY, OCTOBER TERM, 1876.

In the matter of the application of J. L. MacDonald to become a citizen of the United States, James O'Brien and John C. Devereaux, being severally sworn, do depose and say, each for himself, that he is well acquainted with the above named J. L. MacDonald; that he has resided within the limits and under the jurisdiction of the United States, for five years last past, and for one year last past within the State of Minnesota, and that during the same period he has behaved himself as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same.

After that and after the statement of J. L. MacDonald comes the following order:

And now, to-wit, at a term of said court now being held at St. Paul, in and for the county of Ramsey, in said State, upon the foregoing oaths and affadavits, and upon further proof having been made by the said J. L. MacDonald did, before the clerk of this court, on the 14th day of October, 1876, the same being a court of record, having a common law jurisdiction, make the requisite declaration of intention to become a citizen of the United States, and to renounce all other allegience, as required by the laws of the United States. It is *ordered* by the court, that the said J. L. Mcdonald be, and he is hereby, admitted to be a citizen of the United States.

Now, that was the order, but that order was held to be a good order; but the declaration first made by Judge MacDonald was held to be bad; but a new declaration had been filed and the court said it might be filed *nunc pro tunc*, which was done. Now the court go on here and give the proceedings in the naturalization of an alien.

He shall declare on oath before a circuit or a district court of the United States, or a district or Supreme Court of the territories, or a court of record of any of the States having common law jurisdiction and a seal and clerk, two years at least prior to his admission, that it is *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to the prince, potentate, state or sovereignty of which the alien may be at the time a citizen or subject.

Now the court here say that the record of the naturalization proceedings in this case was upon a proper application and showing, amended *nunc pro tunc* by the district court, so as to correct an error of the clerk, and make the record conform to the truth.

This was entirely competent, as remarked in Berthold vs. Fox, 21 Minn., 51: "The district court, as a Supreme Court with general jurisdiction, has full power, by the common law and by statute, to amend its records by correcting the clerical errors and misprision of its clerk."

Under the common-law the court has power to render final judgment; that is to say, it possessed the neccessary jurisdiction over the subject

matter. It is a judgment that is to be rendered at all times in cases of naturalization. The court has to satisfy itself that the party making application is a proper person to become a citizen of the United States, that he has filed his intention to become a citizen, that a proper period of time has elapsed, and further than that that he is kindly disposed towards the government of the United States and that in the judgment of the court he will make a good citizen.

Now we are told that this is not a court; that no court need to be held in order to naturalize persons. Why, we read only the other day in the papers that Judge Blatchford, of the United States district court, or the United States circuit court, I don't recollect which, in New York city, had refused to allow naturalization papers to issue to a Chinaman upon the ground that he was not kindly disposed towards our institutions. The courts have large discretion in these matters. They may admit or they may not admit persons to citizenship, and there is a judicial determination as to the fitness of every person that applies to become a citizen of the United States, not a mere clerical one, but it is an operation of the judicial mind expressed in the order that the court makes, to-wit: that John Jones be naturalized and become a citizen of the United States.

Now, gentlemen, do you believe that there was no court there? Do you believe it was merely an informal proceeding in which, as the counsel states the Judge had simply to stand there and look wise and put on airs and dignity? Why, if that was his duty he was certainly derelict, for he did not even look wise. He went to fighting with one of the men that wanted to be naturalized. He didn't even look wise, he didn't even have any dignity.

Now that is all the defense the respondent has to that charge. That is all there is to it,—simply his claim that that was not a court, and their other claim that they went around and saw these lawyers, and that they said that there was to be no court that day, and that the Judge was sober. That is all the defense there is to it. You will have to decide then, gentlemen, as to whether these parties who tell us this story about the Judge being intoxicated at the time those naturalization papers were issued tell the truth. If you do decide that they have told the truth, if you do decide that the evidence carries to your mind that degree of conviction which renders it certain in your mind that the fact is true as they allege, why you are shut up to the conclusion that this respondent must be found guilty as charged by the House of Representatives in that article, there is no escape from it, there is no way in which it can be avoided.

The counsel for the respondent states under this charge that the Judge was up there simply to accomodate them. To accomodate whom? Who was Judge Cox there in Marshall for, at that time to accomodate? Who is Judge Cox, that he is to appear in his judicial district at regular term times to accomodate somebody? He is a man that the people *pay* for that labor; he is the man that the people support to do that work; he is the man upon whom they have a right to call for any such purpose. And yet the counsel says, "he was there to accomodate them." That he was up there "to accommodate these Norwegians and Germans." But they say there was no harm done. That those people made just as good citizens.

Very true, they may make just as good citizenship under the law that

was read to you last night, which I undertook to show to be the law in this case, but was there not a disgrace brought there upon the judiciary of our state? Was there not a misbehavior in office upon the part of E. St. Julien Cox at the time when he voluntarily became intoxicated and went there and held that court and naturalized Ole Skogan and Charles Marks and William Marks? What kind of an impression do you suppose that kind of a judiciary had upon these new-fledged citizens of Minnesota? What kind of respect do you think they have for the judiciary? Do you suppose they are going through this world, if they are to be met upon every hand by that kind of a spectacle every time they meet the dignitaries of our land, with any respect for the institutions of the United States, or the State of Minnesota? Are they not going through it with the idea that this is simply a country and state of Hoodlums? Will they have have any respect for the law when its administrators are thus publicly intoxicated? Will they have any respect for the law when its administrators are thus vile in their actions when actually engaged in the discharge of their official duties? It strikes me, gentlemen, that that kind of a spectacle needs rebuke. It needs it at your hands. The State of Minnesota calls for it at your hands, and they will not be satisfied without a rebuke of that kind of a proceeding upon the part of the highest officials of this State. What are we complaining of? "What are we complaining of?" the counsel for the defendant asks. The State of Minnesota is complaining of its judiciary because it has polluted that ermine which it had sworn to keep pure and spotless. The State of Minnesota is complaining of its judiciary because it has brought that stain and disgrace and scandal upon itself. Because it tends to debauch the morals of the country.

That is what we are complaining of. Because, if the Judge misbehave, the jurors will misbehave, the clerks will misbehave, the sheriffs will misbehave, and from the highest to the lowest they will all misbehave, if such conduct is to go unrebuked. Why, the respondent even goes so far as to say that the slapping of Marks was a made-up story! Made up by whom? Does the counsel desire to charge that the managers have gone up there and bought Marks and got him to come down here and swear falsely? "A made-up matter; and a cooked-up affair!" If it was a made-up matter, gentlemen, where is the respondent to deny it? The respondent was there upon this occasion as he was upon the other occasion. He was abundantly able to give his side of that story. Why was it necessary for him to leave his defense upon as grave a charge as this simply to the negative evidence of this man Seward and this man Matthews, and this man Andrews? Why was it necessary that he should commit his great case as it were in this charge to the flimsy evidence of those three men and the remarkable Judge Weymouth? Don't he know that if that charge shall be found true,—don't he know that if this Senate shall by two-thirds of its members conclude that William Marks and Charles Marks and William G. Hunter and Charles Wilcox have told the truth, that that conviction in their mind must work his conviction upon that charge is just as effectual to remove him from the high office which he has disgraced thus far, as upon any other charge against which he has brought a cloud of witnesses? He sees Wilcox with hatred in his eye. Nothing else must do but he must abuse witnesses; and "Wilcox has hatred in his eye;" the story must be made up because Cox "would not have crawled out;" that grand

captain of cavalry, that man who has got the blood of the Huguenots in his veins, (and doubtless he has) never would have surrendered to the assault of that sturdy William Marks; he never would have apologized to that man William Marks if he had ever in good faith let that Wil- Marks feel the strength of his right arm; he is too proud a character to be backed up in a corner by a man of such low degree as William Marks, —"the Dutchman,"—as the counsel called him. He (Marks) is an American citizen. He has shaken off the Dutchman; he shook it off that day right there before a drunken Judge. Perhaps the Judge was trying to shake it off completely and thoroughly when he slapped him in the mouth. "It is a made-up story, and Wilcox has hatred in his eye, and Cox never would have backed out and crawled out if he had really been struck by this man Marks;" why, this man Marks said that after he had struck him he hauled off and said "He could knock him some distance." He didn't give him but just a little fore-taste of what the chivalrous Captain, Judge, etc., might have visited upon the person of that man Marks. It was merely a little foretaste, but he refrained from knocking him any great distance and let him go at that.

Now, what was there about this man Wilcox to show that he has hatred in his eye? He keeps a little drug store up there. This court was held in his store; he understood the whole circumstances; he knew the Judge was drunk Why, it gets to be an old saying in the village of Marshall, that when Judge Cox comes up there to hold court, he goes and gets drunk. They all understand it; if we had been allowed to read a little diary we had here the other day we would have shown a memorandum a man made up there to this effect: "Cox came to court this morning, *drunk as usual*." He knew he was intoxicated, and he told this simple story; he was no swift witness, he had nothing to gain. It is nothing to him whether Cox is impeached or unimpeached. He stands here simply to tell the truth, and he does so. And is he to be maligned here by the respondent's counsel and claimed to be down here for some evil purpose "with hatred in his eye, so that it is manifest here to this Senate?" Will not this Senate rebuke such actions as that? Will they not, by their votes here, rebuke the actions of the counsel who shall traduce and malign witnesses here without cause? I believe they will.

This is one of the charges, gentlemen, upon which I think we have not "largely failed." I think the evidence has largely convinced you that this charge is maintained, and I expect to see my venerable friend from Fillmore west, when he shall rise from his seat and vote upon this charge, acknowledge to this Senate that this is not one of the charges upon which the House of Reprsentatives has "largely failed." I shall expect to see that; if I don't see it, I shall expect to hear it. I have no doubt that his good judgment will bear me out in the statements that I am making now, and that his vote will be recorded in the line that I have indicated. So much for article ten.

We now come to

ARTICLE ELEVEN.

That is the Young vs. Davis case. It is a case, gentlemen, which I will say frankly, (as I have said in other cases), is not entirely free from doubt. I make no strenuous argument to you, gentlemen, that you must of necessity under the obligations of your oaths, find the respond-

ent guilty upon that charge; but it is of the same class as two or three other charges that I have already indicated, in which you can justify your consciences to vote guilty. You can justify your consciences also to vote not guilty.

It seems that there was a motion for a new trial made in a certain action in which one John Peter Young was plaintiff and Charles R. Davis was defendant; that in that motion for a new trial upon one side Sumner Ladd was counsel. The gentleman that the respondent's counsel facetiously calls "the little Ladd;" the man that he has endeavored to traduce and vilify here; the man who is spoken of as being "another candidate" for what the counsel pleases to term "the Judge's shoes." My impression is that the Judge will need all of his shoes himself; that he will have no shoes to spare. But, Mr. Ladd they say, is a man that is a candidate for the Judge's shoes. Now upon what do they hang that assertion? Now I am going to read (for this is the first time I have referred to Mr. Ladd's candidacy) the testimony as found upon pages 43 and 44 of the journal of the 17th day ,premising the reading of it with this statement. Mr. Ladd is, as all the gentlemen residing in the Minnesota Valley know, a prominent citizen of that valley. He is not one of those little mites that go rattling around like a mustard seed in a bass drum, he is a prominent citizen of the Minnesota Valley. He has been thought to be by many of that district a fit and suitable person at some time to be the Judge of that district. It is true that he is, comparatively speaking, a recent comer there; and it is also true that no blush of shame has ever yet mantled his brow. He stands among the people of the Minnesota Valley as a No. 1 citizen; he is a man who can be trusted upon any and all occasions; a man whose word is equal to the bond of any man; a man who will stand the test of time, a true friend, a good citizen, and an honest man, is Sumner Ladd. He was before the convention at one time for nomination.

The republican convention had two candidates before it. Mr. Ladd was one of those candidates. He was the unsuccessful candidate. But the fact that a respectable portion of the people composing the Ninth Judicial district thought that Sumner Ladd, by attainments, by education, by his private life, by his private walk, was fit to be the judge of that district, is a sufficient endorsement for him at the bar of this court. It is a sufficient endorsement for him, to wash away the silly remarks of the counsel as to the fact of his candidacy for Judge here as belittling him in any way. Now what is the result of all the testimony? "He is one of the conspirators." Mr. Ladd had been a great friend of Judge Cox. Mr. Ladd was in the legislative halls when Judge Cox made his memorable escapade in the winter of 1878. Mr. Ladd introduced the resolution there of inquiry at the express wish of Judge Cox, one of his constituents. And Mr Ladd, unfortunately with myself and some others, have the sin to answer for, that we then endeavored to whitewash the Judge. We have that to be forgiven. There are numbers of us that wish to be forgiven for so doing, for I am of the opinion that if the first drunken judicial debauch of the respondent, had been pressed right then and there, hard and vigorously, that this prosecution would have been saved by the voluntary retirement of the respondent in this action. Mr. Ladd introduced that resolution. Mr. Ladd was the friend of Judge Cox, and Mr. Ladd was not urging upon that legislature that they should appoint such a committee as would condemn Judge Cox. Not at all.

While there might not have been that kind of personal friendship existing between the two men which exists between some other men, there was a personal friendship, at least a friendship that was sufficiently apparent to deter Mr. Ladd from doing anything out of the way to injure or defame Judge Cox and to stand by him in that hour of need, when truly he needed help, and here he is abused because he comes down here and quietly gives to this Senate his opinion upon the condition of the Judge on certain other occasions.

His abuse is carried on to such an extent that it even attracts the attention of the artist who sits here to caricature certain individuals. Well, now what does he say about his candidacy? How much of a candidate is Sumner Ladd? I say, gentlemen, he has a right to be a candidate. Every lawyer ought to be a candidate. If every lawyer will put his eye upon the ladder of fame, on the topmost round of which the Judge sits of his district, or ought to sit, he will measure himself by that standard, some day, he will reach it. And if he ever does reach that position through a private life of purity and a reasonable amount of learning in the law, he is to be congratulated.

Now, Mr. Ladd is asked this question, "Well, Mr. Ladd, you are a candidate for the Judge's shoes, are you not?" Oh, what a mean question, that is to ask of a sensible, sensitive man!—"*You are a candidate for the Judge's shoes, are you not?*" "No, sir, I don't consider myself a candidate at present." Now mark the manliness of Mr. Ladd in this testimony:

Q. Is it not a fact that you have laid out the work of planning to get into that position if Judge Cox should eventually be impeached?
A. Very little indeed.
Q. Very little indeed, but some?
A. Yes, sir.
Q. It is a fact that you have written letters soliciting support is it not?
A. Very few I admit that in case there is a vacancy I may be a candidate.
Q. As a matter of fact you have written to almost every member of the bar in the district excepting in St. Peter, have you not?
A. No, sir; not to one-quarter of them; perhaps not to one-fifth part of them.
Q. It is a fact that you were a candidate for the judgship of that district when Judge Cox was running was it not, or rather before the convention.
A. I was before the convention.
Q Do you remember of introducing a resolution in the House in 1878 in behalf of Judge Cox at his request, to have a committee investigate his conduct?
A I did: he came to me and requested me to introduce a resolution.
Q. And is it not a fact that right on or about the same time, you introduced that resolution, you went to the Governor and asked the appointment in case Judge Cox should be desposed?
A. No, sir; I never approached the Governor upon the subject or anybody else.
Q. You got some of your friends to do it, did you not?
A. I did not, sir.

Now, there is a fair, square, manly statement of Sumner Ladd's position, and if there is any dishonor or disgrace to attach to it, if there is any cause by reason of those statements that his testimony here should be taken with any grains of allowance, I should like to have somebody that is wiser than I am point it out to me. Is it a criminal offense for Mr. Ladd to be a candidate for the position of Judge Cox if Judge Cox is removed? Why, somebody will have to fill the position if Judge Cox is

removed, and somebody would have to take that position if Judge Cox should die. Whenever that office becomes vacant, some one must fill it; and because men are sufficiently prominent to have their names mentioned in that connection it ought to make their word here a tower of strength to this Senate, especially after the fiery furnace of judicial affliction and disgrace that that judicial district has passed through with the Hon. E. St. Julien Cox. A burned child dreads the fire; if this man is removed we may rest assured that no other man upon whom rests the stain of intoxication can ever attain to the position of the Judge of that district. All the rum-holes of that judicial district have not votes enough to elect, and place upon the bench, a man in the future who will bring dishonor and disgrace to the judiciel ermine, through the cup that inebriates and who shall rule and reign over them in drunken, maudlin periods. Sumner Ladd's evidence then in my judgment is entitled to the weight of a good, straight-forward, honest man. No more no less.

Now, he says that at this time there was a confusion in the mind of the Judge; that it would not have been there if he had not been intoxicated. He testifies upon this matter of this case of Young against Davis. Now just see how kind Mr. Ladd is to Judge Cox. Notice with what care he puts his evidence; how careful he is that he shall not color his testimany in the least as against the Judge and create an unfair prejudice against him in the minds of the Senate.

"During the trial of the case before the jury, Judge Cox was *sober*." Why, if Mr. Ladd had desired to influence this Senate unlawfully as against Judge Cox, knowing that he and Mr. Lind were there together, and Mr. Davis and Mr. Ware were the only men to testify on his behalf, if he had been that kind of a vicious man who cared little for his oath or was reckless of what he said, how easy it would have been for him to say that he was drunk all the time! No, sir; "Judge Cox was sober. The trial commenced the first day of the term; I think the second day of the term the jury rendered a verdict for the plaintiff."

The next day in the afternoon, Mr. Lind came to me and said he would just as soon argue the motion for a new trial then as at any time, and he and I proceeded to the court house. This was on the coming in of the court, in the afternoon at half-past two. It was the fifth day of the term, I think We made the motion at the suggestion of the Court, upon the minutes of the court, considering the stenographer's report as the minutes of the court And the Court intimated that he would grant a new trial. It was not a regular argument, but still both Mr Lind and myself made one or two statements to the Court. The Judge was intoxicated upon that occasion, upon that motion for a new trial.

Now is there anything swift-footed about that? Is there any desire there to do injustice to Judge Cox? Can you see there, any evidence, any ardent desire, to remove this eminent jurist from his position in order that Mr. Ladd may wear his shoes? It does not strike me so, I don't think it strikes any Senator here so, I don't think it would strike the mind of any candid man so, by any means. Well, he was examined and cross-examined, and there was no inroad made upon his evidence; he tells the same story right along.

Now, Mr. Lind, upon the fifteenth day, page 38, testifies to about the same state of affairs. He says:

During the trial of the case, I think the Judge was pretty sober, until the last part; but when the jury brought in a verdict on the case, a motion was made to

set aside the verdict, and for a new trial on the minutes; and that was argued immediately. At that time I thought the Judge was intoxicated.

Now, there are the two witnesses who are claimed by the respondent here to be so incensed and wrought up against the Judge that they would come in here and shamelessly lie in order to accomplish his conviction. Not so; they don't do it.

But Mr. Davis testifies. Mr. Davis was not the attorney, it is true. Mr. Ladd and Mr. Lind were the attorneys. Mr. Davis was one of the parties in the suit; he employed Mr. Ladd so as to avoid the old adage that when a man is his own lawyer he has a fool for a client. He had confidence in Sumner Ladd. Judge Cox's old partner could place reliance in Sumner Ladd; he could employ him to try that lawsuit, in which he was personally interested,—oh, yes; none of that old acrimony, which the counsel would have you think existed between Judge Cox and Sumner Ladd, had cropped out, perhaps, up to that time; everything had been as calm and smooth as a summer's sea. Mr. Davis, I am willing to admit, had almost an equal opportunity to judge between those two parties that Mr. Ladd and Mr. Lind had, because he was an attorney, and because he was interested in the outcome of that motion for a new trial. He had been beaten, and his counsel made a motion upon the minutes of the court for a new trial. Well, Mr. Davis said "I thought he was drunk; I thought at the time that he was drunk,—something the matter with the Judge,—thought he was drunk." Why, he has told that to hundreds of men in St. Peter,—that Judge Cox was drunk upon that occasion.

We expected him to testify to it, open and above board. But his extreme friendship for his old partner, his old boon companion, leads him to qualify that; because it is an elastic question, this opinion as to a man being drunk. A man could never perhaps, be convicted of perjury for giving a mere opinion. A man might perhaps give an opinion contrary to what he really believed, and it would be a very difficult thing to show that he wilfully testified to that which was false. But Mr. Davis then goes further and makes an examination into this matter. He says to Ben Rogers "What is the matter with the Judge?" Ben Rogers is the clerk. "Why," says the clerk, "nothing, I guess." Said Mr. Davis "Hasn't he been drinking?" There was Mr. Davis's old partner upon the bench, the man that had roomed with him and lived with him for years,—his old-time friend. Mr. Davis thought he detected evidences of what? Why, said he, "Ben, hasn't the Judge been drinking?" "No," Ben said, "he thought not." Ben was on the Judge's side if all the lawyers were going to go against him. "No, he thought not." Mr. Davis was not satisfied with that. Up to that time Davis and Lind and Ladd were all agreed that the Judge was drunk; all consented with one accord that the Judge was intoxicated. But Davis goes into the back room, and there he satisfies himself judicially and officially that the Judge was not, then and there, upon that said occasion, in the least intoxicated. "He was worried," he said. Somebody had spoken ill of his high court; a man named Boardman (a pretty good man too) up there, had been summoned as a grand juror and was late in attending court, and the Judge had fined him $5.00; and, as I understand the story, he said out on the street the Judge didn't fine him half as much as he ought to have done if he was to fine him in accordance with the contempt he really had for his old court. Somehow that got into the

newspapers, and that was worrying the fine sensibilities of our Huguenot friend, and the result was, that he was not drunk when he tried that case that afternoon, when he decided that motion; he was not intoxicated, as Mr. Davis and all of them thought, but he was worried to think that his court had been brought into contempt by J. K. Moore in some article he had published in his newspaper.

Well, now that may not be, I will not say that C. R. Davis swears to a lie; I will not insinuate any such thing. I say, gentlemen, that it was a case of remarkably sudden conversion. Saul of Tarsus was very suddenly converted, but it took a mighty agency to convert him; C. R. Davis was converted equally suddenly, but it simply took a three minutes confab with E. St. Julien Cox; and then C. R. Davis won't swear but what the Judge had been drinking, even at that time. Mr. Ware thinks he was sober. He won't testify positively, but thinks he was sober. There you have it, Davis thought he was drunk, Ladd thought he was drunk, Lind thought he was drunk, Ware thought he was sober. Davis, the Judge's old friend, convinced himself that he was not drunk, and you are called upon to decide between them.

Gentlemen, to my mind, while that case is not entirely free from doubt, if this were a criminal case, governed by the rules that obtain in criminal courts, wherein the question of reasonable doubt may be raised, I am inclined to think I would give the respondent the benefit of a reasonable doubt; but in this case,—a simple proceeding to enquire as to the fitness of a man to hold a high position of trust in our State,—in a case of this character, where no presumption of innocence can enshroud and surround the respondent, I am free to say that the more I think of this case, the more I argue it myself, that the man ought to be convicted under that charge,

There is another little matter here, and I will be pardoned I know for alluding to it. It was stated by the counsel for the respondent that Mr. Lind never had confidence enough in the impropriety of the decision in that case to take an appeal. Well, now, in answer to that I simply desire to say that I have right here in my hand the paper book on an appeal to the Supreme Court in the case of John Peter Young against Charles R. Davis. Mr. Lind was not asked if he had taken an appeal in that case. That is testimoney which the counsel himself put in, and if he can put in testimony in this case, *ad libitum*, I propose to put in my testimony occasionally in the same way, not to as great an extent however.

There are some curious features in this case. I would like to read a page or two of this to show the eminence of this jurist in his charge to the jury. He says:

> You are the exclusive judges of the amount of damages, gentlemen, if you find any damages; and those damages are assessed upon the value of the property at the time of its conversion on the first day of November, if you find it was converted by Mr. Davis, up to the present time. You are to find from the evidence what the value of that property is. If you find that the property was given, or it was a gift—if you find there was a gift—a gift is a gift.

One of the main points in this case was whether a certain horse had been given by the mother to her son before she died. Mrs. Young had died and Mr. Davis was her administrator, and one of the boys claimed a horse or a pair of horses, and the administrator seized and sold the

horses, claiming that the mother never gave them to the boy. His Honor is instructing the jury as to what is a gift. He says:

If you find that the property was given, or it was a gift—if you find there was a gift—a gift is a gift.

Now, isn't that bright and luminous? We haven't "largely failed" on this charge, Senator.

If I give you my knife, it belongs to you and don't belong to me any more.

Now, that is clear-cut and well defined. Perhaps that is good logic and good law, too.

If I give you my knife, it belongs to you and don't belong to me any more; but when a person makes you a present freely and voluntarily, that property is yours as between them persons.

This is *verbatim et literatim*, taken from Charles O. Ware's short-hand report.

But when a person makes you a present freely and voluntarily, that property is yours, as between them persons. It is not as to creditors, perhaps, but as to those two parties. Gentlemen, if I give you a wheel down there in a machine it would scarcely be a gift, but if I give you a jack-knife I have in my pocket it is yours.

That is the charge that the Judge gave in the case of Young vs. Davis where we claim that he was slightly inebriated.

Senator GILFILLAN C. D. As Judge Brownell would say, "The charge was drunk."

Mr. Manager DUNN. Yes, "the charge was drunk *all through*."

That is the only difference I can tell you.

Now let us see the difference:

Gentlemen, if I give you a wheel down there in a machine it would scarcely be a gift, but if I give you a jack-knife I have in my pocket, it is yours. That is the only difference I can tell you.

How that jury must have been guided in the abstruse labyrinths of the law by that kind of a charge! How kind the Judge was to lead them so carefully in its devious ways!

To give you a thing, is to hand it to you, to give it to you. But you would not give a horse to a man to take it up in your hand and hand it to him. You would not give an elephant in that way either. [Laughter.]

That is the winding up:

You would not give a horse in that way; you would not give an elephant in that way either. [Renewed laughter.]

Now, gentlemen, is there any evidence of sobriety in that charge? I have not read half of it; I don't propose to read it all.

Senator WILSON. Is that in there?

Mr. Manager DUNN. Yes, sir; (reading). "You wouldn't give a horse to a man and take it up in your hand and hand it to him; you wouldn't give an elephant in that way, either. [Renewed laughter.]

Senator POWERS. Was that the five-year-old horse that was given away eleven years before that?

Mr. Manager DUNN. That is what they claimed. The Judge claimed it was so. I have looked the paper book through, but I can't find it so. It was remarked here that that was the statement of the Judge in denying the motion for a new trial. Now let us see if it was. I have the order right here.

Defendant's counsel immediately upon the return of the above verdict gave notice of motion for a new trial upon the minutes of the court on the ground that the verdict was not justified by the evidence and is contrary to law. After which the motion was argued, and the Court made the following remarks and order in the case.

You recollect the evidence, that the Judge made the remark after the case was tried that—I can't give it in the words of it—Senator, you give it.

Senator POWERS. "Gave a five-year-old horse over eleven years ago," wasn't it?

Mr. Manager DUNN. I dont' remember the language. [Reading from paper book.]

I desire to ask the plaintiff's attorney and the attorneys for the defendant whether there is any evidence of any kind going to show the defendant Mr. Davis's liability in this case. I need not go into the detail of the evidence—I had rather not. I don't think the plaintiff is entitled to a verdict, gentlemen, in this case, but I will give each party time to submit a brief on the law. I don't think the preponderance of testimony is in favor of the plaintiff—I give it as my present impression—I don't think the plaintiff has shown that he is entitled to a judgment by a preponderance of testimony, and that is your motion: "Not justified by the evidence." I may be wrong, but unless I am very wrong I don't think, taking the testimony of John Peter Young and the testimony of Mrs. Holman, and taking the testimony of Charles R. Davis,—I make no reflection upon any witnesses—I don't think there is a preponderance of testimony that justifies the verdict. If you, gentlemen, desire I will give you time to submit your opinions upon it.

I think I understand the testimony. I didn't submit the question of estoppel to the jury. I might have done it and should have done it against the plaintiff if I had. I don't believe this verdict is justifiable by the evidence.

Now, gentlemen, my reputation as a lawyer is not at stake, but whenever that case reaches the Supreme Court there is another judgment of E. St. Julien Cox that is reversed. And another reason why E. St. Julian Cox should be impeached,—another nail in this coffin will be driven.

So, gentlemen, I shall insist, (taking back partially what I said a while ago,) that there is a fair preponderance of evidence on the side of the State upon this charge—and the more I come to analyze it, the more I come to think of it the more satisfied I am that there is such preponderance of evidence as will justify this Senate in finding the charge true as alleged in this eleventh article of impeachment. And I shall expect when you come to record your votes upon that article, that it will be so found.

Senator CROOKS. I would suggest, Mr. President, to the counsel, as it now wants six minutes of six, if he has closed upon article eleven, that it might not be necessary to commence on another now.

Mr. Manager DUNN. The next article is rather a long one.

Senator CROOKS. I think we had better stop here, and I would ask, with the permission of the Senate, does the counsel wish to proceed to-night? Does he feel able to? I understand he is suffering very much with his throat.

Mr. Manager DUNN. My throat is worrying me a good deal, but my personal desires are to get through as soon as possible; and yet I don't know that I ought to undertake to speak two hours to-night. As the Senate will observe, when I speak I use considerable vehemence and energy, and am not feeling well to-day, and have not felt well all day; but still the time for my speaking has about expired. There has been no extension of the time, and I suppose, under the order I shall have to stop now.

Senator CROOKS. I move, Mr. President, that the Senate do now adjourn.

Senator BUCK, D. One moment—

Senator CROOKS. And the effect of that would be to adjourn until 9 o'clock to-morrow morning.

Senator BUCK, D. Perhaps we had better determine the question whether we shall proceed to-morrow.

Senator CROOKS. Very well, I will withdraw it for the moment.

Senator CAMPBELL. Then I move that the gentleman's time be extended.

Voices. I second the motion.

Senator RICE. Mr. President, I move that we go into secret session.

The PRESIDENT. I hardly think that is a proper motion. It is moved and seconded that farther time be given to Manager Dunn to make his remarks.

Senator CROOKS. Mr. President, I would say that I withdrew the motion to adjourn in order to allow the Senator from Blue Earth (Senator Buck, D.) to make some statement that he was about to make here in regard to—I don't know what; I did it for that purpose, and only for that purpose.

Senator BUCK, D. I was going to call up the matter of whether or no we could get through this week. If we cannot get through this week, we might as well adjourn over to-night.

The PRESIDENT. That is not the question. The question before the Senate is whether the time of the manager shall be extended to enable him to close his remarks. That motion was made by Senator Campbell and was seconded.

Senator CROOKS. I withdrew my motion to adjourn in order to allow the Senator from Blue Earth to make his statement.

The PRESIDENT. The chair will put the question to the Senate. Shall the time of Manager Dunn be extended? Those in favor of that—

Senator RICE (interrupting). Mr. President, I desire to be heard a moment on that. If we are going to adopt these orders and then go to work the very first thing and set them aside, why we might as well not attempt to make any more orders. Now here we adopted an order that the discussion should close at 6 o'clock. We did it with the distinct understanding and consent of the managers. It was their own proposition. On a consultation with the Senator from Scott (Senator Hinds) they assented to it.

I think we ought to bring this matter to a close. We have sat here

for weeks,—for such a length of time that the people of this State certainly will condemn us, and they ought to condemn us for doing it. We could have had just as fair a trial if it had only lasted five or six weeks. Now then I am in favor of going on and closing up the case at once. If we are to adjourn now and have no session to-morrow, we will be here all of next week again. If you extend the time of the manager, perhaps he will want another extension,—an indefinite one—in order to make as much of a speech as the counsel for the respondent did. Now I am in favor of letting the manager print his speech if he wants to,—

Senator POWERS. After we have decided the case?

Senator RICE. Yes, that is it.

Senator POWERS. Hang him first and judge him afterwards?

Senator RICE. I am certainly opposed to adjourning now, and going to work and commencing next week and listening to an argument taking perhaps one or two days more and then using all of next week to decide the case. I certainly never shall vote to extend the time beyond this evening. If we will have an evening session, and manager Dunn will consent to close the case to-night, I might vote for an extension of the time. But, if we are to adjourn now and go on with the argument again to-morrow I am decidedly opposed to it.

Senator CAMPBELL. Mr. President, I want to say one word in defense of my motion. It is evident that Mr, Dunn's throat is not in such a condition that he can proceed to-night. That is understood, there is no question about it; so that if you say he shall proceed to-night it means that you propose simply to punish him. We have punished no body in that way during this trial and I hope we shall not punish him. Furthermore, it was generally conceded here at noon that if he wanted more time he should have it, and for that reason he has not attempted to finish his speech by 6 o'clock; consequently he now finds himself in that place where of course it would be monstrous to ask him to close. And I simply moved that his time might be extended, with the understanding that he would make his remarks as short as he could to-morrow, in order that he might know to-night, before the motion for adjournment was put, that his time would be extended to-morrow.

Senator WILSON. Mr. President, I am satisfied that we are not going to close this case to-morrow. And if that is conceded, we might just as well adjourn until to-morrow morning at 9 o'clock. I don't see any wisdom or propriety in getting in a hurry now just at the close of this trial, after we have been here and have conceded to the defense everything that they have asked, (and they have spoken just as long as they chose to speak), or that we should cut things off and close the trial up in an indecent manner by seeming to hurry after we have spent so long a time. I believe now in having this thing closed up in decency and in order, and giving brother Dunn just as much time as he wants in which to elucidate the evidence for the State; and if we can't get through to-morrow, we might just as well adjourn over until to-morrow morning at 9 o'clock as to come here this evening.

Senator CROOKS. Mr. President, I understood that when the manager was asked in regard to his closing to-day by six o'clock, he said he thought he could; that he would do his best towards it; but I have no doubt, and I believe many of the Senators have no doubt, that if he had asked, as others have asked, more time in which to complete

his argument, it would have been granted to him. I certainly so understood it in talking with him myself about it, and told him I thought it was a hardship to him as a manager in closing this case, that he should have this veil of limitation placed in front of him to handicap whatever remarks he might have to make to the Senate on behalf of the State. I intend to carry out exactly what I agreed to. Going back over the whole record of this trial; going back to what I believe was right on the part of the Senate in giving the parties all the time and all the witnesses within reason as we did do, (and with which I have no fault to find, and no words of dissatisfaction to express, for I believe those gentlemen have acted as fully comprehending that there was an honorable understanding with this Senate that they should introduce no immaterial witnesses, and none more than was necessary, in their case on either side, and I don't believe they have done it,) I for one shall not vote to restrict the manager in closing his argument. He has spoken all day; he has been industrious; he has asked for very little time. It is but right that he should be allowed to close this case to his own satisfaction, and that of the managament on the part of the people. And I think the time should be extended, and I would not now insist that he should close his argument in an hour or two hours, but leave it entirely with himself, as an honorable member of his profession, with the understanding that he has with the Senate, that he will occupy no more time than necessary; that his time should be extended, and if he is indisposed as he is, and unfit to talk to-night except at the hazard of his health, that he should have until to-morrow morning to go on and close, when he is ready to close. I thoroughly agree with the Senator from Goodhue, that this is not the time, after what we have done, for the respondent here,—giving him the greatest latitude,—to shut down and cut the matter short for the sake of saving a day or two, as the case may be. I trust that the motion made by the Senator from Meeker, (Senator Campbell) will carry; that the time be extended to the honorable manager, to close his case in his own good time and according to his judgment, his conscience and his conviction of duty to the people he represents here.

Senator BUCK, D. Mr. President, just one word. I was in hopes that we would be able to get through with this case this week. I am inclined now to believe that we shall not. I have been inclined to support a motion (and I believe I so stated during the day) that upon the close of the argument each Senator should be limited to five minutes in giving any explanation he desired in regard to the vote he might cast.

During the recess I examined awhile the impeachment case of Judge Barnard of New York, and there the court was composed in part of the Judges of the court of appeals, and the question was submitted whether or no members of the court might file their opinions after the adjournment of the court. Chief Justice Church, whom we all know to be one of the ablest and most experienced judges that ever lived in this country says, that is a singular motion or suggestion to make. He says, what do we want of opinions after the court has closed? If there are any opinions that are worth hearing, we want to hear them that we may have the benefit of them before the court closes. I confess that the reading that I gave that volume during the recess has changed my views in regard to the matter; but I am frank to say now that if any member of this court desires to advocate any view of the law or the evidence, I think that it is right and his duty to do it, and as far as my

vote is concerned he shall have the privilege of talking or discussing this question as long as he sees fit. I shall vote for the motion of Senator Campbell.

The PRESIDENT. Senators, you have heard the motion,—that fnrther time be extended to manager Dunn to close his remarks. Those in favor of the motion will say aye, contrary-minded will say no. The ayes have it, the motion is carried.

Senator CROOKS. Mr. President, I now renew my motion that the Senate do adjourn.

The motion was seconded.

The PRESIDENT. I would enquire whether in the opinion of the Senate a motion of that kind carries us over to 9 o'clock to-morrow morning, or 8 o'clock to-night.

Senator SIMMONS. I move to amend the motion of Senator Crooks by making it Monday evening at 8 o'clock.

The motion was not seconded.

The PRESIDENT. It is moved and seconded that the court do now adjourn. Those in favor of that motion will say aye; contrary no. The ayes have it. The court stands adjourned until to-morrow morning at 9 o'clock.

FIFTY-FIRST DAY.

ST. PAUL, MINN., Saturday March 18th, 1882.

The Senate met at 9 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, Bonniwell, Buck, C. F., Buck, D., Campbell, Case, Castle, Crooks, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson R. B., McCormick, McCrea, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Powers, Rice, Shaller, Shalleen, Tiffany, Wheat, 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.

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. The honorable manager, Mr. Dunn, will now proceed with his argument.

Mr. Manager DUNN. Mr. President and Senators: At the close of the session yesterday I had arrived at the consideration of

ARTICLE TWELVE

which is the general term of the district court held in May, 1881, at

Beaver Falls in Renville county. This was the term of court, as will be remembered by the Senate, that was held by the respondent, the Judge of the Ninth Judicial District, immediately after a certain ride that has been testified to by the witnesses Pierce and Whitcomb, from Sleepy Eye to Redwood Falls,—at which time, according to the testimony of those two witnesses, the respondent was very much intoxicated upon the train, and the time as they testify that the clerk of the court took charge of him at Redwood Falls. I say they testify so, Mr. Pierce testifies that that was the understanding, not that he had any personal knowledge of it, but that that was the understanding, that he was taken into custody by the clerk of the court and was looked after and nursed during the night, and the next morning he was comparatively sober. That the term of court was held commencing on the next day at Beaver Falls.

All the witnesses for the prosecution testify that for the first two or three days of that term the respondent was perfectly sober, in a proper condition to discharge the duties of his office. And in that particular his counsel stated here, that he believed that is the only instance where the witnesses for the State and the witnesses for the respondent are as one, in perfect accord and agreement. So that admission upon his part, and the accord of the witnesses upon the fact, will certainly go a great ways in persuading the minds of this Senate that the witnesses for the State that have testified as to the actions of the Court during the latter part of the term, in any of their statements in that respect, were made with no other spirit and with no other intention than to give to this Senate an accurate statement of the condition of affairs at that time.

In this case, as in all the preceding cases, the effort was made during the examination of the witnesses, and also during the argument of the junior counsel, to detract from the credibility of the witnesses on the part of the State by a series of fault-finding, a systematic effort to break down and destroy the evidence, by reason of some petty revenge which the counsel claimed the witnesses desired to wreak upon the head of the respondent. I can hardly find words to characterize my loathing of that manner of conducting as important a proceeding as this. Why the respondent does not content himself with denying these charges, or, if impossible to deny them, to admit and then endeavor to avoid the effect of them, is a matter that I cannot understand ; but failing to deny them in the only tangible manner in which they could be denied, the counsel seeks to break the force of the evidence upon the part of the State by attacking the personal character of the witnesses.

The management deem the charge in this article to be one of the strong charges, one in which the evidence has not failed in either a large or a small degree to convince *their* minds of its importance and of the fact that it is thoroughly proven. And the management think that the evidence cannot have failed to convince the minds of this Senate, and, in fact, of every person who has heard the testimony upon this article, or who has read the testimony upon it, that upon this occasion this respondent was entirely unfitted, by the voluntary use of intoxicating drinks, to discharge the duties of his high office.

The first witness we introduce to whom we shall call your attention is the witness S. R. Miller, the prosecuting attorney of Renvllle county. Mr. Miller states that the conduct of Judge Cox for the first two days of that term was beyond criticism; it was correct, gentlemanly and judicial. That on the evening of Thursday, which would be the third day

of that term, Judge Cox began to get excited on liquor, but not in court; he noticed some little effect of it, but nothing appreciable; nothing that he would be willing to testify was at all out of the way in him, compared with the after portion of the term. That that evening he was at the hotel with Judge Cox and Judge Cox invited him into a salooon or into a hotel where there was a saloon to hear a young man by the name of Whitney, who was engaged in some musical performance there, sing a song—I believe he called it "Flannigan's Band"—it struck me as being rather peculiar at the time, and I have remembered it ever since. He said there was lots of fun in it. They went in to hear it, and while they were in there Judge Cox ordered the drinks for the crowd. That was Thursday night. The next day on the opening of court, and all during that day, Judge Cox was evidently, Mr. Miller testifies, under the influence of intoxicating drinks. Now that I may not misquote any of the evidence, I propose to read a little of Mr. Miller's testimony on the 22nd day, pages 58–9, and I desire the Senate to mark the candor with which this witness testifies, in order that they may see whether Mr. Miller is open to these terrible charges that he has come in here and testified falsely in order to wreak his revenge against Judge Cox for some seeming insults that they claim were placed upon him by Judge Cox during that term of court. He says:

From the opening of the term of court on the 24th until Friday morning, or at least until after the close of the session on Thursday the court seemed to be conducted in a regular manner and not subject to adverse criticism. On Friday morning, however, at the oponing of court, I was impressed with the fact then, and am now, that the Judge was laboring under the influence of intoxicating liquors.

Judge Cox appeared to me on that morning in the condition of one who had been drinking heavily at no great period of time before, and was suffering from the effects of it. My impression was that he had been on a spree or had been drinking the night before. He seemed to be nervous and very irritable. That was the impression which I drew immediately upon his opening court.

He then testifies that the case of Anderson was tried that day.

It appeared to me as though Judge Cox had been indulging in drinking during the course of the day. After the disposition of this case, however, I will say, that this being the last case on the calendar as presented at the opening of the court—that there was then some talk about going to the trial of the new indictments found at this term of court; and that occupied some considerable part of the day.

Q. What was his condition that night as to sobriety?
A. I considered him intoxicated during the whole day.
Q. How was it the next day?
A. He was in the same condition—only I thought a little more intoxicated.
Q. What day of the week was that?
A. That was on Saturday.
Q. Was that the day that the fine was remitted?
A. No, sir.
Q. Now, upon the following day?
A. The following day was Sunday.
Q. Did you see him on that day?
A. I did.
Q. What was his condition on that day?
A. He was more intoxicated than I ever saw him, before or since.
Q. During the daytime?
A. Yes, sir.
Q. Publicly?

A. Yes, sir; that is, in a bar room of a hotel in the village.
Q. How was he upon Monday?
A. He was more intoxicated on Monday than he was at any other day during the—that is, more so than any day that he held court.

Now that is the evidence of Mr. Miller as to Judge Cox's intoxication during that term of Court from Thursday night or Friday morning until the final adjournment of that court. Now if that evidence stood alone, without denial of it by Judge Cox, there is not a Senator here I think that would fail to be convinced that the charge was thoroughly supported, thoroughly proven, beyond a doubt. There must be some manner and means devised whereby that evidence can be broken down,—the force of that evidence must be destroyed, otherwise conviction is inevitable. Now what are the means which they take to destroy that evidence as to the naked fact of intoxication? Has there been any circumstances as yet given of the indications of intoxication? This was upon his direct examination, and when they come to the cross-examination they undertake to show a certain state of facts which is intended to lead the Senate into the belief that there is a strong feeling existing between Judge Cox and Mr. Miller arising from the manner in which Mr. Miller had conducted the public business of the county before the Court at that term, and which had merited and reeeived the rebuke of Judge Cox.

It will be remembered that during the term of court, there were certain indictments found against certain individuals for selling liquors without license. Among those persons so indicted was a particular friend of his honor the respondent,—one Peter Berndigen who it is in testimony here kept a saloon; and if we had been permitted to show it by the witness McIntosh, it would have appeared that Judge Cox had obtained a great deal of aid and comfort for the inner man at that saloon during that term of court, but it is in testimony that he was in that saloon by the attorney for the prosecution. This man Berndigen was indicted for selling liquor without a license and ascertaining that the witnesses for the State were not then just at hand, his attorney with a great deal of alacrity and a pressing desire to be prosecuted early, comes into court and asks for an immediate trial.

The Judge asks the county attorney if he is ready for trial, and is informed to the contrary; that the witnesses for the State, notwithstanding they had been before the grand jury at that term of court, had departed for their homes, some fifteen or twenty miles distant. The Judge thereupon waxes exceeding wroth and informs the county attorney that parties charged with crime are entitled to a speedy trial, and that he must have his witnesses there forthwith. Thereupon some colloquy ensues between the county attorney and the Judge, the county attorney claiming it was not proper and not necessary that he should be forced to trial at that early date, and that it was not his fault that the witnesses had gone away, that he could not control the witnesses, at least he could not be forced to trial without having an opportunity to get his witnesses. Now I say, Senators, that the whole colloquy, and that whole disturbance there on the part of the Judge in the administration of criminal justice, and the manner in which he treated that county attorney, is one of the best evidences to my mind that Judge Cox was not in the possession of his better judgment at the time. Now, why? I have had some little experience in court, and there are other gentlemen here who have

had larger experience probably than I have; I have been in a position where I have been called upon to prosecute as a prosecuting attorney of my county for years, but I have never had in my experience as a prosecuting officer, (and I doubt if any other prosecuting officer has), a judge upon the bench to rebuke me because at the term of the court at which an indictment was found I was in fault because the witnesses were not ready then and there to go on with the trial of the cause upon its merits.

And why? The prosecuting attorney does not expect to try a lawsuit until he gets ready. The prosecuting attorney does not expect that the criminal calendar is going to be moved at the first term at which an indictment is found, at least, not until he can have time to prepare his case for trial. He has been engaged in the grand jury room up to the time the indictments are found; he has been there attending to his official duties, in examining the witnesses, and in drawing and framing indictments. His time is occupied up to the time the grand jury come in and file their indictments. Therefore he has not the opportunity to prepare himself for trial. He does not know what the issue will be, if any. It would have been just as injudicious and just as improper as if this Senate, when we were called upon to try this case, had insisted upon the managers, without an opportunity to prepare their case, without an opportunity to notify their witnesses, without an opportunity to see what testimony they wanted here, at the first day to have told them that they must go to trial the next day with their witnesses. And if we had told the Senate that the witnesses were not ready that we would have been rebuked as a board of managers, for not having done our duty faithfully and properly.

And then mark the manner in which this colloquy took place. The county attorney stated that he was not ready. The Judge told him that he ought to be ready; that he had come up there, (so they say,) to clear up the calendar at that term of court, and that he was "tired of this monkeying, monkeying, monkeying business," as he expressed it; that he *must* be ready in his cases. Martin Jensen testifies that he "rebuked the whole outfit,"—county commissioners, sheriff, deputy sheriff, clerk of the court, county attorney, and all the rest of them.

What for? There was no response to that question. There is nothing stated here what for. There is no evidence here that he rebuked them for anything in particular; but Jensen merely puts that in to show that Judge Cox was not merely actuated against the county attorney, but against all of the county officials who were engaged at that term of court. Now, is there any reason, is there any excuse for the Judge upon the bench to undertake, as they say here he did, and as the evidence shows he did, to bring into disgrace, to humiliate, to put to shame, the public prosecutor of a county in which he is holding court, in that public manner as is shown here by this record? Is there any excuse for it? If that indictment had been found at some previous term, and you will remember that it is in evidence here that it was found at that term (the case of Andrew Anderson had been brought to trial, and it was the last indictment of the previous term, and that had been tried); if that indictment had been found at some previous term, his honor, the Judge, might perhaps have suggested to the county attorney that he ought to have had his witnesses there; but is there any excuse for this public reprimand, intended and calculated to humiliate and disgrace in the eyes of the people that were attending court this

public prosecutor, Samuel R. Miller? Is there any excuse for it, except the excuse that the managers throw around the Judge of the Ninth Judicial District, and that is that he was not in a condition, by reason of the voluntary use of intoxicating drinks at that time, to properly discharge the duties of his office. Now, we furnish an excuse for him in our article; we give this Senate the reason for that action. The counsel for the other side attempts to give as a reason for it, that he was so outraged and indignant at the dilatory action of that public prosecutor that he exhibited his indignation in that very unseemly manner. That is *their* excuse.

Now to take the charitable view of it, which of those two excuses is the best one to have interposed in avoidance of that action? Because they admit there was such action. They put in a plea of confession that he did do that thing, that he did tell the county attorney "he was tired of this monkeying, monkeying, monkeying business." I would like to have the Senators turn to their journals and look at that question which was asked the witness Miller by the respondent's attorney, evidently suggested by Judge Cox (page 67, 22nd day). The question is, "As a matter of fact, you didn't have a single criminal case that there had been an indictment found by that grand jury, in which you were ready for trial, at that time?" The answer comes frankly, "No sir." Why should he have had? Here was a term commencing on Tuesday; Tuesday, Wednesday and Thursday, and this was Friday morning. Three days only of that term had elapsed. Everybody knows what the first day of a term of court is. It is merely a day for a sort of dress parade—to get ready for business. Five or six indictments had been found by that grand jury against parties for selling liquor, alone. There were two working days of that court, and here the county attorney had been engaged in the trial of one party that had been indicted the term before. And here was the third day of the term, and now was he ready? He says he was not. He was asked if he had ever seen a criminal case in which an indictment had been found by a grand jury at the same term of court at which he was ready for trial at that term; he says "No, sir."

Now mark the next question, (and I have no doubt that the question was asked in some such language,) "That was the time when the Judge got mad at you and said that 'If Pontius Pilate had been as slow as you are, in condemning Jesus Christ, the theory of salvation would never have been evolved!'" Just think of that question a moment. The Judge on the bench,—the Ninth Judicial District judge,—telling the prosecuting attorney that "If Pontius Pilate had been as slow as you are in condemning Jesus Christ, that the theory of the salvation of the human race would never have been evolved!" But there is an excuse for that kind of language. There is an excuse for it, and the State has furnished it here in this charge, the State has furnished it in this article. Minnesota ought not to be put to the blush of shame by having that kind of language addressed by a judge from the bench to any person in his court room without furnishing an adequate excuse; and that adequate excuse here is simply *whisky*. Now, Mr. Miller says that he never so stated to him; "that there was a little by-play between the parties, wherein the Judge quoted a little scripture and I quoted a little. I think they were both equally applicable. His language upon the bench was, 'I am tired of this monkeying, monkeying, monkeying;' and I told

him that I was too." Now Mr. Miller exonerates the Judge from making the statement above alluded to; but that question came from the counsel for the respondent, and that counsel could never have gotten that question from any other source than the respondent himself, because he (the counsel) was not there. I am glad that Mr. Miller did not answer that question in the affirmative; but it shows the spirit that has actuated and moved the respondent and his counsel during this whole defense. According to their theory, it would be possible for that question to be asked, probably was asked, but Mr. Miller does not remember the Judge upon the bench addressing that language to him.

We will take the language that he did use, and that they all admit that he did use; by Colonel Megquier, or "General" Megquier, I don't know which, I don't want to underrate him; he testifies that he used the word "monkeying;" I am tired of this monkeying business. Now what kind of language is that? It is not at any rate a technical legal term that ought to proceed from the bench of authority. Well, that is one of the reasons that they claim has moved Mr. Miller to come down here and testify to this state of facts—because he was thus publicly rebuked. Mr. Miller himself says he was provoked and his righteous soul was stirred with indignation at the fact that he was there prosecuting his causes before a judge that was inebriated. And I don't blame him. If there is an attorney in this Senate that has ever been compelled to stand before a judge whose mind was crazed with liquor, who was ever placed in the unfortunate condition of pleading a case of a client before a judge whose mind was turned as it were upside down by the use of alcoholic drinks, and who knows it, they will know just how to pity that public prosecutor, Samuel R. Miller. I know how to pity him from experience, for I have stood in that position myself. I have stood for three days before a judge whose mind I know was entirely disturbed so that it was hard work to get into that mind and to procure its true and proper workings—in fact absolutely impossible at times. And a lawyer is to be pitied and his soul ought to be disturbed with indignation, and he ought to get mad when he is placed in that unfortunate position. I do not state what judge that was, but I will state that it was not before any of the other district judges of this State. I do not say it was before this respondent. Well, Mr. Miller after having given these simple statements that Judge Cox was under the influence of intoxicating drinks, he gives a certain conclusive indication that he was excessively under the influence of intoxicating drinks on Monday, the last day of the term. It seems that there was one Anderson that had been indicted at a previous term of court for selling liquor without a license and that the man had been tried at that term of court and had been convicted. That upon his conviction he was called into court, with his counsel sitting by him, and asked if he knew any reason why the sentence of the law should not be passed upon him. He answered that he did not, whereupon the court sentenced him to pay a fine of $25 and to stand committed to the common jail of Renville county until that fine was paid or he was otherwise discharged from that custody. Now the court had then gotten through with that man. That was the end of the connection of the respondent here with Andrew Anderson. The law had been administered upon his person, the judgment of the law had been visited upon his head. He had had a trial by jury as the constitution guaranteed to him; he had been con-

fronted with his witnesses as the constitution and the law guaranteed to him, he had had a fair and impartial trial, he had been fined by the law, not by the Judge, and the law had imposed its sentence upon him, the Judge being simply the instrument by which the criminal law is administered. The law had imposed its sentence upon him that he should pay a certain fine and stand committed until it was paid. Now that was the end of the power of the Judge of the ninth judicial district, or any other judge in the State over that criminal.

He stood there a convicted criminal, tried and sentenced and undergoing his sentence, with just the same conviction, only not to that degree, that the Younger brothers are now undergoing in the State prison at Stillwater for the murder of the cashier of the bank at Northfield. Now with just as much propriety could the Judge who sentenced those Younger brothers to State prison for life, and with just as much right, with just as much power, would that judge have to take those Younger brothers out of that State prison at Stillwater, and upon some showing, or no showing, order them to be discharged from custody as would the respondent in this case have had after having sentenced that man Anderson and having visited upon him the judgment of the law, to have remitted his fine and have discharged him from custody. There is no difference in those two cases except perhaps the difference in the enormity of the crime.

There had been no attempt, there has been no proffer of any authority of law by which that act was justified. It is sought to be justified only by the goodness of the heart of the Judge after having ascertained that this man was unrighteously convicted, not unlawfully convicted. But unrighteously convicted you might say. Now let us see how that is. Suppose you admit that the Judge was acting in good faith. Suppose we admit that that was an error of judgment. Let us see whether he was unlawfully convicted. Mr. Megquier goes upon the stand and testifies that his client had no license to sell liquor, and he knew it; that he knew something about this receipt which he testifies that this man had; but that it was not in any form that would allow it to be presented to the court on the trial of the case as a defense to that charge. Now if that was not in any form to be presented as a defense to the charge before the jury, so that the jury could have been instructed by the court that they could not find a verdict of guilty because of the receipt and payment of the money, why then as a matter of course it was no excuse to the Judge. It was not in any manner or form a receipt for money paid for the license of Andrew Anderson to sell whiskey or liquor in the town of Bird Island. The only evidence we have about that receipt is that it was a receipt signed by the county treasurer for the sum of $65 the purpose not being stated.

Now I have been told that in some of the counties of this State, and notably that county, parties desiring to sell liquor without a license would, just before the term of court, go and deposit their license money with the county treasurer, and take just that kind of a receipt; not a receipt for license money, but a receipt for so much money. And then it would be understood generally that they had paid their money for a license, and the grand jury would come and go and nothing would be said about it; but after the grand jury had gotten through with their labors they would go and draw out their money and go right on with their liquor selling and never obtain any license. Now this may have

been one of that class of cases, and it may not; I am not prepared to say, and do not say that it is, but I am prepared to say this, that there is no evidence here which could warrant this court in believing that Judge Cox was acting and was clothed in his right mind when he issued that order on Monday, the 6th, at that term of court to discharge that prisoner and to remit that fine. There is no evidence of the fact. There is no evidence of it. The fact that he did that stands admitted upon the record. All parties agree that he did it. and if he did do it there must be some excuse found for it. The fact that it was illegal stands admitted; the fact that it was without authority stands admitted; the fact that there was no excuse for it does not stand admitted. We claim there was an excuse for it. That excuse is to be found in the condition of the Judge. The Judge of the Ninth Judicial District is too good a lawyer to undertake to usurp the constitutional prerogative of the Governor of this State to pardon prisoners when he is clothed in his right mind; when his brain and his mind are acting in their proper and normal condition, but there is no accounting for what men will do under the other state of facts.

Now Mr. Miller, the prosecuting attorney, testifies that at that time he protested against that action. And there is something very queer about the manner in which that action was had. Mr. Megquier, the witness in whom they place so much reliance,—the grand central sun of the defense in this whole term of court,—testifies that he knew about that receipt at the time of the trial of the case, and that he knew about that receipt at the time of the verdict; and that after the verdict he went to Mr. Miller and told him about that receipt, and that he was going to ask the court to set aside the sentence. Mr. Miller knew that the sentence had been passed: he knew very well that a judge had no right to set aside a sentence after it had been passed, the defendant in the custody of the Sheriff serving out his sentence. He knew very well he had not, and the court went on, and on until the next Monday morning,—the trouble was the Judge was not sufficiently "gone" on Friday, that Mr. Megquier could have practiced that bit of a trick upon him; the trouble was that on Friday the Judge was not so much intoxicated, (Senator Powers here took the chair to act as president *pro tem.*,) but the time ran on through Sunday when it is in evidence here by even Mr. Megquier, that the Judge was not in a very good state on Sunday. It runs on through Sunday and up to Monday when, the evidence is here, overwhelmingly, that he was in an extreme state of intoxication on Monday. Then the opportunity is sought by Mr. Megquier to get his client, Andrew Anderson, out of custody. Then the opportunity is sought by Mr. Megquier to practice upon this court's condition and to obtain a judgment upon his part that was unauthorized by law and unwarranted by the circumstances of the case.

Now that is my theory of it upon this evidence. I asked Mr. Megquier, "Why didn't you make that motion on Friday, after the verdict came in?" Well, he said he was not ready to, then, that was all. That is all the answer he would give me, "he was not ready to." Now I am always looking for reasons. Why was he not ready to? He is a good lawyer; he knew full well that that receipt was no defense; he knew full well that after judgment and sentence had been passed in a criminal case the Judge was powerless to do farther except to recommend for pardon. But he said that he was not ready; he knew full well that neither Judge

Cox nor any other judge, when his mind was acting in its proper condition would grant a pardon to a convicted criminal. He wasn't ready; why wasn't he ready? Why, the Judge was a little too sober just then, perhaps. However, the evidence shows he was not so much intoxicated that day as he was upon other days. On Sunday he was more intoxicated; and on Monday he was in still a grosser state of intoxication. *Then* was the opportunity that Mr. Megquier sought to make his motion —when his brain was on a perfect whirl of excitement caused by the use of intoxicating liquors; then was the time he took to take advantage of the Judge of the ninth judicial district. And I say that an attorney that would do that ought to be debarred from practicing before any court. He is not fit to stand up and represent the noble profession of the law before a court of justice. But he did, according to this evidence, and this Senate is justified in drawing just this conclusion from it; that he took advantage of the Judge's condition on that Monday morning to make that motion and to obtain from the Judge of the ninth judicial district a judgment that he could never have obtained had the Judge been in his sober mind.

Now they say there was excuse for it. The statute provides that whenever an indictment is set aside for any cause that the Judge shall cause it to be entered in the minutes of the court,—the reasons why that indictment was set aside or *nolle pros'd;* the court must place itself upon record. That is the law that the Judge is sworn to administer. He shall place himself upon record that parties interested may see upon what ground he has sought to interfere with the administration of criminal justice by disposing of an indictment that has been found by a proper panel of grand jurors. It may be that there was some defect in the grand jury that was drawn; it may be that there was some defect in the indictment that was presented, but those facts must appear upon the record. Why did this court set this indictment aside? Well, now, there is no provision of law allowing the court to set aside a judgment that has been carried into effect in a criminal case. He might grant a new trial upon a proper case shown in a criminal case on behalf of the defendant; he might permit the defendant to go to trial again, but there is no provision of the law authorizing a judge to set aside a sentence except by granting a new trial. I don't think there is any provision of law authorizing a judge of a district court to grant a new trial after sentence has been passed. But that is immaterial in this case but in setting aside an indictment as I have said, he must place himself upon the record. Well, now this is a much graver matter than setting aside an indictment. Setting aside the sentence of the law and pardoning the criminal is a graver matter, and certainly would require more safe guards than the mere setting aside of an indictment,—some reason ought to be given upon the record. But do you find any reason here? Not at all. Read that record. Just read that record. (22nd day, 56th page) and see the kind of a record that is:

State of Minnesota against Andrew Anderson. The defendant was arraigned in open court, and being asked by the presiding Judge if he had anything to say why sentence should not be passed, and, having answered in the negative, be sentenced him to pay a fine of twenty-five dollars and the costs of this action, assessed at—dollars, and in default of the payment thereof committed in the common jail of Renville county, Minnesota, until the same is paid, unless sooner discharged by due process of law.

There was his counsel, there was himself and no receipt produced; nothing said except answered in the negative; he sentenced him to pay a fine of $25 and the costs of the action, and in default of the payment thereof committed to the county jail of Renville county, Minnesota, until the same is paid.

Now, that was on Friday the fourth day. Now, on Monday, the sixth day, the following order appears:

Case of the State of Minnesota vs. Andrew Anderson. The court ordered that the fine and costs be remitted and the defendant discharged and his bail exonerated.

That is all there is of it. No reason set forth for it. If the judge of the ninth judicial district had been in the possession or all of his faculties that morning do you suppose that that record would have been as meagre as it is? Do you not suppose that he would have stopped for a little enquiry and wanted to know why he should exercise this extra judicial authority in setting aside the sentence of the law? Ought he not to have placed some reasons there on the record that people may be satisfied that he was not actuated by impure and improper motives? Would he have left it to the testimony of William McGowan, or of George Megquier, or of this "Little Whitney," or of anybody else to prove that that sentence was remitted for good and sufficient reasons?

But he has left it out. "That the fine and costs be remitted and the defendant is discharged and his bail exonerated." What bail had he? He had no bail. Why, the very fact, gentlemen, that the order is written in that way, and as McGowan says, was dictated by the court, is one of the best evidences to my mind that Judge Cox was not in a proper condition to discharge the duties of his office that morning. Had this man any bail? Did you ever hear of any man having any bail after sentence has been passed upon him and he has been turned over to the custody of the sheriff? He had been committed to the common jail of that county. His bail had been exonerated. His bail had answered every obligation when they produced Andrew Anderson to be tried on the fourth day of that term; they had fulfilled their obligation. And now the Judge comes here on this sixth day in his maudlin condition, and upon the request of his friend Megquier he orders that his bail be exonerated, and the defendant discharged. We were told in the argument of the counsel for the respondent that the Judge of the ninth judicial district had become a terror to evil doers since he had been on the bench; that under the administration of Judge Hanscomb (who was the only judge that ever sat there before Judge Cox) in that judicial district—I believe Judge Hanscomb was the first judge elected or appointed in the ninth judicial district—that under the administration of the judge that had gone before him, whisky selling without license, and whisky selling to minors, and whisky selling to habitual drunkards had become a very common occurrence, and that now you could not walk through any saloon in the ninth judicial district but what you would be met by signs stuck up all around "No sales to habitual drunkards! No sales to minors." He didn't say that this saloon had a license stuck up there; he didn't say anything about that.

But we have one record here, gentlemen, which shows with how much terror Judge Cox was regarded by that class of individuals. Here are

two cases—yea, three cases at this term of court of indictments for the sale of liquor without a license. There is one conviction, and that conviction is set aside; the sentence is set aside by the Judge of the Ninth Judicial District, upon the mere request of his boon companion, George H. Megquier, of Bird Island, for there is nothing else to it; it is nothing but his request. For there is no legal excuse for it. The Judge does not act upon other than legal grounds. Now don't you think that the evidence here shows that Judge Cox is a terror to evil doers? There is another case. His friend, Peter Berndigen, was indicted for selling liquor without a license. Peter Berndigen came into court and was allowed to go upon his own recognizance, without being obliged to furnish any bail; that is all. It was all right to admit him to bail, perhaps; all right that he should be admitted to bail upon his own recognizance. It was not all right that he should be admitted to bail upon his own recognizance, and then this Judge, this man that has the interests of that judicial district at heart, so far as his criminal jurisdiction is concerned; this man who is held up to you here as being such a model of judicial purity and integrity, and such a terror to these men that sell whisky without a license—it was not right in him to permit that man to leave that court-room or to permit him to go without at least entering into recognizance, even if it was signed by nobody but himself. But they claim that was the county attorney's fault. We admit it was the county attorney's duty, perhaps, to see that a recognizance was taken, but the county attorney tells you that he was incensed and his soul was vexed with indignation during that term of court, that portion of it, by reason of the Judge's condition. There was no other instance where parties were allowed to go without bail, and without recognizance duly and properly made.

Now, Mr. George Miller testifies (he was the deputy sheriff there) that on this Friday morning the Judge was under the influence of liquor. He does not pretend that his evidence extends over a very large period of that term of court. He was there on Friday morning; he was there at the time his brother S. R. Miller claims Judge Cox was under the influene of liquor; and he gives certain indications to *his* mind that induced him to believe, and induces him to believe that Judge Cox was at that time a sufferer from the effects of intoxicating liquor. He testifies to the actions of the Judge in certain motions that he made in attempting to kill fleas or mosquitoes. That in itself is a very small matter, that amounted to very little; that by itself, possibly, standing alone might not indicate intoxication; I don't claim that it would, standing alone by itself, but, standing and taken in connection with the other facts and circumstances in the case, the admitted facts, standing in connection with the other facts in the case that are not denied, (and I speak of the facts that cannot be denied, that Judge Cox was on that Thursday evening drinking,) it is a fair conclusion to draw from the evidence that when he made those grotesque motions in the morning, simulating the catching of fleas and mosquitoes, that he was doing it not because he was being annoyed, but, if annoyed, that the annoyance was very slight, that he was doing it because he was not really conscious of what he was doing. That is my explanation of that occurrence. And I draw that concluion from the testimony, and is it not a fair conclusion to be drawn?

Now, we have another witness upon this charge, who certainly will

not be accused, I believe he has not been accused,—I will give the respondent and his counsel credit for failing to accuse Carl Holtz of any improper motives in coming here to testify. Carl Holtz was the man as you will remember who kept a hotel and a saloon at Beaver Falls. There is but one hotel there, and that has a saloon in it. There is a drug store there and that has a saloon in it. Whether the other buildings have saloons in them or not,—I think the evidence shows they have not. Now I will read the testimony of Carl Holtz, it is very short, but it is worth reading. It is found upon page 10 of the 23rd day.

Q. Was Judge Cox there any of the time during that term of court?
A. Yes, most every day.
Q. He was there most every day?
A. Yes.
Q. He didn't board with you regularly, did he?
A. Not the first two or three days.
Q. Did he have a room there at your house at any of the time?
A. Well, yes, he had a bed some nights.
Q. He had a bed some nights, and he took some meals there?
A. Yes, sir, he took a meal once in a while.
Q. And he had a bed there some nights?
A. Yes, sir, after the first three days.
Q. You may state if Judge Cox drank any intoxicating liquors at your house, then, at that term of court?
A. Yes, sir: he did some.
Q. He drank some?
A. He drank some every day.
Q. Did he become intoxicated, Mr. Holtz?
A. Not the first two or three days. Gradually he got to drinking more.
Q. He gradually got to drinking more; did he finally get to drinking so that he became intoxicated?
A Yes, the third day in the evening, that we had court.
Q. The third day in the evening that you had court, he got intoxicated. Would he drink in the morning?
A. Yes.
Q. And would he drink at noon?
A. Yes.
Q. And at night?
A. Yes.
Q. Can you tell how much he drank there, that is, in value, if you know anything about that?
A. No, I can't tell you that, because he always drank—had somebody to drink with him: he never drank alone: most generally called somebody up.
Q. State how he was on Sunday, Mr. Holtz?
A. He drank some on Sunday.
Q. Was he intoxicated on Sunday?
A. I think there was not a day after the third day of court without the Judge was intoxicated some.

Now they did not attempt to cross-examine that witness. They made no cross-examination of Mr. Holtz. I claim, gentlemen, that that evidence cannot be gainsayed or denied. They may call all the Megquiers and all the Whitneys and all the Jensens and all the Greelys and all the Ahrens that there are in the whole county of Renville, and I don't believe that the whole of their testimony put together will convince this Senate but what Carl Holtz told the truth in that matter. They were so satisfied upon the other side that he was telling the truth that they entirely refrained from asking a single question upon his cross-examination. They dismissed him without a single word. That is a pretty good indication gentlemen, that they know he told the truth,

because I do believe that if they had undertaken to put their spear of cross-examination into Carl Holtz they would have found matter which would have been running out of his body that would have covered this respondent all over with the slime of intoxication. They did not dare to probe that man Carl Holtz, because they knew he was the man that dealt out the liquor, that he was the man that dished it up to the Ninth Judicial District Judge. So take that testimony in connection with the two Millers and then see if the conclusion does not irresistibly follow that the Judge of the Ninth Judicial District was intoxicated at the time alleged in this article.

But we have another witness, that is Mr. Coleman. We have heard a great many times during the respondent's argument that Coleman drops out. But he every time comes to the surface. The respondent's counsel then goes on with a tirade of abuse against R. W. Coleman and says "Well, Coleman is out of this case entirely; he is entirely out. We have everlastingly demolished Coleman. He has not a prop upon which to stand. He has not got a friend in Beaver Falls, or in Renville county, and he is out of this case."

Well, I expected him to be out as a matter of course, but as the counsel goes along with his argument, every time he comes to Mr. Coleman, he has to go through with the same performance,—he isn't out after all, he still remains in the case notwithstanding he is put out upon every occasion when he appears. He will not stay out according to the theory of the respondent. Now, Mr. Coleman testifies,—and I will submit to this court if Mr. Coleman upon the stand here was a swift witness. I want to read a little of his testimony and see if you do not agree with me that Robert W. Coleman, so far as his testimony is concerned,—no matter what may be his character otherwise,—(and I will come to that in a moment) if you do not agree with me that he is not open to the ordinary objection that is made to being a willing, swift witness, or a volunteer witness. We will read from the the 23rd day, the 12th page:

Q. I call your attention now, Mr. Coleman, to a term of court held in Renville county in May, 1881.

A. I will state here that I first saw Judge Cox in April, I think it was at Waseca. I was just casually introduced to him there, that is all, and I afterwards made his acquaintance in June, 1879, at Redwood Falls.

Q. In May, 1881, did you attend a term of court held in Renville county?

A. Yes.

Q. What judge presided at that term of court?

A. Judge E. St. Julien Cox.

Q. You may state his condition during that term of court as to sobriety?

Now mark Mr. Coleman's evidence and see whether there is anything that convinces your mind that he was in a very great stress to injure Judge Cox.

Judge Cox Tuesday, when he opened court was sober Wednesday he was sober and the first intimation that I had that he was otherwise, was Thursday morning. Thursday afternoon it was very perceptible; Thursday evening, it was more so. In fact, he was very much intoxicated Thursday evening. Friday and Saturday the same, and Sunday.

Q. He was intoxicated while upon the bench?

A. Yes, sir.

Mr. Coleman further says in answer to further questions:

Thursday night he was in the primary stages of drunkenness; Friday,—he was not so you could call him exactly drunk, in the general acceptation of the term; but he was very close to it.

Mr. BRISBIN. Please repeat that; those are technical words, and we want to get them down.

A. Drunk, not exactly in the general acceptation of the term, but very close to it; Friday he remained in the same condition; that is, close to being drunk; Saturday the same, and Sunday he was drunk.

Now, there is the evidence of Robert W. Coleman That is all of his evidence so far as the State adduced it. Now all the evidence they obtained from Robert W. Coleman upon which they go to this Senate and claim it is false is obtained by their system of cross-examination. The State did not go into these details of the condition of the Judge; they were willing to rest it, as it ought to have been rested, upon the opinion of witnesses. We left it right there,—a moderate statement by Mr. Coleman on behalf of the prosecution in this case,—to the effect that in his opinion at that time Judge Cox was intoxicated. Well, they take hold of Mr, Coleman on the other side, and they make a fearful examination of him, running through page after page and page after page, with the evident intention of destroying the effect of his testimony. Now, gentlemen, we are met by the statement that Robert W. Coleman is a very bad man; that he has been impeached. I want to ask this question in all candor of this Senate, if the respondent's counsel had believed when Robert W. Coleman was put upon the stand that he was a man that was entirely unworthy of belief,—that his word was not to be taken by men even under the solemnity of an oath,—that he was of that class of men whose word is but as the wind that bloweth, effecting no good and no evil,—I want to know if they had believed that, if they would have gone to the great trouble and put this State to the great expense in an endeavor to break down his testimony by that system which we call impeachment as to truth and veracity. Would they have done that? But, do you not think with me that they knew that this man Robert Coleman, was telling the exact truth about that matter? And if not,—if they did not believe that he was an important factor, and telling the truth, why did they go to the great expense to undertake to break him down?

I tell you, gentlemen, it is not the practice of lawyers to undertake to break down witnesses upon unimportant matters; and it is not the practice of good lawyers to undertake to impeach a witness upon whose testimony the case does not hinge. This case does not hinge upon the testimony of Robert W. Coleman; this case does not hinge upon his testimony at all. He is only a makeweight here; that is all; he is one of the five. This case stands principally upon the evidence of Samuel R. Miller, the prosecuting attorney of that county; he is the principal witness upon this charge; he is the man upon the strength of whose testimony we go before this Senate, with the expectation that Judge Cox will be convicted. Robert W. Coleman corroborates him; George Miller corroborates him, and Carl Holtz corroborates him. So that Mr. Coleman's testimony could be thrown out of this case, if necessary, and still they have not shaken the case as made out by the State. But shall Mr. Coleman's evidence be thrown out? We all know, gentlemen, that when one good, solid man like Robert W. Coleman, with a family, well dressed, money to spend, good circumstances, pays his debts—when one family

like his moves out of a little town like Beaver Falls, there is a fearful void made in it. The people very much dislike to see one family like the Colemans leave it; it makes them all feel as if they had lost an important factor. When such a man as Coleman goes away from them, it makes them feel as though their town was running down instead of growing up, and especially when they have a coterie of friends there who are interested in helping the Judge. The man has gone from their number; he don't face them any more; and they come down here and testify that his reputation for truth and veracity is bad.

That is one of the ways that they take to help the Judge, and at the same time administer to the absent one what they would call a rebuke; it is one of the means at their command to help the Judge. But, when you sound and get right down to what is the matter with Robert W. Coleman you find it is partially a political matter. He did not agree with them all on politics. You find that he has charged this man Berndigen forty dollars for doing some business for him when Berndigen thought he ought not to have charged him but five. You find that there is some lodge of some character or other up there to which Coleman was to pay two dollars for some member and that he failed to pay it, claiming that he had paid it in his business, other parties claiming that he had not paid it. You find also that they reason and testify within a circle; it is Zumwinkel has told me this and McIntosh has told me that, and they bring on the same crowd every time to testify that Robert W. Coleman's reputation for truth and veracity is bad. Well, we happened to have the witness Zumwinkel here upon another matter, and he came upon the stand and in the honesty of his heart said "Why I never told these men any such thing." Here they had been testifying how Zumwinkel was one of the principal men that had told them that Robert W. Coleman's reputation was bad. The honest old German said "I never told them so;" he came upon the stand and denied it under oath, testified that they had testified falsely,—another system of impeachment going on. But he says and he explains here to this court exactly what was meant by all that talk in Beaver Falls. Why, he says, Coleman is a man given to large talk, that he likes to tell big stories. If his family had had a coat-of-arms he would have been telling about that, no question about it. Perhaps they have none and had none of that noble blood in their veins of which the counsel for the respondent speaks, but if they had had any noble blood in their veins, and had had a coat-of-arms, if it was nothing but a pipe and a bottle, he would have had that illustrated and told them what a grand family the Colemans were; and like enough if they had been free-booters Coleman would have got a circle of friends around him and made a great deal of capital out of that.

If they had excelled in some particular art he would have boasted of that. And he would have told them what an immense amount of law practice he had somewheres down east. Well, now they say that Sam Miller was one of the men that told them that he had a bad reputation for truth and veracity. Now, I imagine that could very well be. I have no doubt that Coleman has frequently been talking with Sam Miller, and told Sam how he used to rake in the fees for his professional services, and how he got a thousand or two thousand dollars in a single case, and how he would make Sam's eyes stick out, so you could almost hang a bushel basket on them. And Sam would not believe that kind

of stuff and nobody else would, and so, in conversation, they would say, "Coleman is a liar; you can't believe any such thing." It was on account of his big stories. But not one of them has come here and testified that Coleman was dishonest in his dealings; not one of them. Now, a man's reputation, gentlemen, is what he makes by his ordinary dealings with his fellow men. And recollect there is not a witness on the part of the State that they have attempted to impeach except where the witnesses have left that portion of the country and gone away—not to any great distance, simply gone a short distance.

Well, not satisfied with their impeachment of Robert W. Coleman, as they claim, by the witnesses they brought upon the stand, they have been impeaching him all around through this court. Why, I have heard from the lips of the respondent himself, in the presence of Senators here, that the United States Marshal was after that Coleman now, for some terrible thing that he had been doing in swindling the government. They have kept on impeaching him and trying to break him down, all around. It was said that he had lost some money here while attending this court, that some money had been stolen from him, and you have heard it circulated around here by the respondent and his counsel that he never had any money stolen,—that he stole it himself from his client, or something of that kind. All that kind of poison has been circulated here for the impeachment of Robert W. Coleman. Ah! gentlemen, it is only more convincing testimony to my mind that they knew Robert W. Coleman was telling the truth, or they would not have put forth such extremes to destroy his evidence and weaken its effect. It was the truth that he was telling.

Senator BUCK C. F. Mr. President, if it is agreeable to the manager, I move that we take a recess for five minutes.

Mr. Manager DUNN. I should like a recess for five minutes.

The PRESIDENT. We will take a recess for five minutes.

AFTER RECESS.

Senator BUCK C. F. Mr, President, I am anxious to go home on the train that leaves pretty soon, and if the Senate will do so, it would be very proper if they would fix the time now when they would adjourn to. And in order to bring the question before the Senate, I move that when the Senate adjourn, it adjourn until next Monday at 8 o'clock in the evening.

Senator AAKER. I move to amend that by making the time 10 o'clock in the morning.

Senator MEALEY. I second that motion.

Senator BUCK, C. F. I would say, Mr. President, that there will be a great many of the Senators who will probably go home and it will be impossible to get here at ten o'clock in the morning; I would suggest three o'clock if it would suit the gentlemen better.

Senator CAMPBELL. That would be better.

Senator WILSON. Mr. President, I think there will be a sufficient number of us stay here and not go home at all to make a quorum Monday morning; I hope we will not adjourn longer than to ten o'clock Monday morning.

Senator MEALEY. Mr. President, I would say that it is the desire of many Senators here that this thing be continued without any adjourn-

ment until its close. We are here and we can stay here to-day and we might just as well commence on Monday morning. A large majority of the Senators live so remote from here that it would be impossible for them to go home, and they will have to stay over, and it is very desirable that we continue this thing now until its close. I hope there will be no adjournment.

Senator BUCK, D. I would suggest, as a compromise, that the hour be put at half past two o'clock Monday. Now, I am very anxious to go home. One cause of my prolonged absence at one time during this trial was the very serious sickness of my child with typhoid fever; that child is still sick and needs my care. It is only because of the importance of this matter and the duty I felt imposed upon me that I have remained here this week. I want to go home this afternoon. If we hold a night session, we can make up for the loss of the forenoon on Monday.

Senator POWERS. I think it is necessary, Senators, that we have a full Senate now the rest of the time. There are two questions:

Senator BUCK, D. One word. A very severe fire raged yesterday in Senator Clement's city, and he felt it his duty to go home; possibly he cannot be here before half-past two Monday; and it is so with many other Senators for certain reasons, and I do not think it would be best to meet here Monday at 10 o'clock. I move that the hour be fixed at half-past two on Monday.

Senator BUCK, C. F. I will accept the amendment. I would suggest, as we shall have to adjourn over Sunday, at any rate, and there will be only three or four hours more of to-day, and we cannot get through in that time, and that while we have spent a great deal of time in this trial, and Senators are anxious to get home and are tired out, yet I do not believe in going off half-cocked in this important matter, and that it is necessary to be deliberate upon it, that we should take time to deliberate and not be in a hurry.

Senator CROOKS. Mr. President, I would ask the Senator from Blue Earth to amend and change the hour named by him in his amendment, making it three o'clock instead of half-past two, for the reason that the train from Winona gets here at three o'clock.

Senator BUCK, D. I will accept that suggestion and make it three.

Senator JOHNSON, A. M. Mr. President, no one can appreciate the condition or the statement of Senator Buck more than I do. I am sorry that it is so; but what have we got to warrant us, if we put it off to next week, that other conditions will not arise when ten Senators will have to go home? Some fire, sickness or death,—and then the thing will be prolonged for all time to come, we never shall get through. This matter has been prolonged from time to time. I am sick of it. I would like to accommodate the Senator on account of the sickness in his family, but it is a moral necessity that this thing shall go on, and I think that we can go on and we can vote this evening, and we can dispose of this matter. I calculate I shall die before long. [Laughter.] I move that we continue right along with this session until we get through.

Senator BUCK, C. F. I will insure his life until the end of the trial. [Laughter.]

The PRESIDENT. There are two motions before the Senate: one that we adjourn until 8 o'clock on Monday evening, and another that we adjourn until 3 o'clock Monday afternoon. We will take the vote on the

otion to adjourn until 3 o'clock on Monday afternoon. Are you ready r the question? Those in favor of the motion will signify it by saying e; contrary no. The ayes seem to have it,—the ayes have it. What the further pleasure of the Senate?

Senator ADAMS. Mr. President, I desire to call up a resolution offered me some days ago, upon which notice of debate was given and it nt over; I have let it remain on the table until the present time. I not in a disposition to talk to-day. I go home on the noon train, and would like this question disposed of before I leave. It refers to the atter mentioned before, this morning, in regard to the final argument.

The SECRETARY. I have it here and will read it.

[Reading.] Resolved, that after the final arguments are all in, the ssions of this court shall be open and that the speeches and remarks ade during such such sessions shall be published as a part of the proedings of the court and be a part of the record.

The PRESIDENT. Is there a seconder to that motion?

Senator BONNIWELL. I second it.

The PRESIDENT. You have heard the resolution that has been read the secretary. Are you ready for the question?

Senator GILFILLAN, C. D. Mr. President, I like the tone of that as far the taking of the vote is concerned, but there might be circumstances ising after the taking of the vote which would require a final consultion. I wish the Senator would change that so it would only cover ne proceedings up to and the taking of the vote.

Senator ADAMS. Very well, I am willing to change it; I will accept at proposed amendment.

Senator WILSON. Mr. President, I would suggest that these matters e left until after we get through and we go into a session for deliberaon. It would take up the time of the Senate now, and we had better ear the argument and let that matter rest, it appears to me, until after e get through with the argument. Then we will have an opportunity f arranging all of these other matters.

Senator CASTLE. I think, Mr. President, we had better have it fixed ow for several reasons. There seems to be a disposition upon the part f some of the members of this body to enter into a general melange, oth upon the law and the facts of this case, after that sort of thing has een indulged in by the counsel for the respondent and the managers. ow, if we are going into that, perhaps it would be well enough to know and to know it now. If, on the other hand, each Senator is to content imself with a mere brief statement of the reasons which influence his ote, to be given at the time his vote is taken, why, in that event, we erhaps ought to hnow it now, and then have time, after his vote, to le such opinion as he may desire.

The resolution I introduced yesterday was offered for the reason that seemed to have the sanction of precedent. Not that I had any particular desire then, or now have, to discuss the matter—so far as I am oncerned I care very little whether we have a general discussion of the natter after it it is closed by the parties in interest, or whether we proeed at once to take a vote. I think it is perfectly manifest to any man who knows anything about the make-up of this Senate, that all the dissussion we may have here will be just so much in the interest of buncombe—simply that and nothing more; that it won't change a vote, hat it won't influence anybody or any party; and I don't think that

posterity is very deeply interested. Now, if there is a desire, I don't care to stand in the way of discussing it; I am perfectly willing to discuss it, at any time and anywhere. But it strikes me to be in bad taste—strikingly in bad taste—that acting as judges, as we are, we should get into an open wrangle on the floor of the Senate, or the floor of the court, over matters upon which we are to exercise, or ought to exercise our calm dispassionate judgment. A discussion means, and will result, necessarily, in a conflict of opinions and a discussion of the law and the facts of this case that will probably engender anything but kindly, dispassionate feelings. That is the result of discussions generally, in this and other bodies. While perhaps there is as much charity and courtesy exercised in this as in any body that I know of, it strikes me that it will not be the proper way to approach the final consideration and determination of the questions that we have to adjudge upon. If after having heard this mass of evidence, all these arguments upon the law and upon the facts, the members of this Senate are not prepared to vote and to do justice, I think that a discussion upon the part of the members of this body will be a very fruitless affair.

Senator AAKER. Mr. President, I move to lay the motion on the table.

Senator ADAMS. I hope that motion will not prevail.

Senator GILFILLAN, J. B. Mr. President, I desire to rise to a point of order, whether discussion upon this matter is in order.

Senator ADAMS. If you do not desire to interrupt me now I desire to say a word.

The PRESIDENT. I suppose, strictly speaking, it is not in order.

Senator CASTLE. I don't understand the rule to have that effect at all; I understand the rule as inhibiting discussion during the trial of the case,—during the taking of evidence in the case. It does not go to the extent of inhibiting discussion upon a purely regular motion or matter of business.

Senator WILSON. I am more satisfied than ever that it is improper to discuss this matter now. We are robbing Mr. Dunn of his time for argument; It will take him all day to get through—

VOICES. "Question," "question."

The PRESIDENT. You have heard the question, Senators, upon the resolution.

Senator ADAMS. I call for the ayes and nays upon the motion to lie upon the table.

The secretary then proceeded to call the roll.

Senator Adams (when his name was called). Mr. President, I have some rights in this body that cannot be trampled on.

Senator WILSON. Can a man make a speech after the call of the roll has commenced?

Senator ADAMS. Yes, sir. I desire to explain.

The PRESIDENT. You are explaining your vote?

Senator ADAMS. Yes, sir.

Senator GILFILLAN, J. B. That is not in order upon a motion to lie upon the table.

Senator ADAMS. The motion to lie upon the table was not seconded.

Senator GILFILLAN, J. B. The roll-call is being taken upon that.

Senator ADAMS. Then I will simply appeal to this Senate.

Senator BUCK, C. F. I think the gentleman ought to have a chance to explain.

Senator ADAMS. I don't intend to occupy three minutes.

VOICES. Go on.

Senator ADAMS. I simply desire to explain; if the Senate refuses it then of course—

The PRESIDENT (interrupting.) The Senator is in order unless there is an appeal from the chair.

Senator ADAMS. The object I had in offering that resolution which is about to be laid on the table was simply to accomplish the very purpose indicated by my friend Castle, only in a different way. I want to make the investigation of this court *public;* I would, if it were possible, have every man, woman and child in the whole State of Minnesota here, because I think it is in the interest of the people. Gentlemen, if their remarks are going to be public, and consequently a part of the record of this court, will be very particular what kind of remarks they make. It will not be as it is in a secret session of the Senate. If what is said is said openly, and in the face of the public, members of the court, myself as one of them, will be very careful what they say. And that was the object of the resolution.

Senator BUCK, C. F. Mr. President, I desire to say a word upon this.

VOICES. "Question," "Question."

The roll-call was then proceeded with.

The roll being called, there were yeas 14, and nays 12, as follows:

Yeas:—Messrs. Aaker, Campbell, Case, Gilfillan, J. B., Hinds, Howard, Johnson, A.M., Johnson, R.B., Mealey, Powers, Shalleen, Tiffany, White, Wilson.

Nays:—Messrs. Adams, Bonniwell, Buck, C. F., Buck, D., Castle, Crooks, Gilfillan, C. D., McCrea, Morrison, Peterson, Wheat, Wilkins.

So the motion to lie on the table was carried.

Senator CASTLE. Mr. President, I call for the resolution that was offered yesterday.

Senator HINDS. Mr. President, I move that the Senate proceed with the argument.

The motion was seconded.

Senator CASTLE. I understand that Manager Dunn has all the time he wants to have to dispose of his argument. It won't take any more time to dispose of this question now than to dispose of it on Monday. I call it up now because there are probably more present than when Mr. Dunn is through with his argument. I am not very particular about it if the Senator [Senator Hinds] has any special desire to rush it ahead now, I have no objections. But I suggest that the probabilities are that when Manager Dunn gets through with his argument—

Senator HINDS. I am not particular about it at all. The only objection I have now to considering this matter is that I think it ought to be done privately when there is time to consider the whole subject,—not only as to whether the proceedings shall be with closed doors, in relation to one part of the proceedings but as to the whole of them,—in what order proceedings shall be conducted. I think we had better, after the argument is closed, retire by ourselves for deliberation upon the subject and come to a conclusion in regard to all these collaterals that must be attended to before the final questions are taken.

The PRESIDENT. It is moved and seconded—

Senator CASTLE. Just one word, Mr. President, with reference to the remarks of the Senator from Scott [Senator Hinds.] Now, I do not propose to have this or any other important question, from this out, settled in a Star Chamber proceeding. I do not think that any Senator here is or ought to be desirous of any vote that he shall give or expression that he shall make excluded from the light of the world if we desire to adopt the usual course,—the only course that has been adopted hitherto in this State upon the matter of taking the vote, we should not hesitate to say so, and to say it publicly. I can see no advantage in going into a secret session for the purpose of considering this or any other matter until the final vote.

Senator GILFILLAN, J. B. I would like to know if there is any question before the Court.

Senator CASTLE. There is a question before the Court.

Senator GILFILLAN, J. B. I think there is no question before the Court.

Senator CASTLE. I think the Senator must have been up at Hennepin attending to his law business.

Senator GILFILLAN, J. B. I call the gentleman to order.

The PRESIDENT. If you will wait a moment, gentlemen, until this point of order is settled. There is a motion before the Court, and it is that Manager Dunn be permitted to go on with his argument.

Senator GILFILLAN, J. B. The regular proceeding is the course of argument.

Senator CASTLE. I don't believe I have got up to make a speech for a week but what the Senator from Hennepin has interrupted me.

Now I called up the resolution of yesterday, (which the mover of a resolution has a right to do). When that resolution is called up, it is before the Senate for the purposes of consideration and adoption or rejection. And if the Senator from Hennepin had been attending to his business he would have known it.

Senator GIFFILLAN, J. B. I heard that, but I knew that the chair was entertaining a different motion.

Senator CASTLE. I would like to know whether I have got the floor or the Senator from Hennepin.

The PRESIDENT. Senators, I am just as well aware as any of you that we are not proceeding religiously and scrupulously. [Laughter.] I am also aware that we have not done so at all. [Laughter.] And I am granting just the same courtesy under a law of limitation, until I shall chance to get mad,—that has been granted all along. Only that and nothing more. The Senator from Washington has the floor and he will probably get done in time.

Senator GILFILLAN, J. B. Will the chair allow me to say one word? I would like to know which question is before the house,—the one that the chair insists upon, or the one that the Senator from Hennepin insists upon.

Senator CASTLE. The gentleman from Hennepin don't insist upon any.

The PRESIDENT. Order! I have simply stated that there was a motion before the house, the Senator from Hennepin claims that is not in order because it would result anyway.

Senator C. F. BUCK. Let me suggest that the President is laboring under a mistake. The Senator from Washington called for a resolution

that he offered yesterday and which was laid over; because some person gave notice of debate, it was laid on the table. He moves to take that resolution up. That is the motion, as I understand, before the house.

Senator GILFILLAN, J. B. That is the point I desire to make, Mr. President I understood from the Senator from Washington that he was discussing a proposition which the chair did not understand to be before the house. That is why I rose to a point of order.

Senator CASTLE. Mr. President, I desire to say—

The PRESIDENT. The Senator from Washington stated that he desired to call up the question, or made a motion to that effect, as near as I can learn,—we cannot hear very well in this hall,—it was not seconded so that the Secretary could not get that motion, and before it was seconded the Senator from Scott had moved that Mr. Dunn be required to go on with his speech.

Senator GILFILLAN, J. B. Well, if the Senator from Washington had been paying attention, he would have known that.

Senator CASTLE. The Senator from Hennepin is exceedingly smart, but if he can't do anything better than interrupt a gentleman in making his argument, I would suggest to him that it would be well for him to keep quiet.

Senator GILFILLAN, J. B. The chair decides the point of order well taken.

Senator CASTLE. Now, Mr. President, one word further. I hardly think that it is particularly becoming the members of this Senate—

Senator GILFILLAN. Mr. President,—

Senator CASTLE. I haven't any objection, if the Senator from Hennepin desires to make a further explanation.

Senator BUCK, D. Mr. President, it seems to me—

Senator CASTLE. One more word.

Senator BUCK, D. I call the Senator from Washington to order; for his remarks are entirely out of order and improper.

Senator CASTLE. Well, we calculate they are, in a technical sense.

Senator CAMPBELL. Now, Mr. President, I propose to make a point of order. Rule 26 of this court provides as follows: [Reading].

> All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for more than fifteen minutes on an interlocutory question, unless by consent of the Senate to be had without debate, but a motion to adjourn may be decided without the yeas or nays unless they be demanded by some member present.

Now, I shall insist upon that rule, simply to get us out of this nonsensical wrangle that we have got into. I move that point of order, and I ask a ruling of the chair upon it. I desire to ascertain whether it is good or not. If it is good, it settles this debate; if it is not good, I want to know it.

Senator AAKER. There isn't any question before the Senate.

Senator CAMPBELL. The point of order is that all this debate is out of order.

The PRESIDENT. I have regarded the motion before the Senate as a motion made by the Senator from Scott, we will take a roll-call upon that.

Senator CAMPBELL. Then the gentleman from Washington is out of order,—if you are entertaining the motion of the gentleman from Scott.

The PRESIDENT. I will take the opinion of the Senate upon that question.

Senator CASTLE. Mr. President, I will save the trouble of that, I don't care to discuss this question at this time. I withdraw the motion for the calling up of this resolution,—I don't care to take the time of the Senate if they don't want to consider this question now. The only thing I was insisting upon was that a member upon the floor had a right to stay there until he was properly called to order, that is all.

Senator CAMPBELL. I am willing to concede that the Senator had the right to call the resolution up without any seconding and have it disposed of.

Senator CASTLE. Now, if the Senate don't care (I don't want to take up the time of the Senate in discussion here), perhaps we might have a vote as to whether we will take up this resolution. I don't care which way the Senate votes. If they wish to consider it now, well and good. It strikes me, as I suggested in the first place, that we shall not have a quorum this evening; perhaps, therefore, if we want to do any business, we had better do it now.

Senator CAMPBELL. I desire to say this: I would not have raised the point of order, provided the chair had entertained the motion of the gentleman when he moved, as he had a right to do, to have his resolution taken up; but when we were getting into a discussion here and did not know where we were, in order that we might have some order, and that we might proceed with business, I made the point of order.

VOICES. "Question," "Question," "Question."

The PRESIDENT. The question is upon the motion of the Senator from Scott, that manager Dunn proceed with his argument.

Senator HINDS. I withdraw my motion.

Senator CASTLE. I withdraw mine.

Senator ADAMS. The regular order.

The PRESIDENT. Mr. Dunn will proceed with his discussion.

Mr Managor DUNN then proceeded with his argument as follows:

Mr. Manager DUNN. I desire, Mr. President and Senators, to call attention for a few moments to the witnesses and the testimony for the defense as to this article—article number twelve. The witnesses seem to be Megquier, an attorney from Bird Island, Mr. Whitney, an attorney from Walnut Grove, Mr. Jensen, the nominal sheriff of that county, Mr. Greely, a sort of looker-on in court, and Mr. Ahrens.

I claim that this court nor any court can place much credence in the testimony of these witnesses upon the position that I took yesterday. That they had not the same opportunity of judging of the condition of the Court as Mr. Miller, the prosecuting attorney had, at these several times when it is charged that the Judge was manifestly under the influence of liquor. There is no particular evidence given by Mr. Megquier that he was very much interested in obtaining the attention of the Court at any time, except on the sixth day of the term, which was the day when he procured this unwarranted pardon of the convicted Anderson. Mr. Megquier, I think it is patent to this Court from his evidence, was more or less engaged with the Judge in his bacchanalian revelries at that term of court. He seems to be thoroughly intimate with the Judge upon more than one question; he is even so intimate with him

that he has gauged his drinking capacities almost to a fraction. He don't think the Judge was drunk because he had not drank enough. He says that his acquaintance with the Judge, and his knowledge of his *holding*,—not judicial holding,—leads him to the conclusion that it takes about twenty drinks of a fourth of a gill apiece (some of you arithmeticians can figure that up) before the Judge will exhibit the least signs of intoxication. Now let us take that for what it is worth. I ask this Senate to consider that evidence, and then ask themselves the question if they take much stock in the testimony of this man Megquier, who testifies that during the time when we have had undisputed evidence here that the Judge was drinking liquor, at this term of court, "the Judge was not intoxicated."

It will be remembered that on the day the senior counsel closed his argument here, he was very much astonished that during the whole of the testimony that had been given, there had been no time fixed when Judge Cox was seen to commence to get drunk; that witnesses would come upon the stand and testify that he was drunk or intoxicated, but there was no one who testified that he had seen him begin to get intoxicated. Now at this time, if at no other, the Senate will bear me out in the statement that the evidence clearly shows that there was a commencement to his intoxication, and that the evidence clearly shows that he was drinking intoxicating liquors. The witnesses for the respondent coincide that he did *commence* to get drunk, at least. Mr. Megquier testifies that on Sunday night, in his opinion, the Judge had taken his usual amount of twenty drinks—not in words did he say that he had taken twenty drinks—but on Sunday he thought the Judge was intoxicated; so I draw the conclusion that he must have taken at least twenty drinks on that day, or at least an amount of liquor that would be comprised in the twenty drinks at one-fourth of a gill apiece, four drinks to a gill!

Now the Senate will remember that was the day previous to the time when the pardoning of Anderson took place, and it is in itself enough to warrant the conclusion that I draw from the evidence, and from the action of the Court, that he was intoxicated upon Monday, to Mr. Megquier's knowledge.

Mr. Whitney is the other witness. You will recollect that in one of the charges here—it has come out in testimony that Mr. Whitney was introduced by Judge Cox to a certain prisoner as his "scratchitory"—the scratchitory of Judge Cox. Mr. Whitney was the room-mate of Judge Cox at this term of court at Beaver Falls, at Mr. William McGowan's. He was the man who, for Judge Cox's delectation, and for the entertainment of Judge Cox's friends, was the promulgator of that beautiful song, "Flannigan's Band," and to the performance and hearing of which the Judge invites his friends at the hotel, interspersed between the verses (I presume) by way of slight digressions, by the Judge ordering in the drinks.

They did not go out to "see a man," but they brought the man in, at that performance. Mr. Whitney,—I won't call him a "briefless barrister" as my friend Arctander has called Mr. Drew,—but he was the young man who, in the language of Counselor Brisbin, had been taken so kindly by the hand by the Judge of the Ninth Judicial District, and invited to go with him upon his circuit. He had just been admitted to the bar at the city of Rochester, had received his instruction under that emi-

nent legal light there, Mr. Tolbert—had graduated at that bar, and was looking for a location to practice the noble profession of the law; and the Judge imitating the example of the great men that Counselor Brisbin cited before you, had taken him under his protection; he had thrown his judicial arm around him, permitted him to travel in his august company, and at this term of court at Renville, it mysteriously happens that Mr. Whitney,—a man at that time without a location and without a home,—was retaind as attorney by a total stranger,—a man that he never saw and never knew; and the service was the defense of a man charged before his Honor with having sold whisky contrary to the statute in such cases made and provided. There is something singular about the fact that this man Whitney should be employed in this manner, but there are one or two suspicious circumstances connected with that whole transaction. It seems that this man, Whitney, was employed to defend one Morgan. Whether Mr. Morgan thought it was well to employ a man who was a friend of the court, who had the ear of the court, who slept with the court, who drank with the court, who sang "Flannigan's Band" for the court in the hours of his dejection, in order to entertain and enliven him,—who was near the court,—I don't know, but it seems that the court took a great deal of interest in Mr. Whitney's client.

We find, from the evidence, that in the saloon of one Peter Berndigen, (another man who had been indicted for selling whiskey, and whose trial was then depending,) and in the presence of Mr. Morgan, the Judge of the court requested the county attorney to *nolle pros* the indictment against Mr. Morgan, in whose behalf Mr. Whitney was appearing. Now there may not be anything wrong about that, but there are some suspicious circumstances connected with the whole transaction. Why should the Judge of the court request the county attorney, out of court, in a saloon, without any showing, in the presence of the accused, to *nolle pross* and dismiss an indictment which had been found by the grand jury of that county? No one was moving, no one was asking the court to interpose its own counsel, and force and thrust it upon the prosecuting officer of that county.

It may have been all right, but I think, gentlemen of the Senate, that that action needs an excuse to be found, I think that that needs palliating in some way, otherwise a very improper conclusion might be drawn from that circumstance. That excuse, *we* being here, and claim that it was because the Judge was not in his right mind.

It is not the usual thing for judges to thrust their advice, unasked, upon public prosecutors, that certain indictments be *nolle prosed* and quashed. Now, take that into consideration in connection with the other act, that Mr. Whitney, this briefless barrister, this lawyer without a habitation or a home, was the employed counsel of Mr. Morgan, in the face of the fact that there were other resident lawyers there, that this Morgan had acquaintance with,—I say, put these two facts together, and there is in that circumstance, evidence to my mind that the Judge could not have been sober and in his right mind when he performed that act of giving his counsel and advice unasked to the county attorney.

They bring Mr. Whitney on the stand to contradict the State's testimony that Judge Cox asked the county attorney to *nolle pros* that charge. But, you will find that Mr. Whitney does not testify to the occasion that Mr. Miller testifies to, but he testifies to something that took place in court. Mr. Miller testifies that this took place in a saloon of Peter

Berndigen, and that Mr. Morgan was there. Mr. Morgan does not come upon the stand to deny it. The matter came up in court finally, and the prosecution was dismissed without serious opposition upon the part of the county attorney at that time; because it was probably apparent that Mr. Morgan had paid his license and was really acting in good faith, but had no license. That was the technical defect in his case,—no license had been granted. Now if the Senate will look at Mr. Whitney's testimony they will find that upon all important matters of what occurred in that court, Mr. Whitney testifies "that he don't know." There is page after page of "I don't know," "I don't know," "I don't know" matters, which, if Mr. Whitney had been observing in that court, he ought certainly and would certainly have known.

[Senator Buck, D. here took the chair to act as President *pro tem.*]

Mr. Jensen, the sheriff of that county, testifies that he was present, and that Judge Cox was perfectly sober,—no indications of drinking anything; but he finds that Mr. Coleman was very drunk one night,—*very drunk*; and I asked him which was the drunker of the two, Judge Cox or Coleman; and he said he thought Coleman was. The counsel for the respondent found that Jensen had made an apparent admission that he ought not to have made. And he sought to parry the effect of that statement by asking if Judge Cox was drunk at all. "Oh, no; oh, no; he was not drunk at all;" therefore, of course Coleman was the drunker of the two.

But in answer to my question, put in a quiet manner,—the witness off his guard,—not really understanding the force of the question, and his answer perhaps, says that "Mr. Coleman was the drunkest of the two." Well, Mr. Jensen and Judge Cox are shown, by Mr. Jensen's evidence, to have been, at one time, on this night, together, in this saloon at a late hour at night; and the saloon shut up and Judge Cox went off, but Mr. Jensen didn't have enough to drink and went up to the brewery and finished out his debauch. That is his testimony,—he went up to the brewery and finished up.

Well, the next witness is Mr. Greeley; he is a very knowing witness; "he was there all the time and Judge Cox was sober." Now there is one little point in his testimony that I want to call attention to. You will recollect that Mr. Greeley is a boon companion of Judge Cox. He does not want to testify to anything that will injure Judge Cox in the least, but he does testify to one little circumstance which characterizes his testimony, and which I claim weakens his testimony as to the question of the sobriety of the Judge. He testifies that one evening he was at the hotel, and the Judge with his friends was in another room, and that the Judge came out and asked him if he had not some money to lend him,—wanted to borrow five dollars of him. No, he hadn't any money. "Well," the Judge says "go over to Peter Berndigen's and borrow five dollars for me." Now this Peter Berndigen was engaged in the whisky business, and was under indictment then pending before Judge Cox. Mr. Greeley goes over and borrows the money of Peter Berndigen at a late hour of the night, brings it over and gives it to Judge Cox. There may not be much in that testimony; standing by itself, it would really have but very little effect upon anybody, that is, as showing that Judge Cox was drunk, but taken into connection with the testimony of Mr. Greeley and that of the other witnesses in this case, it shows a very

close community of interest between his Honor, the Judge, the witness Greeley and Mr. Berndigen.

Mr. Ahrens, the ex-Senator, was in court but a short time, and he testifies that the Judge was perfectly sober; and in order to test the ideas Mr. Ahrens had,—what he means when he says a man is drunk,—I call your attention to the testimony he gave concerning the occasion when he went from St. Paul to St. Peter with the respondent in charge, in the winter of 1878. He said he didn't think he was intoxicated at that time; but he said further that they had to use force to keep him in the cars as they were going up, and to keep him from getting out at every station at which the cars stopped. Yet, in his opinion the Judge was not intoxicated. Now they attempt to weaken Mr. Coleman's evidence by producing testimony to show that Coleman was not in that court on two of the days he testifies he was there. Mr. Coleman testified directly that he was there all this time, and left there on Sunday morning. We produced a witness here who testified that he went with Mr. Coleman that Sunday morning to the point where they had to take the cars to come to St. Paul.

This article, gentlemen, I claim is thoroughly proven on the part of the State, and we shall insist strongly on a conviction under article twelve. Now I ask this pertinent question, which I have asked as to some other of these articles: Why has not the respondent himself been placed upon the stand to deny the facts stated in this charge? (And I want the Senate, when they come to vote upon this article, as upon the others, to consider that circumstance.) Why has the Judge of the Ninth Judicial District left your minds in this doubt and uncertainty, as is claimed by the respondent's counsel? Why has he left it in that doubt and uncertainty when by his own testimony and evidence, if the facts that our witnesses have testified to, were not true, he could in a large measure, have cleared it up? The respondent's counsel could have gone before this Senate with a great deal of assurance, if Judge Cox had come on the stand and testified that upon this occasion he was not intoxicated, upon that occasion he had not drank any liquor, upon the other occasion his mind was not confused. They could have gone before you, gentlemen, with the assurance that when their witnesses and our witnesses disagreed somewhat, his testimony put into the scales would have decided the matter in his favor. They have failed to do so, and I draw the conclusion, and you should and doubtless will draw the conclusion, that where the respondent has knowledge of matters which are decisive of the case, and fails to produce evidence of them, that the occurrences as stated by the prosecution in this case are correct. You cannot come to any other conclusion.

ARTICLE FOURTEEN,

is the general term of court held in Lincoln county in the month of June, 1881. That is a peculiar article to be considered. There is a good deal of evidence under that article, and a great deal of testimony that will require consideration. It will be remembered that the first term that had ever been held by authority of law in Lincoln county was held last June. Theretofore, it had been attached to Lyon county for judicial purposes at the last session of the legislature.

It was detached from Lyon county and was organized into a county

so far as judicial purposes were concerned, by itself. A term of court was established to be held at Marshfield, the county seat. This term of court followed close upon the heels of the term of court that we have just been discussing in Beaver Falls, not a great while after it. We find that Judge Cox arrived at Tyler,—which is the nearest railroad station to Marshfield, the county seat,—and goes to Marshfield on Wednesday morning. We find that upon his arrival at Marshfield, according to the testimony of the witnesses for the State, he was in an intoxicated condition. We proved that by Mr. A. G. Chapman, Mr. R. W. Coleman, Mr. A. C. Mathews, the clerk of the court, and Mr. C. W. Stites, an attorney. And we might have proved it by a score of others at Marshfield, if the rule of the Senate had permitted us to put them upon the stand. We find that there were some reasons that impelled these attorneys and others at that term of court to believe that Judge Cox was intoxicated. There was some ground for their opinions. There were some business transactions of the court at Marshfield which carried conviction to their minds, in connection with the actions personally of the Judge, that he was, as is charged in this article, in an intoxicated condition. Marshfield is a small place, situate, I believe, at the east end of Lake Benton. There are but few houses there. It is entirely bereft of that great comfort and solace of the district judge, of the ninth judicial district;—a whisky saloon. There is a void there which is, to my mind, almost unaccountable. We find that upon the arrival of the Judge at Marshfield he was helped out of his buggy, he went into the court room, and the first thing that he did after taking his seat and opening the court was to turn to the clerk of the court, and in a drunken manner ask him, "What's the business, Mr. Clerk?" They all agree to that; and before the clerk could answer what the business was, he asks, "What's the accomodations for having court here?

Now, bear in mind that the act of the Legislature establishing that court at that term especially provided that there should be no jury empanneled because there was not time. The regular session of the board of county commissioners had passed over, and they could not therefore draw the jury. The jury should have been drawn in January, but the act, I think, was not passed until in February, and the term of court was established for the following June, so that there was no meeting of the county commissioners to draw the jury, hence there was no jury expected to be had. The Judge after asking what the business was, immediately asked what accommodations there were for holding the court. Now, all the accommodations that were necessary for holding that court was a court room. If a jury had been drawn, there would have been necessarily jury rooms, grand and petit jury rooms, but up to that time there was no necessity for jury rooms in the town of Marshfield; and yet anticipating that there might be a special venire issued by the Judge and a jury called, the officers of that county had provided what to them was deemed suitable accommodations for holding that court at the legally established county seat; there was a court room in a school building, there was a room provided for the grand jury, and, in case of the necessity of a petit jury, there was a room which they had made provision to occupy, the office of the hotel, or a house provided for a hotel. There was all the requisite paraphernalia to carry on the business of the district court in the town of Marshfield. Now, if the Judge had been in a perfectly sober condition, to my mind he would have investigated more

than he did investigate as to those accommodations. The answer that he made was that that bar-room was no place for a jury, and that was all. He asked then, "How far is it to Lake Benton?" "Seven miles." "How far is it to Tyler?" "Four miles." He then immediately directed the clerk to make an order removing that court to the town of Tyler.

The manager who opened this case for the prosecution commented upon that to some extent—upon the law—that the Judge had no authority of law to remove that court to Tyler; and I submit to any attorney of this body, or elsewhere, that that statement of the law was eminently correct. If he had no right to move that court to Tyler, it is still another evidence that the testimony of the witnesses for the State upon that point, that he was intoxicated is true, and it is intensified and corroborated. Because, as I said before, we are looking for excuses for illegal acts. We don't want to believe that the Judge of the Ninth Judicial District acts illegally; we don't want to believe that the Judge of the Ninth Judicial District acts illegally knowingly and wilfully; therefore we seek an excuse for that act; we are trying to help the Judge out. And given, the fact that the act was illegal, improper, without authority, transcending his rights and powers, then given the other fact, as stated here in the opinions of these witnesses, that he was intoxicated, the conclusion irresistibly follows that that is the only excuse that can be given for that illegal action upon the part of the Judge, that he was, as these witnesses testify in fact, intoxicated at that time.

Now, mark another thing, the grand central figure of the respondent's evidence in this case—the great and good Col. Sam McPhail—is asked by the State whether any arrangements had been made by them as to holding court in Tyler, when they went over from Tyler to Marshfield. Why, he said no, except that Mr. Hodgman and himself had concluded that they had better ride every morning from Marshfield to Tyler and back again, because they, the lawyers, and the Judge could get a better room at Tyler than they could at Marshfield; but there was no talk about moving the court to Tyler, he said, when they went over there. Not at all. Now, taking that to be the fact, taking that to be the truth—that there was no talk about holding the court at Tyler—I say does it not still farther intensify this conclusion that we draw, that the Judge was intoxicated in this; that the Judge himself had not ascertained whether there was any provision made for holding the court in Tyler? How did the Judge know that there was even a court-room or a room that could be occupied for a court, in that little village of Tyler? How did the Judge know that there was any room in Tyler for petit jurors or for grand jurors, any better than there was at Marshfield? The evidence is that he took no measures to ascertain; he had made no arrangements, he had made no inquiries; he was acting entirely in the dark as to Tyler, much more than he was to Marshfield, because, at Marshfield he knew there was room, at Marshfield he knew there was some accommodations, but as to Tyler he was entirely ignorant. Gentlemen, I cannot help but come to the conclusion that there was some accommodation at Tyler which was a necessary adjunct to the administration of justice under the respondent in this case, and that cropped out in the answer that Col. McPhail made to a question put by one of the Senators when he asked him whether there was any place at Marshfield where liquor could be obtained; he answered no.

I claim, and I am warranted in making this claim, from the whole of the evidence in this case,—I draw the conclusion upon this matter, because it only comes out under this charge,—I draw the conclusion I think, gentlemen, fairly, taking the whole evidence in this case, from the commencment in Fairmont, down to the term of court that is charged in the last article of this impeachment, the general term of court held at Marshal in Lyon county,—that whiskey, alcoholic drinks, means of becoming intoxicated, opportunities for debauchery and revelry, were necessary adjuncts to the administration of justice according to the theories and practices of the Judge of the Ninth Judicial District. There was no attempt on his part to assertain what accommodations there were at Tyler, but he did know and he had ascertained that the main accommodations necessary, as I said before were to be fouud at Tyler, to-wit: a place where liquor could be had. Now, gentlemen, are we not fair in drawing that conclusion? Is that a conclusion unwarranted from this evidence? I think not.

We bring here as to the condition of the Judge, first, Mr. Chapman; who testifies, I admit, a little strong. He says, "The Judge was as drunk as a lord when he came in." It was a strong expression, but I know that A. G. Chapman meant it, and I know, and you know, that A. G. Chapman stands here unimpeached upon this record; and we all know that he stands here corroborated. Mr. A. C. Matthews, the clerk of that court, testifies that at Marshfield the Judge was intoxicated when he came into that court room, that he knows he was intoxicated, knows it from his actions, knows it from what he did, knows from what he said, —the whole conduct of the man was that he was intoxicated. Mr. Stites, a young attorney who had not then been admitted to the bar, was present at the time, and testifies that in his judgment and opinion the Judge was evidently and manifestly intoxicated at that time. The court was then adjourned.

What is the evidence for the respondent as to Marshfield? In the first place our old friend, Col. Sam McPhail, and Mr. Hodgman, who rode over in the buggy with the Judge. There was also another man in the buggy, the evidence does not disclose who he was; at any rate, if it does, he has not been produced as a witness. But they testify that he was perfectly sober; that there was no liquor in that wagon, no bottle at all there. Well, gentlemen, that may be, but if it is so, it is a very improbable circumstance, to my mind. I don't believe, and I don't think any Senator upon this floor believes, after hearing Col. Sam McPhail's testimony upon the stand here; after hearing the tale that he told, so unblushingly, of the revelries of the court at Tyler afterwards; I don't think there is a Senator upon this floor that believes there was no liquor in that wagon, when they went from Tyler over to Marshfield. I don't believe it, and I don't think there is a Senator here who does believe it. They believe that he testified to it, but I think that our old friend, the "Colonel" (because he is a colonel, or *has* been), was in the same condition then that he was in, upon a certain other occasion when he says: "Well, now, upon that morning you must excuse me. I—I wasn't in just a condition, myself, that morning, to tell how that occurred." And I was peculiarly struck with that remark made at that time, and it put me in mind of a little incident, showing the fidelity and subservience and faithfulness of the negro servants to their masters in the South before the War.

There was one that was brought up in court to testify as to his master's intoxication,—and on being asked if he ever saw him the worse for liquor. "Oh no," he says, "I never saw him the *worse* for liquor; he is generally the *better* for it." "Well, did you ever see him intoxicated?" "Oh, no; no, I never saw him intoxicated, because when Massa gets intoxicated I am generally so I can't see anything myself." He was going to stand right by him all the way through. And I was struck with the similarity between the old Colonel's testimony and that of the faithful body servant of the southern master. He never saw him intoxicated because he was in such a condition he could not see himself; and he was never the *worse* for liquor, because he always thought he was a little the better for it. But I think we will have very little difficulty in deciding that there must have been some liquor in that buggy on the way over there. It is true Mr. Hodgman says he didn't see any liquor, and testified that the Judge was perfectly sober during that whole time over there, and that he did not help him of the buggy. But Mr. Chapman and Mr. Stites both testify that they saw this man Hodgman lift and assist the Judge of the district out of the buggy at the time, when they arrived at Marshfield. There were two against one. And right here, how I would like to have had the testimony of his Honor upon that point. His Honor seems to have left a gap every once in awhile that I, for one, would have liked to have filled with his judicial oath.

The next morning this court meets at Tyler, and there, gentlemen begins a bachanalian revel that is beyond my power to picture here before this Senate as it ought to be. It has been called "a carnival" and "a jamboree" and "a picnic," by the various witnesses that have been upon this stand, and in all of which the Judge of the Ninth Judicial District was the great central figure.

Now, that was so patent to the defense, it was so notorious to the defense, that it was almost impossible for them to deny it even by their own witnesses. They sought to palliate it, they sought to throw discredit upon our witnesses as to the enormity of it; but the counsel for the respondent gets up before this Senate and glories in it. Why, he tells you that he had a right to do this thing; that when the court goes to these little towns it is a sort of a picnic, a sort of a jubilee; they have a good time, they drink a little whiskey, and they play cards, and he even says they play penny-ante with the judge; and they expect to have a sort of a carnival when the court comes. Well, gentlemen, all I have got to say is, that if that is the fact in the Ninth Judicial District,—if that is the mode and method of conducting the highest courts of our land in that new and growing district, among that new and growing population on the frontier, it is high time that this Senate set its seal of condemnation upon it.

Now, they do not deny that picnic and carnival, but they glory in it; except that they endeavor to show that the Judge was not drunk. He is the man they don't want to have drunk; they are willing to have old man Weymouth drunk; they are willing to have Col. Sam McPhail drunk; they are willing to have Bob Coleman drunk; they are willing to have anybody drunk but the Judge. Why they even go so far to excuse it as to show that they were really indecorous, ungentlemanly, impolite and unfair, and that there was not even,—as we have always believed there was,—honor among rogues, at that term of court; because,

the old Colonel testified that when they passed the hat with the bottle in it, and everybody drank out of it, when it came to the Judge that there was none in it. And the Judge who sat at his left he knows didn't get any of it, because there was none in it when it came to him; that they were not decent with the Judge.

Now, is there any Senator here that believes that the Judge failed to get some of that whisky? Don't you believe that the Judge would have exercised some of that high-toned spirit, that the counsel says he has, if he had been thus improperly treated by the suitors and litigants and attorneys at that *bar?* Do you not believe his high and haughty spirit would have rebelled against that kind of treatment? But it is certainly in evidence here that the Judge was a part of that revelry and a large part of it, too, because without the Judge there would have been no revelry; without the Judge there would have been no drunkenness there, there would have been nothing of the kind. Do you believe that if Judge Dickinson had gone up to hold that term of court that that scene would have transpired? Do you believe that if Judge Brill had gone up there, that debauch would have taken place? Or if Judge Vanderbergh, or Judge Brown, or Judge Young, or any other judge in the State of Minnesota? Do you believe that those disgraceful scenes would have been enacted at Tyler under the administration of the law by any other judge in this State? Why, they have their little quiet games; they even go so far as to invade the sacred precints of the Judge's own private room in the evening, sat up there drinking and playing cards, and they have even got the Judge down so low that he cannot afford to play at a table where they play for stakes of some magnitude and importance.

He sits in the game where they play penny-ante! Well, if that had been the size of that party it would have been all right, but there was a table there upon which some of the high toned party were playing right along side of him; but the Judge was sitting and playing with the cheap jacks, the low-down impecuneous fellows, where they could only play for a cent a-piece. That is the testimony of their own witnesses, and the testimony of our witnesses. It is undisputed testimony; and it was not regretted, it was not spoken of in sorrow, but it is gloried in. It is apologized for as the thing to do; it is advertised to the State and to the world. The Judge of the ninth judicial district comes into this Senate, sitting as a high court of impeachment, for his trial on charges of intoxication, and makes no apologies for that kind of action, but justifies it. Well, now, the conclusions we draw, gentlemen, are these—I think every Senator here must draw such a conclusion: we have taken the position that drunkenness comes from drinking, intoxication comes from drinking, that if the Judge was engaged in these midnight revelries, lasting, as it is in evidence here, up to as late as two o'clock in the morning, and as our witnesses testify, some of them, that upon no occasion but one did he go to bed, but that he lay on the bed with his boots on—and their own testimony shows that at least upon one occasion that occurred—I say we take the position that a man cannot engage in these revleries, nor in the use of intoxicating drinks, because upon all those occasions, even according to their own testimony, there was more or less liquor—they would get it down to two little bottles of beer—down to a little bottle of whisky—they would get it down to small amounts—and still their own testimony shows all the way through

that there was liquor drank there—we say that we cannot come to any other conclusion than that if the Judge entered into these revelries and partook of them, that he was not in a condition in the day-time to transact his business; hence we say that he was intoxicated at that term of court; hence we say that he was intoxicated and incapacitated from transacting the duties of his office properly. As is the case in almost all these charges there is a flagrant instance here of his intoxication at this term of court—a flagrant instance of it; and that is in the instance of the witness George A. Chapman who was charged at that term of court with having committed a grevious offense.

Now, let us consider that a moment. A man is indicted for an assault with intent to commit a rape. He is brought, under arrest, to that court. He testifies here, and without denial, (mark, without denial,—and when a thing is testified to and not denied, it stands admitted)—that the first evening after he got there, he went and took a drink with Judge Cox, in Judge Cox's room. The Judge who was sitting in judgment upon him,—the prisoner who was in the toils of the law, charged with a crime that would incarcerate him in the State prison of this State, goes and takes a drink in the Judge's room with the Judge of the court. Now, that is not denied; that is admitted here upon the record. Put that down as fact number one. He is arraigned before that court; he has his trial before that court. He is found guilty of a simple assault before that court; and the only evidence of an assault with intent to commit a rape is that he kissed the woman. Now let us pause right there. Col. Sam McPhail was the county attorney at that time. He was the man that had the drawing of indictments, he was the counselor that guided that grand jury through their arduous duties, charged, under the law and by his oath, with the proper discharge of those duties.

We have shown that he was there, by his own testimony, and drinking with the Judge, and drinking by himself, and one day at least, so much under the influence of liquor, that he was not accountable for what he did. And yet a grand jury, under his guidance and direction, found a bill of indictment against the man for an assault with intent to commit a rape, when the only evidence that they had under heavens, was that he had kissed a woman! Perhaps that was the first step towards committing a rape,—I don't know how that is, but that is all the evidence they had, and they had all the evidence in court that they had before the grand jury, because that is the first grand jury that they ever had in that county. Now do you believe that Sam McPhail was sober when he got that grand jury to indict that man? Do you believe the foreman of that grand jury, Col. Pompelly, and all the rest of them, were sober when they indicted George Chapman for an assault with intent to commit a rape, when all the testimony they had was simply that he kissed the woman? Why, gentlemen, that is one of the very best evidences that the grand jury and the county attorney and the whole outfit were drunk. If the grand jury and the county attorney did not know any more about committing a rape than that, they certainly must have been drunk. I am going to give them credit for having good sense. Well, I am not quite through with it; the county attorney tries him, goes on with his trial. When the jury bring in a verdict of simple assault, the court fines him ten dollars. It is then found, for the first time, that the defendant has not plead. The lawyers of this body un-

derstand the force of that objection,—the laymen do, I guess, by this time, from the argument that has been had. It was a necessary step before he could be put upon his trial upon the merits, that he should plead whether he was guilty or not guilty.

Well, now, they say that that does not indicate drunkenness. In itself, of course it don't. Such an occurrence taking place in court before Judge Dickinson, Judge Severance, Judge Buckham, Judge Mitchell, Judge Start, or any Judge who is known not to be a slave to his appetite, would not, by any lawyer be taken by any means as evidence that the Judge was drunk.

It looks like an oversight; it would be called an oversight. But this is the point: You must look at all the facts that crop out in this case, in the light of their surroundings. It is of a piece with the whole court. It is of a piece with the remark which the Judge made to Mr. Chapman, as when Mr. A. G. Chapman asked him there in that court, or made a motion, on the day following the removal of the court to Tyler, to take that court back to Marshfield, when the Judge told Mr. Chapman in open court "You can't come that on me, by a damned sight." That is what he told Mr. Chapman, and that is not denied. It is of a piece with that.

Now, gentlemen, we find the man has not plead. But the Judge, in his drunken moments, after finding that out, fines him ten dollars. He don't say anything about costs. Now, we were promised that the record, which was here, would be kept here; I don't know whether it has been or not, but they claim that the record is not correct upon that point; that the record is incorrect at any rate, in that they claim that this man was not fined at that time, but afterwards, when he plead guilty. But Mr. Chapman testifies that he was fined right then and there, ten dollars, and then his attorney made the motion. Why, gentlemen, my judgment is that Mr. Chapman and the records tell the truth, for I think that the Judge was drunk, that the county attorney was drunk, and that the lawyer Chapman had employed was drunk,—that Matthews and Andrews and the whole concern of them, were drunk at that time.

But after the fine had been imposed, Mr. Chapman says, and the record says, that this point was raised. The point was raised before the fine was imposed, but notwithstanding the raising of the point, the Judge went on and fined him ten dollars, and then immediately set the action aside and said it could come up after dinner. Now, during that recess, we find Mr. Chapman and the Judge holding a conversation. We find Mr. Chapman, this prisoner, this man that had been arrested for kissing a woman, taken to one side by his Honor, the Judge of the Ninth Judicial District, and told, in direct words, "If you plead guilty here, as you have been charged, and not put this county to expense, the matter will be easy with you!" That the Judge did fine him ten dollars afterwards. Here we find the Judge of the court holding a conversation with a man that was accused of crime, urging him to plead guilty! We were promised in the opening of this case, by the counsel for the respondent, that they would show you that that conversation took place between Mr. Chapman and this Col. McPhail, and not the Judge. But they have failed to show you any such thing. They attempt to parry the force of that evidence by showing that Mr. Strong was not there. Now turn to the evidence in this case and you will find

that Mr. Chapman testified that it was after dinner and during this recess, and that the Judge took him to one side, entirely away from everybody, alone. And when asked whether anybody was with him, he said he thought Mr. Strong was on the steps of the hotel at the time, but that he and the Judge were apart, away from Mr. Strong. And, in order to counteract the evidence of Mr. Chapman, they bring up Mr. Strong to testify that he did not see them on that occasion. We don't know whether he did or not, and we don't care whether he did or not; we don't pretend to say he heard or saw it; we don't say that he was there; our witness don't say that he was there.

The PRESIDENT. The hour for adjournment has arrived, and manager Dunn will suspend his argument. Is it the wish of the Senate to meet again?

VOICES. Regular order.

The Senate then took a recess until 2:30 P. M.

AFTERNOON SESSION.

The Senate met at 2:30 P. M., and was called to order by the President.

The PRESIDENT. The honorable manager will proceed with his argument.

Mr. Manager DUNN. At the recess I was discussing the point relative to the taking of Mr. Chapman, the party who was accused of an assault with intent to commit a rape, to one side by the Judge and asking him to plead guilty. Following that up, we find after the recess of the court, and when the court convened, that Chapman, the defendant, was called up by the side of the Judge and was asked "how he was heeled"—if he had any money—and intimating that if he had not, he would be let off easily. That thereupon Mr. Chapman did enter a plea of not guilty as charged, but guilty of a simple assault, and the Judge then assessed the fine over again, of $10 and the costs of the suit.

Now, that testimony is given by Mr. Matthews, the clerk of the court. There is no testimony to contradict that statement by the only person who could have denied it. The respondent has seen fit to pass it by without his denial. And we are justified in drawing the same presumption of guilt from his failure, having the facts in his own mind, and able to testify if untrue—I say we have the same right to presume from that failure that the fact took place, as we have to any other fact to which the party is wilfully guilty of suppressing the testimony. Mr. Matthews was the clerk of this court, was engaged during the whole of that term of court in attending to his duties right by the side of the Judge. He admits that the Judge assisted him somewhat in making up his records. He does not appear to be a witness that desires to say anything that is not true, but he states also that he was not one of the drinking party. He kept his head straight during the whole of that revelry. Mr. A. G. Chapman was another who kept his head straight, as he testifies. He was not one of the drinking party.

Mr. Coleman testifies to the same state of facts; but not upon direct examination. Mr. Coleman is not a very swift witness even in this matter,—this most terrible of drunken scenes and of revelry that we have yet encountered during Judge Cox's administration. He testifies moderately, and while plainly, he does not mince words. He tells when the Judge in his judgment was sober, when he was partially intoxicated,

and when, in his judgment, he was very much intoxicated. He gives the instance of the Judge going to bed "with his boots on," as the saying is, and he also gives some instances of playing cards in the Judge's room while the Judge was on the bed. We had a little matter of evidence that was not permitted to be given, to the effect that they were playing cards on the Judge's person, while he was asleep on the bed. That evidence was stricken out for the reason that the Judge's condition while asleep could not be taken into consideration. In my judgment the evidence should have been admitted, and for this reason: That if it could have been shown here by any of the witnesses that were of the party of revellers that they were playing cards upon the person of the Judge while he was lying asleep, and the ordinary method of playing cards with that kind of a party was not successful in arousing the Judge from his slumbers, his slumbers must have been caused by something more than the wants of nature. It would certainly be evidence to my mind that he must have been in such a stupor that it could have hardly been denominated "sweet, peaceful sleep." But still that is out of the case, so far as it is concerned, as testimony.

Now, we meet as witnesses for the defense in this matter, this Col. McPhail,—who was the central figure;—we meet three or four lawyers,—C. W. Andrews, Charles Butts, W. E. Dean, J. L. Cass,—those are the lawyers we meet.

It strikes me as being remarkable that this young "scratchetary," (as the Judge denominated him,) Mr. Whitney, was not interrogated upon this point. He was not even put upon the stand; he was not asked to be a witness. And the Senate will recolloct that there was no limitatiou placed upon them as to the number of witnesses that they might have upon this or any other article, that they had all the witnesses they wanted. Mr. Whitney was present, summoned upon another matter,—the Renville term,—and upon this very important term, this boon companion,—Mr. Whitney,—this intimate friend, this sort of duplicate of the Judge, was not interrogated. Mr. Andrews appeared to me to be a candid kind of man. He appeared to me to be a very cautious witness, a very careful man; and yet there are some little points in his testimony that will bear a little scrutiny. In the first place, he is very friendly to the Judge. That we find no fault with; we are glad that the Judge has a warm friend; we are glad that Mr. Andrews is his friend if he desires to be. He was a student in Judge Cox's office, studied law with him. Judge Cox, as is right, undoubtedly, has assisted him a great deal, as lawyers do persons who have graduated from their offices,—take an interest in them. He therefore comes upon the stand predisposed very strongly in favor of Judge Cox. And while he might not be guilty of wilfully falsifying, in any particular, he might possibly be guilty unconsciously of suppressing some part of the truth. He was not, as has cropped out in the evidence, at all ignorant of the Judge's peculiar failings, because, in order to show this Senate the extreme temperate habits of the Judge at that term of court, the question was asked Mr. Andrews if he did not invite the Judge to drink. "Yes, he did." "Did he drink?" "No, he didn't." "Why, didn't he drink?" It appears that he invited him to go over to the saloon to take a drink. No he said "he didn't want to go to a saloon to drink."

Now, Mr. Andrews testifies that he is a temperate man himself,—that he don't drink liquor, he don't use the article, and didn't at that time.

And I thought it was a very strange circumstance that a man that did not want to drink anything himself, should ask the court to go over to a saloon with him and take a drink. The only explanation that he made of that was that it was perhaps suggested by a "very liberal disposition." Well, now there is another explanation to that. The explanation is that Mr. Andrews evidently knew the weak side of Judge Cox. He had a number of cases pending in that court and he was doing that which in his judgment would bring him near the throne, at least as near the throne, (being a temperance man as he claims to be), as the lawyers that were not strictly temperance men were evidently getting. Mr. Butts, who is shown to have been one of the party that was engaged in playing cards there at the time,—one of the parties who was engaged in invading the sanctity of the Judge's room,—testifies that the Judge was sober. Mr. Dean, to the same effect. Mr. Scripture to the same effect.

Mr. Scripture, however, is a doctor, and they claim for his evidence a great deal of weight, because he was able, being a physician, to detect any evidence of inebriety in the Judge by the mere casual observation that he took of him during his attendance upon that term of court;—occasionally in and out.

Mr. Hodgman also testifies that the Judge was sober. Mr. Hodgman was so oblivious to what was transpiring in his house during those hours of revelry, that he don't even know that that took place. He excuses that by saying that he retired every night at 11 o'clock, and his son took charge of the house after that. His son, whoever he is, is conveniently and conspicously absent.

Mr. Larson was brought upon the stand to testify that during the time he was in court he did not think the Judge was intoxicated: and yet Mr. Larson testifies that he had seen him under the influence of liquor; in other words, he would not testify that he was not positive he was not under the influence of liquor at some time. Now, Mr. Cass has been brought upon the stand,—this young man who had been beaten, as it would seem. I think it is a very curious circumstance, if he had been beaten, according to the theory of the respondent's counsel, that he comes down here and testifies in favor of the Judge. I asked him with reference to the payment of his bill there at that term of court. "Well," he said, "the Judge didn't pay his bill there." I didn't press the matter, because I thought I knew what was the matter; I let it stand right there; but it did come out in evidence that the Judge himself invited Mr. Cass to stay there during that term of court; and Mr. Cass objected to staying because he was not able to stay there; he could not afford to hang around that term of court and the Judge pressed him to stay, and on the Judge's earnest solicitation Mr. Cass remained there and staid on expense at that term of court when he had nothing to do. And he was one of the party that was engaged in passing the hat and drinking out of the bottle.

Capt. Strong, who was on the stand, was a member of that grand jury, and was not interrogated as to the condition of the Judge. Neither was Mr. Pompelly, the foreman of the grand jury; and the absence of that testimony is excused by the respondent's counsel upon the ground that they were restricted to five witnesses on that point. Well, now, the Senate will remember that there was no such restriction; they had all the witnesses they wanted, all they cared for; but the fact that they did not ask them is simply an evidence to my mind, and I have a right to

draw the conclusion, that if they had asked them, their answers would have been contrary to their desires.

Well, they bring on one very peculiar witness, a Mr. Apfeld, the man who kept the saloon. Why, he testified that Judge Cox was not in his saloon; did not drink a drop of liquor in his saloon during the whole term. Well, it was in proof by Mr. Apfeld himself, before he got off the stand, that he would not swear but that Judge Cox treated the grand jury in there, sent that grand jury over there to be treated. It was a very queer circumstance to me that Mr. Apfeld should remember that during that term of court Judge Cox was not in his saloon and not drink any liquor there. But that might all be, I am not going to dispute it. It might possibly be so, but that does not excuse the Judge from drinking at that term of court, because we have the testimony of Col. McPhail that he drank with him, this article that he called "bug-juice,"—whatever that might be. And Mr. Apfeld swore on the stand that if Col. McPhail bought what he called "bug-juice," he didn't buy it at his saloon; and he also says that Col. McPhail did send his bottle over there to be filled, and that if he filled it, he filled it with whisky or brandy, or some strong drink, that he did not keep an article called "bug-juice." So, we will have to conclude that Col. McPhail, in using that word, was using it for mere sport, and that there was no kind of liquor that they drank that was denominated "bug-juice." Mr. Hodgman will not testify that Judge Cox was not drunk at that term of court. He does not testify, upon being pressed upon that point, upon page 580 of the Journal. And Mr. Larson testifies, upon page 584, that the Judge was drinking during that term of court.

Now, there is a good deal said about Mr. Chapman looking through the window and seeing Judge Cox under the influence of liquor, laid up on the bed, at a certain time. And they bring Mr. Hodgman down here and he puts in a plan of his house to show that it would be an impossibility for Mr. Chapman to have seen from his room into the room that Judge Cox was in, through any window. Well, now if you will examine Mr. Chapman's testimony upon that point, you will find that he says that he saw him through the door. The word window does not come in there, but the word window is evidently not intended to be used as expressing the time and place when he saw Judge Cox upon the bed drunk. That is, it has no connection in that sense, because he testifies that he saw him through the door during the time he went up there to get his friend, Mr. Newport, out of that room and get him off to bed. So I think they can hardly find any fault with Mr. Chapman's testimony upon that point. As a matter of course, we were placed at a little disadvantage in that matter, and, in an ordinary law-suit, Mr. Chapman would have been here in court and we would have called him upon the stand to explain that matter; as a witness would have a right to do where there is a misstatement of the evidence, either by his misunderstanding of the question, or by the reporter misunderstanding his answer, or some defect of that kind. But it is a difficult matter to get a witness 250 miles just at the moment you want him. Therefore we did not send for Mr. Chapman to explain that discrepancy; it would have been at too much expense to the State and it would hardly have paid.

This is the testimony; twenty-first day, page 53:

Q. Was he drunk in court?

A He was pretty drunk in court, and it ended up in a carnival at night. went to bed with his boots on that night.
Q. It ended up in what?
A. It ended up in a game of poker up stairs. The Judge got so drunk that he couldn't "hold a hand," and then they rolled him up and put him on the oed, and continued the game.
Q. Who was there?
A. Mr. Cole, Mr. Butts, a young man by the name of Whitney, Burt Newport, of Pipestone, (I got him out of there into my bed that night)—
Q. Anybody else?
A. Yes; there were several went in. The doors were open at first, along.
Q. Were you there when they rolled him onto the bed?
A. I looked right through a window and saw him; I was in the ell at Mr. Hodgman's hotel. The Judge and his associates had two rooms, right across in the main part on the southwest corner of the building, or the south end of the building, and the window is such——
Q. And you laid in the ell and looked through the window?
A. Yes; as I came up stairs, before I went into my room; the door was open.

Now that is his testimony as to when he saw the Judge. It was when he came up stairs, before he went into his room.

Q. You say they rolled him on to the bed?
A. I say they helped the Judge up on to the bed, or pushed him up or got him up some way.
Q. They got him up there?
A. Yes,—with his boots on.
Q. Was that his room?
A. No; I think that was Mr. Butt's room.
Q. Did you see Judge Cox lay there during that night?
A. I saw him as late as 3 o'clock, and saw him again perhaps at 6 or 7 o'clock.
Q. You were in there again at 3 o'clock, were you?
A. I went in and got Mr. Newport out about 3 o'clock.

So it is not fair to say that Mr. Chapman said he saw them roll the Judge upon the bed while he was in his room looking through the window. The testimony with reference to looking through a window was evidently intended by the witness to answer some question other than when he actually saw the Judge in there lying upon the bed, because he says he saw him through the door when it was open, as he went up there to his own room, and at 3 o'clock he saw him again; and again at 6 or 7 o'clock in the morning.

Q. What were you doing when you got back there about 6 o'clock?
A. When I got up the Judge was there in sight.
Q. What were you doing there when you went in at 6 o'clock?
A. I was getting up.

Mr. Butt's room, as I understand, was the room that adjoined Judge Cox's room, and it was in that room that they rolled the Judge up onto the bed.

Now there is a little matter of testimony here by this witness Chapman that I think is worthy of a moments consideration, and that is this: It will be remembered, and it was undisputed and undenied, (and when I say undenied I mean undenied by the only party who could deny it and that was the Judge of the district court,—and I want to hold him right to the strict letter of the law, and I propose to take all the advantage of all the presumptions there are in this case, because the State is entitled to them in this case as well as any other,) it is undis-

puted and undenied, upon pages 54 and 55 of the 21st day which I will read:

I had other reasons for thinking the Judge was under the influence of liquor besides that.
Q. Well, what were those reasons?
A. Oh, we had a chat outside.
Q. Well, what was that chat?
A. Well, he wanted to know if I was going to mention these facts in the paper which you have there before you. Whether I was going to mention any statement of anything that was going on there.
Q. He wanted to know whether you would mention any slander in the doings, the proceedings?
A. Not slander, but the matter.
Q. Was that what he said,—the slander?
A. No, I didn't say slander. He asked me if I was going to publish the proceedings.
Q. He asked you if you was going to publish the proceedings of the district court?
A. No, not exactly that.
Q. Well, what was it, sir?
A. Well, his spree, sir; his spree.
Q. Was that the language he used?
A. I don't remember the exact language about that, but he wanted to know if I was going to publish the trouble.
Q. The trouble?
A. Yes, sir: the trouble and the general doings. That might not have been his words.
Q. The doings of the district court?
A. Yes, of the Judge.
Q. That was his language?
A. No, not perhaps the exact words.
Q. That was the reason you had, then, outside of his appearance, for thinking he was drunk that day?
A. Why, he said he should thrash me if I printed it. Said he, "G—d d—n you, I will pound you if you print that; I'll thrash you."
Q. Anything more than that?
A. Yes, he told me if I did publish it, not to send it to his wife.
Q. Anything more?
A. I don't remember anything more particularly.
Q. Was anybody present at this conversation?
A. Between him and I?
Q. Yes?
A. No, sir. It was out of doors.

Now, when a witness testifies to a matter so palpably outrageous as this, regarding it in connection with a district judge to tell an editor of a paper that if he publishes the proceedings of that court, or what he had seen there in connection with those carnivals and in connection with those drunken bouts, and in connection with the Judge's condition, that he would thrash him, and even if he did publish it to beg of him not to send it to his wife; and the Judge of the court is the party testified to as the party having the conversation with him fails and neglects and refuses to testify to the contrary when he is upon the stand and has the opportunity,—I say does not the conclusion irresistably follow that that statement was actually made; and if made, the Judge was drunk? And if made was it made for any other reason than that the Judge was in the exact condition which this article charges him with being? Wasn't that what he desired not to be published? Wasn't that what he desired should not be sent to his wife? Or was it, as these

questions which were put to the witnesses, would seem to indicate the counsel for the respondent thought it was, that he did not want him to publish the regular proceedings of that court? I don't think that that was what the Judge was afraid of having published. I think, and I think this Senate thinks, from that evidence that what he was fearful would get into print was his drunken carnival at Tyler. How easy it would have been for the respondent to have come upon the stand and denied that. Very anxious they were to put him on the stand to testify about some book he had kept. Oh, yes, they wanted to get a book in evidence here;—something that he had manufactured from time to time,—after taking the D'D's out of it, doctors of divinity as they ars sometimes called, there were a good many of them in it, but they had been scratched out, and after taking those out of it they were very anxious to get this book in evidence here.

But they were not at all anxious that the Judge should interpose his oath against Mr. Chapman's on that point. And Mr. Chapman is not impeached either; no, no; he lives in Lake Benton yet; he is a live lawyer up there attending to his business. He is one of these men that are not afraid to come before this court and tell the truth in this matter even if it was against the Judge of the district court. He has sand enough to come here and swear that the respondent was drunk when he *was* drunk, and sober when he *was* sober. That kind of men don't scare at all. Well, the fact was that it did get into the Lake Benton *News*. The whole proceedings did, and it gave rise to considerable newspaper comment. A part of it got into the Lyon County *News* afterwards, and we had some of it in this court, which we will come to by and by in the course of the argument.

Now, our old friend Col. McPhail testifies that the Judge must have been sober because he saw him shaving himself one morning. Well, all the witnesses claim that in the morning the Judge was comparatively sober. Mr. Matthews, the clerk of the court, testifies to that. They all testify that he was not very far gone in the early morning. He got some sleep every night if he did sleep with his boots on. It rested his weary body, it rested his mind, and he was able to get up and go through some mechanical motions of holding court, and he was really able to shave himself. Well, there is no great evidence in that fact that a man hasn't drank any liquors nor wasn't going to drink any that day, because that morning he shaved himself. Even if he had fortified himself with a quarter of a bottle of "bug-juice," as the Colonel testifies he did almost every morning. After he had steadied himself up with that adjunct, why as a matter of course he was probably able to go to work and shave himself after a fashion.

And they went so far I think as to testify that he didn't even cut himself in the operation, he had such a steady hand. That may all be; we don't intend to dispute that; we don't care whether he cut himself or not. But it is so very remarkable,—so wonderfully remarkable that the Colonel should remember so distinctly that upon those mornings the Judge shaved himself. Perhaps the Colonel's memory is of that kind that remembers that very distinctly, but there was a good deal of adroitness involved in having the Colonel swear to these little minute circumstances. It was necessary that there should be some person there that was able to know something about the circumstances of the Judge's every-day life, and so the Colonel is

brought in inasmuch as he was the room-mate of the Judge, practically speaking. But why didn't they ask this Mr. Whitney, or this Mr. Butts, something about that, for they all occupied that room? Not one of them is asked about that matter, because, perhaps, *they* had not got over *their* revelries of the night before; the Judge being the sober one, you know, got up early, shaved himself, and took his walk, went and opened court and attended to business in good shape. Well, on Sunday the testimony is the Judge was a little full. This Col. McPhail testifies that they went over to Lake Benton that day and went through a process of "sweating the cat," as he called it. Now, I don't know what that means, and I didn't know at the time, but in the course of the examination of the witnesses, it cropped out that the sweating of the cat meant drinking whisky. That is some kind of a technical name that the Colonel has for that kind of a performance, and he tells you how they did it. It seems that the Colonel and the Judge, and some other parties, (I expect this young Whitney was along this "scratchetary") went over to Lake Benton, and they had a bottle of whisky when they came away from Benton; how much they had, when they went there, we don't know, but it seems that the Judge was a little "toney" over at Benton and had refused to stop at the same hotel with Col. McPhail, and on the way back to Tyler that day the driver and the Cononel sat on the front seat and they had a bottle of whisky, and the Judge and his companion was continually importuning them to pass it back to the back seat. "Not much," the Colonel says, "you are too good to stop at the same hotel with us in Lake Benton, and you ain't going to have any of this whisky." Well, after much importunity on the part of the Judge and his friend, the Colonel thought he would take a little pity on them and handed it back; and the Colonel says "they gave it a pretty good pull; but he thought they left a little in it." Now, that is the way they "sweat the cat," so we know what that means.

Well, that is simply characteristic of the whole term of court. These *little things* characterize that term of court, and they characterize it in a way that will warrant this Senate, when they come to vote on this charge, to find that Judge Cox was guilty of the acts charged in this article of impeachment. The witnesses know that the Judge was sober when he went to the train that day, because the train was late and the Judge had to run. Well, I don't think anybody accuses the Judge of being very drunk on Tuesday morning; I think the evidence is, on all hands, that he was not very drunk on that morning; but it is a moral impossibility for any man that commences to drink liquor, (with Judge Cox I mean,) I won't say any man,—it is evident from the case that it is a moral impossibility for that man, when he commences to drink liquor, to cease drinking until he is removed entirely from the scene of action. He seems to have a weakness in that respect, and we are justified in concluding, from the fact of his being drunk the first day of the term of court, and drinking liquor right along through that term of court, that the testimony of the witnesses,—Mr. Matthews, the clerk of the court, Mr. A. G. Chapman, Mr. Coleman and Mr. Stites,—that the Judge was intoxicated during that term of court, and in court, is true,—all this mass of testimony of the respondent's witnesses to the contrary notwithstanding.

Now there was in evidence here, or attempted to be gotten into evi-

dence, a little matter of a congratulation, or a certificate of good moral character, or something of that kind, that was passed by the grand jury and handed to Judge Cox. What that was I don't know nor you don't know. You have no right to know, except from what cropped out in the argument of the counsel for the respondent at the time it was offered in evidence. It will be remarked that upon the handing in of that article by this grand jury Judge Cox invited the whole institution over to the saloon to take a drink. It is in evidence here that he did treat the grand jury; he treated them for something; what did he treat them for? Why he treated them because they had expressed such a high mark of confidence in his Honor. Over to Mr. Apfeld's saloon the whole grand jury was taken, and given something to drink. What they drank I don't know and I don't care; but the average man, when he goes into a *saloon* to drink, if he don't want lemonade, he ain't going to drink it; that's all there is of it.

I think, gentlemen, that it will not be profitable for us to spend any more time on that article. It is one of the articles which the management claim is proven in such a manner that conviction must necessarily follow, just as soon as a Senator is called upon to vote,—as to the *facts* I mean,—I am not arguing the law.

We now come to another important term in this Judge's history, and that is this

FIFTEENTH ARTICLE

in Lyon county. It seems that the Judge went up to Lyon county to hold a term of court, immediately upon the heels of this Tyler term. Immediately after that term, he went to Marshall to hold a term,—the same day. And they claim, upon the other side, to have landed Judge Cox safely, unintoxicated, perfectly sober, in the court house at Marshall. They trace him from Tyler, where he *ran* to get the cars, into the cars at Tyler, and through to Marshall, and upon the seat upon the bench at the court house, perfectly sober. Now *we* are going to trace him, and see where we land him. We find from this evidence that the first time we commence to trace him was at Tracy, when he is upon a train going from Tracy to Marshall; and we trace him by such men as Mr. Allen, the attorney from Winona, by Mr. Sanborn, the superintendent of the Winona & St. Peter Railroad Company. We find him there intruding himself into the business car of the superintendent of that road. We find him there with a shawl strap in his hand, in which is an overcoat. We find among that baggage a bottle of whiskey; that that baggage was placed upon a wood-box, or something of that kind, in the kitchen of that business car. That the Judge went out of the car, and some of the employes of the road visited that kitchen and had some curiosity to examine that bottle; they did examine it; they smelt of it, and perhaps some of them tasted of it. And they came to the conclusion that it was such "villainous stuff" that it was not good enough for that party, so they corked up the "machine" and let it set. We find that a short time after that there was a crash, and that baggage of the Judge of the Ninth Judicial District was violently hurled to the floor, and immediately thereafter there was a terrible perfume of alcohol pervading the car. That upon investigation by Mr. Sanborn and Mr. Allan, it was found that the perfume came from the fact that this bottle that the Judge had had, fortunately, or unfortunately, as the case may be, was broken.

Now that is one bottle that the party, consisting of Col. McPhail and the "scratchetary," Whitney, and his Honor, the Judge, and Mr. Coleman (for he was in the party), that was *one* of *the* bottles they had that came to grief. How many more bottles they had of course we are not able to tell, but we find them with one bottle, and that bottle in possession of the Judge of the court—a part of his baggage, a part of his luggage. Exactly what time they came into the car during that journey we don't know. But we find that the Judge had either smelled the contents of that bottle, or of some other bottle before he came into that car. We find that he had either had access to his own bottle and drank part of its contents, or else Col. McPhail's "little bottle" had been produced, or somebody's else bottle, because, as we contend here, drunkenness comes from drinking. Mr. Sanborn, the superintendent of that road, testifies that the Judge at that time was under the influence of liquor, and more or less intoxicated. Mr. Allen testifies to the same state of facts—that he was intoxicated at that time. Now there are two good men; there are two witnesses who were not afraid of Judge Cox; there are two witnesses that are not afraid to come and tell the truth as against even the Judge of the Ninth Judicial District. They have no motive to cover up and conceal his infirmities, notwithstanding they were very reluctant witnesses, notwithstanding they were not volunteer witnesses. They were in no wise in a hurry to give their testimony upon that point; but they gave it because they were compelled to give it by the process of the court; and farther, because their sense of duty as citizens of the State of Minnesota impelled them to tell what they knew of that transaction.

Now then do you believe the witnesses by whom they attempt to land Judge Cox sober in that car? This Mr. Hartigan,—are you prepared to believe this man Hartigan that testified here,—the man that kept a saloon at Tyler,—when he testifies that Judge Cox did not drink anything to make him intoxicated in that saloon, unless it might have been one glass of beer? Take the surroundings: We have shown that Judge Cox had a pretty good quantity of liquor in him during that term of court at Tyler. He comes down there to Tracy. Some of you do not know the geography of that country, and I will simply say that it is some 20 or 30 miles east of Tyler; the train goes to Tracy, and there is another railroad running from Tracy to Marshall; so that the passengers got off at Tracy and waited there three-quarters of an hour, and then took the train going to Marshall. This Mr. Hartigan testifies, (and there is a peculiarity about that too,) that Judge Cox and his friends,—the 'scratchetary" and Col. McPhail,—came at once from the depot when they landed at Tracy, right to the saloon of Mr. Hartigan. Now what do men go to saloons for? I recollect in my early days,—it is a good while ago,—I can barely remember when I used to go to saloons,—but I know I hardly ever went there unless I wanted something to drink; and I believe that is the experience of everybody,—they go to saloons to get something to drink; that is what saloons are kept for,—they don't go there to get a loaf of bread or to buy a pound of sugar, or a yard of calico. They generally go there to get something to drink. If they don't want anything to drink and want a cigar, as a general proposition they will find some other place to buy it. But they all went there as soon as they landed in Tracy. Why, they were perfectly keen on the

scent; they knew what they wanted, and knew where to get it,—our old friend Col. Sam McPhail leads them all straight up to that saloon.

He knows right where the bait is, and away they go; for Mr. Hartigan says they came in there. Yes, and they went immediately up stairs and visited with his wife, and they had some music up there; some one played on an instrument, and they didn't have anything to drink there, unless it might be a glass of beer. No liquor was bought there, and they went directly to that train, upon which the business car was attached, perfectly sober. That might be. Mr. Hartigan may tell the truth about their being sober. But sometime during that trip they were found in the business car, and Judge Cox was intoxicated. Now, do you believe that they did not buy something at Tracy; or, if they didn't buy it at Tracy, perhaps they had it with them, bringing it from Tyler; perhaps that might have been the case; but, at any rate, the evidence is that they had it. Now, they are so anxious to trace this Judge, that they trace him on this train to Marshall, and they land him across a certain bridge at Marshall. We have shown him intoxicated. They have failed to show him sober, except by this man Hartigan. Their evidence is, when he got off the train at Marshall, that he came across a little foot-bridge that spanned the Redwood river at that point. Well, there is nothing remarkable about his crossing a foot-bridge, there is nothing wonderful about that, it is only important in this, that if the Judge was in the condition that the articles of impeachment charge him with being, or rather that the witnesses for the State say he was, it would be almost an impossibility for him to cross that raging stream upon a crazy foot-bridge, having in his hand a large satchel full of books. That is the only importance that that bridge cuts in this whole case.

If it was a fact that there was, as some of the witnesses testify, nothing but a plank four inches wide or eight inches wide across that stream, and the Judge crossed that stream with a large satchel in his hand, it would go a great ways in my judgment to show that our witnesses might have been mistaken as to the condition of the Judge when he arrived at Marshall. It has casually cropped out as to the building of that bridge, on the examination by the State of Mr. Drew and two or three other witnesses, that the Judge crossed on the wagon bridge. There was no point made about that on our side of the case. Our witnesses simply gave their testimony upon the coming there of the Judge and that he was intoxicated. But the bridge was an important item in the mind of the respondent and his counsel. And so they cross-examine our witnesses thoroughly on that point; they fail however to shake their testimony as to the fact that the bridge was actually built,—the wagon bridge and not this foot bridge. They then bring down their witnesses, Judge Weymouth, Mr. Seward and three or four more, (I will not stop to mention their names,) to testify that that was the bridge the Judge crossed on. Why, old Judge Weymouth said that he stood and saw him cross it, and that it was such a frail structure that he, himself, was afraid to cross on it. Mr. Butts testifies that he saw him cross on it, and he was afraid to cross on it. And other witnesses testified to the same thing. The importance of this occurrence is simply as showing the probable condition of the Judge,—that he was able to cross it. Well, that woke the management up a little bit,—having so many witnesses to testify to so unimportant a matter as that,—the construction of that bridge, and we

took a good deal of pains to ascertain when that bridge was actually built.

We have produced witnesses before you, and they have, I think, convinced your minds that the witnesses for the defense upon that point were certainly mistaken. We have produced here the man who had the contract and built the bridge. We have produced him here with his diary, showing that on the morning of the 21st day of June, when the court was held, that this wagon bridge was completed and open for travel before the train arrived from Tracy. We have produced witnesses that show Judge Cox crossed upon that wagon bridge and not upon the foot-bridge and we have proven it by witnesses who have taken the pains to investigate the matter, and not by mere guess-work. Why, some of them testified, on the part of the defense, that the bridge was not built until after the 4th of July,—go even so far as that; but there is an abundance of testimony which I think must convince every member of this Senate, that that foot-bridge was a thing of the past, and that on that morning of the 21st of June, that wagon bridge was a thing of the then present. Why, we even produced witnesses here who testified that a portion of that foot-bridge was taken up the day before, on Monday,—no, that morning,—that of two lengths of that bridge, the plank had been sold, and the man that bought them had removed the plank and there was no crossing there except upon a wagon bridge at that time. Now, that is only important, as I said before, as indicating the probable condition of the party who could cross a crazy foot-bridge.

Well, they land the Judge in court. They land him there through the agency of Judge Weymouth and of some of the others of these lawyers. We undertake to show that Judge Cox came to Mr. Hunt's hotel, put his goods into the office,—whether he registered his name or not we don't know and we don't care,—but he immediately adjourned from the office into the bar-room, the saloon. Mr. Hunt testifies to it, and Mr. Coleman testifies to it,—that he adjourned from the office to the saloon, that he went there and took a drink,—yes, more than one drink,—several drinks before they left that bar room; and when he went up into that court room he was essentially intoxicated. That is the evidence on the part of the State.

They attempt to parry the force of that evidence as to his actions upon the bench there by showing that the light was in his eyes, and the light interfered with him. They bring their lawyers, it is true. They bring Mr. Seward and, Mr. Matthews—let's see, who don't they bring: They bring Mr. Weymouth, and Mr. Seward, and Mr. Main, and Mr. Gley, and Mr. Eastman, and Mr. Webster, and Mr. Grass, and Mr. Matthews, and Mr. Butts, and Mr. Andrews, to testify that Judge Cox was sober upon that morning when he went into the court. On the other hand, the testimony for the State is comprised of the witnesses Mr. Patterson, the clerk, Mr. Coleman, Mr. Drew, Mr. Lind, Mr. Sullivan, Mr. Hunt and Mr. Hunter. Those were the witnesses we produced. Then there were three witnesses that testified to that charge under article eighteen, before the Senate restricted the management as to the testimony under that article, saying that we would not be allowed to produce testimony that had reference to any other article in the impeachment charges. But their evidence was in upon that point, and being in, it is in for all purposes, and, of course, will be considered by the Senate.

Those witnesses testify that he was intoxicated. Now, I want to read

a little particle of Mr. Hunt's evidence upon that point. On the twentieth day, at page 53, he says:

He came from the depot up to our hotel, and into the office. I think it was the 21st of June.
Q. Was he at your hotel at that term?
A. He was.
Q. About your saloon?
A. Yes. He came from the depot up to our hotel, and into the office. I think it was the 21st of June.
Q. Was he drunk or sober at that time?
A. Well, he was intoxicated at that time.
Q. And for how many days did he remain intoxicated?
A. I think he was there about two weeks at that time, in town, but not all the while at my house.
Q. How many days did he remain at your house?
A. Two days.
Q. Two days?
A. That is, the day that he came, and the next day.
Q. State what his condition was during the two days.
A. Well, I should say the two first days that he was drunk most of the time. I didn't see the time that he was not.
Q. How was he at night?
A. Well, he was in the same condition at night.
Q. How late did he frequent your saloon at night?
A. Between the hours of ten and eleven.
Q. Did he stay there until you closed up?
A. In the evening about closing time; I couldn't say that he was there just at the time they closed.

That is Mr. Hunt's testimony. Now, Mr. Hunter, the sheriff, testifies to the same state of facts. Mr. Sullivan was one of the grand jurors, and testifies to the same state of facts; but he testified under article 18. Mr. Forbes, Mr. Hunt and Mr. Hunter testify under article 18, but their evidence was directed to the article, now under consideration.

Now, let us consider for a moment the condition of the Judge at the time that court was opened. Mr. Coleman testifies that he went with the Judge up to the court room; that he was there when the court was opened, and that the Judge was intoxicated. Mr. Patterson, the clerk of the court, testifies to the same thing. Mr. Drew testifies to the same. Also Mr. Sullivan and Mr. Lind. They all unite in testifying that the Judge was intoxicated at the time that he opened the court, and they give several reasons why. For instance, one: Mr. Patterson testifies that at the time when this grand jury was charged, after the Judge had charged the jury he turned around to him and said: "Ain't that a daisy?" Now that is not a queer remark to make, perhaps, but it was a very queer remark for the Judge to make at this time, when he was holding a court, when there ought to be some dignity about him; but Mr. Patterson excuses it by saying that he was intoxicated. Mr. Drew says that at the time he came there he fumbled over the statutes as though he didn't know where to find what he wanted; that he was confused, that his mind was wandering, that he was not himself that morning. Mr. Lind was not there, I think, at the time the court opened, but he testifies that during the time he was there the Judge was intoxicated. Mr. Sullivan, a member of the grand jury, testifies to the same thing. Mr. Forbes, upon our side, that he thinks he was intoxicated; that he thinks he was intoxicrted when that case of Bradford against Bedbury

was tried. Well, things ran on in that manner in court until it was found that it was necessary that something should take place to stop it, something must be done. The grand jury consulted together, evidently after having had some charge brought in by some citizen of the place, and concluded that they would see what they could do.

They consulted, it seems, about indicting him; they found that they couldn't indict the District Judge, because if they undertook to bring in an indictment against the Judge there would be no one to try it. The Judge could put the indictment into his pocket or into the stove, or do what he chose with it. All the evidence of the existence of the indictment would be the indictment itself, and so they hit upon the project of reaching the Judge in a milder manner,—by bringing resolutions of censure; and so they did. And the Senate will remember with what difficulty we obtained those resolutions to spread upon this record. In the first place, we were met with the objection that they were hearsay testimony. Well, we admitted that they were hearsay testimony; but we desired to get them in for the purpose of characterizing the Judge's action at that term of court. Finally the counsel for the respondent in his zeal to show how sober the Judge was, desired to introduce the resolutions that were passed at a bar meeting, commendatory of the Judge. We made no objection to them upon our side, we were willing that the Judge should have all the commendations that he could get, but we gave notice that inasmuch as they were in upon the defense, in rebuttal, we would show the other side of the story, especially as one of their witnesses, Mr. Seward, had testified that there was nothing in those resolutions of the grand jury that militated against the Judge on account of insobriety. We knew better; we knew that those resolutions did censure the Judge directly on account of his intoxication. But Mr. Seward testified they did not, and therefore we were entitled to bring them in, in rebuttal, to show the fact.

Now, the grand jury adopted a certain set of resolutions, which I propose to read, in a few minutes, and those resolutions, instead of being spread upon the records of the court, by Judge Cox, were handed over to a party of lawyers which he called to meet at his rooms at the Bagley House, to consult.

Those lawyers met, upon the adjournment of the court, and considered those resolutions; and I think, gentlemen, when we shall have closed the argument upon this article upon those resolutions, you will find that the key to this whole mystery of Judge Cox's sobriety at that term, (if it is a mystery,) the key to that whole mystery will be found in the answer that was made by that young man Seward to Judge Cox and thereupon and thereafter the action of that bar meeting was taken in response to that answer. These resolutions were passed by the grand jury, after strict and careful investigation of the facts. They were signed by every member of that grand jury. They were made in duplicate, and one of the members of the grand jury testified upon the stand that they were made in duplicate because it was uncertain what would become of the copy that was handed to the Judge. They evidently had some notion that perhaps His Honor might undertake to squelch and smother them and not let them see the light of day. So they took the precaution to make a duplicate set of resolutions. And the resolutions being handed over to the bar meeting they were considered by those lawyers, in the capacity of a bar meeting, at the special instance and request of Judge Cox. And the Judge said to them as he went in, (corroborating Mr. Seward's testimony), that Judge Weymouth—you will

recollect Judge Weymouth who was on the stand here, a clever, garrulous, and as good an old gentleman as ever lived—the Judge said: "Inasmuch as Judge Weymouth is the oldest member of the bar, perhaps he had better be chairman of this meeting;" so the vote was carried. and Judge Weymouth was made chairman. Well, that was a little bit of "taffy" for Judge Weymouth; he had got to feeling pretty good over that.

But Mr. Seward is their central sun,—the man who, of all the others rivalled them upon that occasion, and the man whom Mr. Arctander, the counsel, seems to set up before you as the man par-excellence, who has told the truth as to that occasion,—says, that there was a dispute and a wrangle entered into by the bar meeting. What was it about? Why, one party wanted, he said, to investigate the subject-matter of the resolutions. The other party desired to censure the grand jury for meddling with that with which they had no right to meddle. Anyhow, he says he was endeavoring to get the party that wanted to investigate, over on to his side. He was one of the individuals that didn't want to investigate. He wanted to censure the grand jury, and not to investigate the conduct of the Judge. And he says that in order to get them around upon his side, he told them that—well let me read it. It is found on the 724th page.

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.

Well, now that was a very essential difference, in my judgment. One party wanted to investigate and the other party didn't. There was no trivial difference between them but it was a very important one.

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 passed 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."

Now that is the key-note to the whole proceeding, and the moving and actuating motive with these young lawyers that come here and testify upon this question. He swears that in order to get them to come around, he said, "if the grand jury had passed a resolution censuring you, we would all stand by you, and now we want you to come around and stand by Judge Cox." And we shall see, as we pass along here, that they did stand by Judge Cox. They all stood by Judge Cox. Now we want to get the resolution and see how they stood by Judge Cox.

[Senator McCrea here took the chair to act as president *pro tem.*]

Now, I will read the resolution that this bar committee were called upon to investigate.

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

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 by nineteen of the grand jurors.

Now, gentlemen, I have read the resolutions that were referred to this bar meeting, and I make a point upon this because I think this is the key to the whole situation in Marshall, Lyon county, and also a key to the manner and method of these young lawyers testifying upon the stand here, as well as to the matter of their testimony. Those resolutions were referred to that bar meeting, and they were referred to them with this remark, made by his Honor, E. St. Julien Cox, as testified to by Mr. Seward. Mr. Seward says that those resolutions were handed over to the bar meeting, and that Judge Cox told them: "Gentlemen, I want you to investigate these charges, and if I am guilty of them I will telegraph my resignation immediately to the Governor of this State." Now those charges were, that he had been intoxicated on the bench, and while in the discharge of his official duties. He had not arrived at that peculiar technical position that he has taken since the House of Representatives has said that he *should* resign and get out of the way. He had not read at that time all this immense amount of law that his counsel have been able to look up, to show that it was not a reason why he ought to get out of the way. But Judge Cox thought, at the time when these resolutions were passed, that if he was guilty of the offenses charged there, he ought not to be Judge; that he was not fit to be a judge, and that he would send his resignation at once to the Governor. Well, here were these young lawyers. Judge Weymouth is not a young lawyer, but he testifies he isn't doing much in the line of practicing law; he is a farmer. But here were those young lawyers who were frightened at the Judge's remark, that if these charges were true, and the bar meeting found them true, he would send his resignation to the Governor, and they would lose their judge. Now, what a pity it was that Wallin, and Ladd and Webber were not there!

How they would have seen to it that those charges were found true in order that they might get into those shoes that Mr. Arctander has talked so much about here! But they were not there. Those resolutions were acted upon by that bar meeting, and, in the language of Mr. Seward, they divided up into two parties, one desirous of investigating, the other not desirous of investigating; and he brought as many as he could over to the non-investigating side, by telling them, "Why! you have been drunk with Judge Cox; now come around and stand by Cox." That seemed to be the rallying word at that time, to "stand by Cox." Now we will see who stood by him. That bar meeting investigated according to Judge Cox's request—or rather they *didn't* investigate—and they brought in some resolutions rather commendatory of the Judge; and the Judge ordered them to be spread upon the minutes of his court, and we find those resolutions spread upon the minutes of the court; but we

fail to find the resolutions of the grand jury there. There is nothing of that kind in the records. Those resolutions were entirely suppressed. We cannot find a particle of evidence from those records that the grand jury ever brought in any resolutions of censure, or anything else; but we find these resolutions:

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.

Now, we want to find out who it was that rallied around Mr. Virgil Seward when he told them, "Let's all stand by Cox." We want to find out who rallied around the flag of the debauchee then and there, and stood by Cox; because that is what Seward wanted them to do. "You have all been drunk with him, now if they censured you for being drunk, we would stand by you; and now we want you to come around and stand by Cox." Now let us see who stands by him:

H. C. Grass,—he stands by him. Why, yes; he stood by him on the stand here when he swore the bottle went around, and yet Cox didn't get any of it. He stands by Cox; he stands by him in these resolutions. He stands right by him like a little major; he staid there three days after his business was all over, so as to stand by him down here at this impeachment trial. He is looking right after him on every occasion. He is still standing by Cox.

J. W. Whitney,—why, there is our little friend the "scratchetary," he stands by Cox. He agreed to stand by Cox in these resolutions. He didn't want to investigate Judge Cox; but, according to Seward, he was going to "stand by Cox," and he stands by him. He stood by him when he swore on the witness stand here that "he didn't know," and "he didn't know," and "he didn't know," in answer to my interrogatories about what they drank; but he did know that "Judge Cox was sober." He stood by Cox at Renville county; he stands by Cox on the stand here. He stood by Cox; he agreed to stand by him, and because he agreed to stand by him in that bar meeting, and he is an honorable man, and he won't go back on his word.

C. S. Butts,—why, he stands by Cox. He agreed to stand by him in those resolutions; he undertook to stand by Cox then. The solemn obligation that he took there at the bar meeting was that he would stand by Cox, and he stands by him on the stand here. It is true he played poker with him up there at Tyler; it is true he occupied his room and they played penny-ante, and they passed around the bottle in the hat, but still Cox wasn't drunk. All the rest of them might have been drunk but Cox wasn't drunk and he stood by Cox, and he stands by him to-day.

M. E. Matthews. Oh, yes, he stands by Cox. He is another one of that beautiful company of lawyers there that is standing by Cox. He agreed to stand by Cox then, but he ought to have stood by Cox a little

earlier in this trial. Why, it is in evidence here that this man Matthews was up there at Tyler, up to Marshfield with Cox, and he wrote a letter back to Mr. Whitney, the editor of the Lyon County *News*, and he told him,—well let us see what he did tell him. He was up to Tyler, Mr. Matthews was,—M. E. Matthews,—this goody-good man, that they claim from Marshall. He says:

TYLER, MINN., June 15, 1881.

FRIEND WHITNEY:

* * * * * * * * * * * *

Cox came up with me from Tracy to-day, *and is as drunk as*——!

You can fill that in there, Senators, at your pleasure.

All necessary arrangements were made for holding court at Marshfield,—

Ah! Matthews was mistaken about that. There was one arrangement that was very necessary, that they had not made; they hadn't got their bar up there at Marshfield; they had left that out. If Charlie Marsh had only got his barrel of whisky up there, the court never would have been moved from Marshfield.

—the county seat, which is about three or four miles from here, but when Judge Cox got out there, he, without cause, as everyone says, and against the desire of everyone, adjourned court to this town. The fact is that the people are——mad over this drunken move.

Now, he had repented a little for writing that letter when he got down here to Marshall and had this meeting, because he agreed then to stand by Cox. And so he comes down here and in the carrying out of his solemn promise and agreement with Seward & Co., to stand by Cox, he says he never wrote that letter, when we produce two men here that swear he did write it. We produce the editor of the paper to whom it was written and who swears it came from Matthews, enclosing him a puff which he asked him to publish to help him along in his new home at Marshall, and which he did publish, and that at some time Matthews came in there to pay Mr. Whitney, and asked to be allowed to take the letter away; and he took the letter away just about the time this impeachment trial commenced; otherwise you would have had the original letter here. He "stands by Cox" though; he testifies that Cox was "as sober as a judge;"—it won't do to use that word any more,—but he was very sober. Oh, yes, he was "standing by Cox," right along.

C. W. Andrews. It appears to me we have heard that name before. He is another man that is standing by Cox. He agreed to stand by Cox in these resolutions. It is true he wanted Cox to go and take a drink up there at Tyler, and in his nobility he refused to go, because he said he didn't want to be seen going to a saloon; Mr. Andrews didn't want to drink himself, but still he tried to give the Judge something to drink, knowing his weak place, and here he had agreed with Seward that he would "stand by Cox," and he stands by him, he stands by him on the stand as to the Tyler term, he stood by him as to this Marshall term, and, as he had agreed to, and he stands by him all through.

V. B. Seward. Oh, yes; he is the author of the phrase "*stand by Cox*," and he stood by him; there is no question but that he stood by him. He stood by him so nobly that he was the only lawyer of the whole

crowd that really drew out any praise or encomium from our friend, Mr. Arctander. Why, the counsel said he was "the brightest young lawyer in the whole northwest;" he was "one of the towers of strength up there in the town of Marshall and knew just what he was testifying to."

B. F. Weymouth. Why, we have heard of him, haven't we, somewhere in this trial? It appears to me he is the old gray-headed gentleman that they called Judge Weymouth; the man that stood so high there in the estimation of the people. He was the chairman of that meeting. He will stand by Cox. Why, Cox made him chairman of that meeting, so he "stands by Cox," in the language of Seward; and he stood by him on the stand here. It is true he came very near slopping over once, in testifying that the Judge was drunk at one time when he would have been attending to business if he had been able to, but it was kind of choked off. He didn't get it out; he got it about half way out, and there it stuck. Why, he even stands by Cox so far as to see him cross a bridge that had been taken up and was gone and wasn't there at all! Why, he stands by him all the way through, he don't propose to be caught with any small matters; he stands by Cox.

Well, now, there is another man here that agreed to "stand by Cox" at that time, but he has repented. He has come to the conclusion that it won't do to "stand by Cox" in everything. He has come down here and has manhood enough to repent and take it all back. He had been standing by Cox, but has had the nerve to come here and tell the exact truth about that term of court at Tyler. Well, that is Mr. A. G. Chapman. He signed these resolutions. Notwithstanding he was willing to "stand by Cox" at that time, yet when he comes to be put upon his oath, when he comes to have the test applied to him, that he will answer under the pains and penalties of perjury if he shall testify to that which is false, then the truth comes forth. He finds that it won't do to "stand by Cox" when he is under oath. He may stand by him in other matters of right, but when put under oath, he is going to tell the truth; he says that Cox was drunk at that term of court at Tyler.

Well, there were some that voted in the negative: A. C. Forbes, F. N. Randall, M. B. Drew and C. W. Main. They put the following resolution on record:

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 resolutions 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.

Now, gentlemen, that last portion of the report of that bar committee is eminently manly. They tell the Judge there that they did not agree with those resolutions because they "do not answer the purpose for which they were confided to them." The resolutions were confided to that bar meeting for the purpose of investigation, and with the assurance on the part of the Judge that if those charges were true he would at once tender his resignation by telegraph to the Governor of this State. With no truckling disposition to stand in with the court, these lawyers are found unwilling to sell out their manhood. They were not willing to sell out everything that a lawyer holds dear, by passing a set of reso-

lutions which failed to comprehend and take in the business for which they were met, and simply white-wash the Judge of the Ninth Judicial District, and they have come here and kept on in that line.

Those resolutions were resolutions that referred to the Judge's inebriety, his intoxication, his disgracing the position. The resolution of the bar meeting merely says: "We have undiminished confidence in the eminent ability and integrity of Judge Cox, and we hope he may long continue to do honor to the bench." Well, there is no one that would hope that he might "do honor to the bench" more than every member of this Senate.

[At the request of Mr. Manager Dunn the Senate here took a recess for five minutes. Resuming, Mr. Dunn addressed the Senate as follows:]

I was remarking, Mr. President and Senators, that the portion of that communication that was addressed to the court by Mr. Forbes, Mr. Main, Mr. Randall and Mr. Drew, to my mind, was certainly stamped with a great deal of honor and a great deal of manliness. Those attorneys were desirous that the investigation called for by those resolutions of the grand jury should be made, and they were regretting the fact that the majority of their brethren sought to stand by his Honor and not investigate the subject; for it will be seen by reference to the resolution that they did pass, that there is not a word said about the personal habits of the Judge,—"Resolved, that we have undiminished confidence in the eminent ability and integrity of Judge Cox, and we hope that he may long continue to do honor to the bench." That is all.

Now, I will not take up your time, gentlemen, to go through and analyze in detail all the evidence upon this article fifteen. I don't think it is at all necessary to do so. I think the very fact that these gentlemen were brought here as the champions and witnesses for the Judge at that term of court, and also at the Tyler term; and part of them at the Renville county term of court,—the very fact that those gentlemen appear as his champions and as his witnesses at that transaction and testify to a state of facts diametrically opposed to the parties that the State brings here as witnesses,—the fact that they signed this paper and that they come here and testify to the facts, is sufficient, at least, to put this Senate very much upon its guard as to how far it will believe them.

Now, I do not say that they testify falsely, I do not say that they have perjured themselves, neither do I say that they have done anything wilfully wrong, but upon this question of intoxication, as I said before, it is such an elastic question, resting so largely in opinion, that they have given the Judge the benefit of the doubt that might exist in their minds. They agreed to do it in those resolutions, they have stood to it, and they have done it on the stand,—with one honorable exception, Mr. Chapman, who as I said before, repented, and upon oath has told the exact truth.

We claim, gentlemen, at your hands, when you shall come to vote, that artiele fifteen shall be sustained, and that if any gentleman votes against that article he will vote against it not because it has not been proven but because of some question he may have upon the law of the case. And we claim that the law of the case has been so far settled by this court when the demurrer was argued that it is no longer an open question and cannot be so considered in the mind of any Senator. Claiming that, and that this article has been proven, we shall confidently look for a verdict unanimously, especially upon this article, by the Senate.

There remain now, five specifications to be considered.

SPECIFICATION ONE,

is denominated the supplementary proceedings in Marshall. That is a charge which I say, as I have said with reference to other charges, is not entirely free from doubt. That is to say a reasonoble doubt,—I don't mean that, in its narrow sense, but I mean from *ordinary* doubt. As to whether the respondent should be convicted upon that charge I have this to say: The evidence upon that charge is so conflicting that any Senator can justify himself in voting for it or against it.

There are three witnesses who testify that upon the occasion of the supplemental proceedings in the Robinson & Maas case the Judge in their opinion was intoxicated. There are several other witnesses who testify that in their opinion he was not intoxicated. The witnesses stand equal as to opportunity, so that any argument that I have made in regard to the opportunity of witnesses,—that our witnesses had a better opportunity than the witnesses for the defense,—does not obtain any hold in this specification; and I feel bound to say, as a manager here in the argument of this case, that on that specification, whether the Senate shall vote guilty or not guilty, a vote either way can be justified by the evidence. Therefore I will take no time in arguing it.

The next specification is

SPECIFICATION TWO OF ARTICLE SEVENTEEN,

which is the Coster against Coster case. That is regarded as a strong specification, and the testimony as strongly supporting the charges therein made.

It seems that at this time,—on the first day of August, 1880,—there was an order to show cause made by the Judge of the Ninth Judicial District, the respondent in this proceeding, served upon the defendant Coster to answer why he should not be punished for contempt of court in not paying over certain suit money in an action that had been theretofore brought by his wife to procure a separation from him, under the divorce laws of our State. That the order to show cause was made returnable on the first day of August. That upon that day the Judge was in an extreme state of intoxication; that he was at his hotel when he was sent for by the witness young Mr. Kuhlman and refused to go; thereupon another party, Mr. Eckstein, the deputy sheriff, went after him, and upon his solicitation the Judge said he would go; that on his way to the court room he declared he could not walk and would not walk, and wanted Eckstein to furnish him a conveyance.

Eckstein tells him that he has no conveyance to furnish him, that he can get up there as he has always got there. That at the time he was intoxicated; that thereupon he hailed a swill-cart as it was passing through the streets and mounted that swill-cart and rode up to the court house. That upon arriving there the court was held, not in doors, but out of doors, and that, during the proceedings some time, he suggested to the defendant, who was before him, arraigned for having committed a contempt of his court, that he had better go and buy some beer. That upon the defendant suggesting he had no money to furnish beer with, his Honor furnished the money and thereupon he went down and bought some beer and they drank it during the proceedings. That the Judge was then and there intoxicated is shown by the fact of his sham

orders, by his incoherent remarks, by the improper statements that he made to the defendant, and also to the deputy-sheriff, Eckstein, who was present. He said to the defendant, "John, I'll have to put you in, John; I am sorry for you, John, but I'll have to put you in." Said he to Mr. Eckstein, "Joe, put him in; put him in, Joe." Language of that kind used by a district judge engaged in the solemn proceeding of determining whether or not a party was guilty of a contempt of that court; he was determining the question whether a man had been guilty of practicing or committing a contempt upon that court, and at the same time drinking beer with him, with the court in full blast and in "open" session!

Now that state of things is testified to by Mr. Eckstein, the deputy sheriff; by Mr. Edward Kuhlman, the young man; by Mr. George W. Kuhlman, the attorney, and by Mr. Webber, the other attorney. There is no disagreement between them as to the question of the intoxication of the Judge; at any rate, the successful party, Mr. Kuhlman, testifies he was so intoxicated that he could not get him to make a decision one way or the other, as to whether he should have the the man committed for contempt, or what he should have done with him. He could get no satisfaction from the Judge except in his drunken moments by telling John he would have to put him in. He would not listen to the explanation Mr. Webber was trying to make in his behalf; he was not in a condition to decide as to the merits of the application of Mr. Webber that he should not be punished. It is a well-settled proposition of law that a man does not commit a contempt of court, in disobeying its orders in regard to the payment of money, if he can show that he is not able to comply with its orders,—the law imprisons no man for debt. The law does not seize hold of the person of a man that is compelled to pay money if he can show fairly that he is unable to comply with the order of the court. The law does not ask impossibilities of men. Therefore it was his duty to listen patiently, and have ascertained whether the man was actually guilty of a contempt of the court or not. Technically, he was guilty because he had not paid the money, but whether he should be punished for it was another thing. That is what he was to determine; that is what he was to judge of,—whether he was to be punished for it was another thing. Well, the consequence was that this matter went over, and there was no order made.

Now, how do they meet that on the defense? Why, they brought on the defense, this butcher Steibe and his man, simply to swear that Judge Cox did not ride in his cart!

Well, now, it may be possible that these men are telling the truth, but I would prefer to believe Mr. Eckstein and Mr. Kuhlman on that point. Because, why? Because their attention was directed to it at the time. It made an impression on their mind. Mr. Steube and his man Meyer might not have had their attention directed to a trivial incident of that kind. They have never thought of that, probably, from that day to this, if it did not occur. It might make no impression on their minds, but it did make an impression upon the mind of this young man Kuhlman; it did make an impression upon the mind of this deputy sheriff, Eckstein. It must have made an impression upon the minds of these two men, and it did do so; consequently, I say that their evidence is entitled to the greater weight. Well, they bring in this young man Manderfeld. He testifies that he was there, and he recollects the beer

being drank; he recollects the case, but he says the Judge was sober. Now, that is the only witness they have as to the condition of the Judge. He says he was sober, and now let us see how much he is to be believed. Why, young Mr. Kuhlman testifies that Mr. Manderfeld was there, but Mr. Manderfeld testifies that he didn't see Mr. Kuhlman; and the respondent's counsel desires to make you believe that Mr. Manderfeld testifies Mr. Kuhlman wasn't there. Now, if you will read his evidence carefully you will find he did not so testify. He testified that he did not see him, that is all. He might not have seen him, we don't say that he did see him, we don't care whether he saw him or not; but the fact that he failed to see him, does not make it patent to my mind that he was not there, by any means. He says that he saw Judge Cox come walking into the court house yard, and that he did not come there in the swill cart. That may be. He went out of the sight of Kuhlman and Eckstein riding in the swill-cart; where he got out of that swill-cart we don't know and don't care. We started him on his winding way in that offal cart with the rest of its contents. Where he got out we know not. So that Mr. Manderfeld's testimony may be entirely in accordance with the facts as he understands them, and yet it does not militate a particle against the evidence for the State, because neither Mr. Kuhlman nor Mr, Eckstein say he went clear to the court house in the swill cart. The court house is several blocks away from the Dakota House. Probably the general managers of the swill cart got tired of carrying him after they had carried him a certain distance and they concluded they would unload their goods, and they did, and his Honor footed it the rest of the way. Mr. Manderfeld's evidence, then, might have been correct upon that point,—and correct that he did not see Mr. Kuhlman.

Now, that is all the testimony there is upon that question. They will hardly undertake to say, I think, that that was not a court. They make but very little argument upon that specification. They hardly ask this Senate to believe that our testimony is not true upon that point. But there is one other matter connected with that,—how they knew he was intoxicated. Young Mr. Kuhlman says that after he went down town and left them there, Judge Cox came along and came up into his father's office, in which he was assisting as clerk. And he says that the Judge was very drunk, and the Judge abused his father, calling him all kinds of opprobrious and obscene names,—abused him in every possible way. That finally he lay down on the lounge and went to sleep; and Mr. Kuhlman says he went up into his office a little while after that, and that the Judge had rolled off the lounge and lay on the floor, in a state of extreme drunkenness. Now, both of the Kuhlmans testify to that. He lay there, I guess, all night, for they went off and left him there,—did not pretend to get him up.

Now, Senators, the question will be, when that specification comes up to be voted upon, was this respondent sober or intoxicated on the first day of August during the proceedings in the Coster case? There is no one, I think, within the sound of my voice—there is no one that has heard or read that evidence—that can come to any other conclusion than that he was not in a sober condition at the hearing of that case, but that he was, as the article charges, in a condition unfit to transact the duties of his high office by reason of the voluntary and immoderate use of intoxicating drinks.

The next specification is specification four; and that is the settlement

of the Tower case at New Ulm. There is no evidence, gentlemen, against this specification. This specification is one that is undenied and undisputed.

I do not desire to go on any further this afternoon, Mr. President. I should like to have this matter laid over until Monday. I am pretty nearly through, and I am about worn out.

The PRESIDENT. The Senate have heard the remark of the counsel.

Senator RICE. I didn't hear it.

Mr. Manager DUNN. I say I don't feel like proceeding any further with my remarks; I am pretty nearly through. It will take me probably an hour or an hour and a half on Monday. It is an important matter that I want to discuss, and I desire to discuss it before as full a Senate as possible. It is the general term of court at New Ulm.

Senator GILFILLAN, C. D. moved that permission be granted Mr. Manager Dunn to conclude his argument on Monday, which motion was adopted.

On motion of Senator Gilfillan C. D. the Senate then adjourned.

FIFTY-SECOND DAY.

ST. PAUL, MINN., Monday March 20th, 1882.

The Senate met at 3 o'clock P. 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, Bonniwell, Buck, C. F., Buck, D., Castle, Clement, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson R. B., McCrea, Mealey, Miller, Morrison, Perkins, Peterson, Powers, Shaller, Tiffany, Wheat, White, 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. G. W. Putnam 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.* Mr. Dunn will proceed with his argument.

Mr. Manager DUNN. Mr. President and Senators: We had arrived at the adjournment on Saturday at a point in this discussion, I think, up to

SPECIFICATION FOUR, OF ARTICLE SEVENTEEN,

which is known as the settlement of the Tower case at New Ulm. The facts of that case would seem to be these: That on a day that had been set by the Judge of the Ninth Judicial District by an order, the attorneys, Mr. Morrill and Mr. Wallin, appeared before the Judge at a spe-

cial term at New Ulm for the purpose of settling a case and making a motion for a new trial in the case of the board of commissioners of the county of Redwood against one Amasa Tower. The case had been tried at Redwood Falls and preparatory to making a motion for the new trial and as a basis for the same, the attorney for the county, Mr. Wallin, had prepared a case and served it upon the respondent's attorney, Mr. Morrill, to which certain amendments had been proposed and that was the day which was set for the purpose of settling the case before the Judge and making a motion for a new trial upon the case so settled.

It appears from the evidence of both of the attorneys that upon their arrival at New Ulm they found the Judge in a state of intoxication; so much so, that neither of them felt safe or justified in proceeding to the matters of business on hand; that they agreed among themselves that if when they should arrive at the court-room the Judge was in no better condition than he was when they found him upon the street that they would adjourn their matter to some future day. It appears from the evidence of both of the attorneys that at the time of their meeting in court the Judge was in no better condition and was in an entirely unfit condition to go on with the business and that therefore it was adjourned; and that there was no other cause, no other reason for that adjournment than the intoxicated condition of his Honor, the Judge of the Ninth Judicial District.

Mr. Webber, who testifies in this case, testifies that on that day he saw the Judge in New Ulm and that the Judge was then intoxicated. That is a matter of evidence in support of this specification which has not been spoken of by the counsel for the respondent. You will find it upon the twelfth day, eighth page. It has not been noticed or spoken of at all. He says:

> I recollect the time that Mr. Wallin and Mr. Morrill came to argue a motion for a new trial in the Tower case that had been tried at Redwood Falls. I was going along the street with Mr. Wallin, and I don't know but Mr. Morrill was with us. Anyhow, we met Judge Cox, and Mr. Morrill came up and spoke to him about the business, and he said "he had decided that already;" he said he was going to grant a new trial. In my opinion he was intoxicated at that time.

Now, there has been no evidence by the respondent offered to refute this charge, or the statements that are made by these witnesses. It stands uncontradicted, although not of course admitted, because it is denied in the answer of the respondent. But there is no evidence before this court that the Judge was in any other condition than that in which the witnesses for the State, state him to have been. The only method by which the counsel for the respondent undertakes to avoid the force of this charge, is by charging that Mr. Wallin (and this is his first appearance in this case) is a disgruntled candidate for Judge; that he was a candidate before the people at the time of the election of the respondent and that he was defeated at the polls, and therefore Mr. Wallin must of necessity bear in his heart a sufficient amount of animosity and hatred toward the respondent to move him to come here and testify to that which is false. That is the sum and substance of the argument of the counsel, stated in a very narrow compass.

He also seeks to avoid the force of the evidence on the part of the State on this article by claiming that Mr. Wallin is a candidate for what

he has been pleased to term so often in this action, "the shoes of the Judge." Now, you all remember the evidence that Mr. Wallin gave upon that point. Mr. Wallin stated very manfully and candidly that if there was a vacancy in the office of the judge of the Ninth Judicial District that he would be a candidate for it. The fact that it is not a criminal matter, the fact that it is not a blameworthy matter but the fact that it is rather praiseworthy in an attorney to aspire to sit upon the bench of his judicial district has been adverted to by myself and by the other managers who have argued this cause.

I think it will not and ought not to militate or detract a particle from the evidence given by Mr. Alfred Wallin in this matter. Mr. Wallin has been defended upon this floor, by Mr. Manager Gould in more eloquent terms than I am capable of. That defense I think, together with the facts exhibited here under his evidence and the manner and demeanor of the man is a sufficient argument and sufficient refutation of the mere slurs and innuendoes of the argument of the counsel. It is sought to be broken farther by the impeachment of Mr. Morrill, for this is the first time that Mr. Morrill appears upon the stand in this case. Mr. Morrill it is claimed has been impeached; that is to say, that his evidence has been thoroughly destroyed by the evidence of certain parties from Redwood Falls, who claim he is a man of bad reputation for truth and veracity. I will not take the time of the Senate to wander through the labyrinth of testimony introduced relative to Mr. Morrill's standing in Redwood Falls. I simply state this, that as in the case of Mr. Coleman, no witness upon the part of the State has been sought to be impeached by the evidence of the respondent except those who have left their places of residence or the places where they resided at the time oi the taking place of these occurrences. I refer to the cases of Mr. Coleman and Mr. Morrill. The impeachment of Mr. Morrill was deemed by the managers so slim, so slight, based upon such false premises, that it was not even worth while to undertake to sustain his character by procuring witnesses from the town of Redwood Falls. It seems the whole burden of the song of the impeaching witnesses was, that Mr. Morrill was unreliable in political matters; he had the temerity at some time to want to run for some office up there as against a candidate of his party. That of course was a grievous sin. He incurred the displeasure and hatred, as it were, of the managers of the land office there, Messrs. Dunnington and Herriott.

He incurred the enmity of certain political leaders of that county by that action. And there is Mr. Bunce, who claims he has been very foully wronged by this man Morrill. He claims (and it is a charge that is frequently laid at the door of lawyers) that Mr. Morrill, while he was really employed by him in some matter, had suffered himself to be employed by his adversary in the same matter or matters growing out of the same transaction. And then there were some matters connected with some dealings of Mr. Morrill relative to the church, in which they claim that a minister of the gospel had claimed that Mr. Morrill was not reliable. How far this evidence may have tended in the minds of Senators to impeach and destroy the evidence of Mr. Morrill, I am at a loss of course to know. But I can say this, that this case does not hinge upon the testimony of Mr. Morrill; and it is mere idle work for counsel to undertake to impeach the evidence of a witness upon whose testimony the prosecution does not entirely rest.

Mr. Wallin's evidence is unimpeached; Mr. Webber's evidence is unimpeached and if the Judge was not guilty of being intoxicated at that time, and to such a degree that it was necessary that this matter should be postponed, and thereby delay the cause and time of litigants in court, it was a very easy matter for the respondent to have shown it; and as I have stated before in this argument, it would have been very pleasant to me, and doubtless would to this Senate, if this charge could have been refuted by the evidence of his Honor upon the stand. He was upon the stand and failed to testify upon it. He proffered himself here as a witness and was accepted and neither the respondent or his counsel saw fit to ask him anything relative to this undisputed charge. So that it will be impossible for you Senators to resist the conclusion that these witnesses have testified to absolute facts. Because were it otherwise, they might have been refuted, at least by the testimony of the respondent himself. Now that being the case, as a matter of course, this article must be considered as having been proven.

They saw fit to read upon the other side the record in this case in order to give their argument some point and weight, as found on the 17th day of the proceedings, upon the 28th page; and they argue from that that these witnesses must have been mistaken as to this motion. In my judgment no such conclusion can be drawn from the record. The record states it seems that there was a calendar made for the special term of August 7th, 1880. Upon that calendar appears the case of the board of county commissioners of Redwood county, versus Amosa Tower, Alfred Wallin for the plaintiff, Baldwin, Miller and Merrill, for the defendant. Rufus P. Kingman and others, versus Fredrick Howard and others. That is the calendar of those two cases. Now the rest of that calendar appears to be as follows:

Special term of court, August 7th, 1880.
Court opened at 10 o'clock, A. M. Present, Hon. E. St. Julien Cox, Judge.

Board of County Commissioners of the County of Redwood. vs. Amosa Tower, et al.	Motion for new trial.

That is what it was called there "motion for a new trial."

Case called from calendar and submitted on briefs.

Well, now that is just what was done exactly. It *was* taken from that calendar; but why it was taken from that calendar does not appear from that record. The reasons of its being taken from that calendar and not argued at that time appears from this evidence here, by this witness Morrill, and by Wallin and Webber. That is the reason why that cause was called from the calendar. It is rather singular language, "case *called* from calendar, and submitted on briefs." The reasons why it was called from the calendar, and the reasons why the motion was not then made, are before you in the evidence of these three gentlemen.

There is another argument they make and a misstatement of facts, also by counsel for the respondent, in regard to this charge to which I desire to call the attention of the Senate for a moment. He states that Mr. Morrill comes upon the stand and testified to a certain state of facts.

that is to say there were no amendments to be settled at that time to the pending cause; that it was simply a motion for a new trial. And then he states that after Mr. Wallin had testified that there were amendments to be settled, Mr. Morrill then comes into court and changes his testimony to correspond with the testimony of Mr. Wallin. Now that is not the fact. The respondent's counsel was laboring under a grievous error when he stated those to be the facts as to Mr. Morrill's testimony. You will find by consulting the journals that Mr. Morrill's testimony was given on the twentieth day of the proceedings, the 24th of January; that is, his second testimony was given on the twentieth day of the session, the 24th day of January, and Mr. Wallin was not sworn in the case at all until the twenty-first day of the session, the 25th day of January. So that any conclusion that the Senators might come to, that Mr. Morrill was a doubtful witness, or a witness that was desirous of having his evidence conform to that that had gone before, according to the statement of the respondent's counsel, must fall to the ground by a mere reference to the facts as they stand established in the journal, that Mr. Morrill's evidence explanatory of his former evidence was given before the witness Wallin was placed upon the stand as to this charge. I think, gentlemen, that that article requires no farther argument.

SPECIFICATION FIVE.

is what is known as the Drew motion. That charge is supported simply by the evidence of Mr. Drew and Mr. Patterson, and is one of those charges or articles which as I have stated as to some of these other articles, is not free from doubt, and that any Senator voting guilty or not guilty upon that charge can justify his conscience either way. It is simply a question as to which class of witnesses here are more to be believed.

Judge Cox. I would like to ask the counsel if there is any evidence that that case (the Tower case) was settled on that day or if there is any evidence that it was ever settled?

Mr. Manager DUNN. Well Mr. Wallin says that it was settled.

Judge Cox. Does he? I wasn't aware of that fact. When and where?

Mr. Manager DUNN. Well, if you want to take the time, I will look it up. (After examining the journal.)

Mr. Wallin testifies upon page 6 of the 21st day, after stating the purpose for which they were at New Ulm, (and it was for the purposes of settling that case that they came there, also to make a motion for a new trial after the settlement of it:)

Q. Well, the result was, that on account of the condition of the Judge, the case was not settled, and the motion was not made. Was that it?

A. The motion was not made and the business was not submitted to the court, except as I was about to explain before when the counsel objected.

Q. How was it finally settled, if at all at that term?

A. The business was not done at that term or at that time. The motion for a new trial was not made until the following November, and the case was not settled until a considerable lapse of time after the adjournment of court. It was done by correspondence.

Q. You never met again before the Judge?

A. Not for the purpose of settling that case.

Q. Did you meet again for the purpose of making a motion for a new trial?

A. In November of the same year, in another county.
Q. You made your motion for a new trial and it was granted, was it?
A. Yes sir.

The case *was* settled according to the evidence of Mr. Wallin. Is the gentleman answered upon that point?

Judge Cox. Not in the least.

Mr. Manager DUNN.

SPECIFICATION FIVE

is Mr. Drew's motion as I was stating and it was one of those specifications that is not without its doubt which might justify any Senator in voting not guilty. I state it frankly; I state that I don't think it is a strong charge, I don't think that it is a charge that any Senator would be guilty of any violation of his oath of office in voting for or voting against it.

SPECIFICATION SEVEN

is the last specification, Senators that we shall have to consider. That is the general May term, 1881. This specification or charge the management think is one of the strongest in the calendar, and is one upon which the proof is so strong that every Senator must come to the conclusion that the management have thoroughly and conclusively proven.

The facts are these: That in the month of May, 1881, a general term of the district court for Brown county was held by the respondent. That upon the morning of the opening of said court the respondent was at Sleepy Eye; that he was late in taking the train and he procured a private conveyance to transport him from Sleepy Eye to New Ulm. We have had the driver of that conveyance upon the stand and he has detailed to you the condition of the Judge at that time. He has detailed to you the fact that upon that journey there was a certain amount of whisky among the passengers, the passengers consisting of himself and the Judge; that a certain quantity of that whisky was consumed by the passengers, and in that short ride of 12 or 14 miles the Judge became intoxicated and the party that drove that conveyance testifies in distinct terms that upon the arrival of his Honor at the court house in New Ulm, he was then laboring under, and suffering from the effects of intoxicating liquors. So that we land the Judge upon that charge directly within the halls of justice under the influence of intoxicating drinks,—and by a witness whose evidence they have not attempted to dispute, as to the drinking of liquor upon that trip.

And right here I would say in answer to the argument of the senior counsel for the respondent, that we have failed at all times to discover the beginnings of the drinking or the beginnings of the drunk, that in this case we have succeeded in showing when it commenced. It commenced on the ride from Sleepy Eye to New Ulm. We then bring the evidence of Mr. Blanchard, who testifies unmistakably that the Judge was intoxicated during that whole term of court. Mr. Blanchard is a witness for the respondent, and they will hardly gainsay his truthfulness. They placed him upon the stand to refute such men as M. J. Severance. They have most implicit confidence and reliance in his word. They un-

dertake to place him here as a witness and become responsible for his character themselves. They go bail for the fact that whatever Albert Blanchard says is true.. And it won't be denied that Albert Blanchard has an intimate acquaintance with Judge Cox, and it won't be denied that being the clerk of his court there, he is certainly on very friendly terms with the Judge. It won't be denied that Albert Blanchard has told the truth as he understands it, and he testifies distinctly and unequivocally that at this term of court, whatever may have been said of other terms when Mr. Blanchard has been present, that the respondent was in an intoxicated condition.

We have the further evidence of John Lind. Mr. Lind testifies that the Judge was intoxicated when he came there, and was intoxicated all through the term. We have the evidence of Mr. Somerville and Mr. Thompson and Mr. Webber and Mr. Jones upon that point. Mr. Lind testifies (and that is corroborated by Mr. Thompson) that the condition of the Judge was such that he and Mr. Thompson concluded it was unsafe to try their causes, and that they agreed among themselves that their causes should be continued for that reason, and that they were continued for that reason and no other. Mr. Thompson and Mr. Lind both agreed that notwithstanding they had causes that were ready for trial, and their witnesses were there from a great distance, but owing to the inebriated condition of the presiding Judge, at that term, it was deemed by them unsafe to jeopardize the interests of their clients in pursuing their litigation at that time.

On the first day of that term was taken up the celebrated case of Howard against Manderfeld. Mr. Webber declaring,—Mr. Lind and Mr. Thompson, and all of these witnesses, and Mr. Blanchard—declaring that upon the trial of that case the Judge of the ninth judicial district was intoxicated; and that he was more intoxicated at the time of the charge to the jury and the giving of the verdict than at any other time during that day. Mr. Brownell is brought upon the stand to refute that charge, and the charge of his being intoxicated during the trial of the case of Howard against Manderfeld. He seems to be the central figure of the defense as to that term of court. Mr. Brownell is a very pleasant gentleman; I have not a word to say against his character for integrity or for truthfulness; but I have simply to say that sometimes attorneys as well as other persons in their zeal to aid and assist a friend, especially a friend who holds a high position, are sometimes guilty of suppressing some portion of the truth. Sometimes guilty of giving it a certain coloring which the facts will not warrant. I claim that Mr. Brownell has been unfortunate in his testimony here. He has testified to one thing to-day and apparantly forgetting what he testified, and then the next day has testified to a state of facts diametrically opposed to it.

As for instance, Mr. Brownell testified on the 377th page that he had not had any talk with Mr. Jones about the condition of the Judge. Mr. Brownell testifies on page 372 relative to the charge of the court in the case of Howard vs. Manderfeld in answer to the question by the respondent's counsel: "Was the charge of the Judge distinct and clear?" "Oh, yes;" he says, "it was entirely satisfactory to us." That was his testimony: "Entirely satisfactory to us." Upon being recalled upon the stand, Mr. Brownell testifies to an entirely different state of facts. On page 1142 this question was asked him: "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. Manderfeld, that the charge was drunk all through; I would ask you to state with what understanding and under what circumstances you made it?" It will be recollected that the witness Brownell was asked whether he had not stated originally to Mr. Jones that the charge of the Court in the case of Howard vs. Manderfeld was drunk all through, and that he stated that he did say so. Now in answer to this question by the counsel for the respondent, with what understanding and under what circumstances he made that statement, he says: "It was not stated with the idea that the *Judge* was drunk, but that the charge was wrong, wrong—wrong in law—incorrect; thought so then and think so now." Now only a week or so before that Mr. Brownell had been upon the stand and testified that the charge was distinct and clear, and perfectly satisfactory to their side. Wasn't it clear if it was drunk all through, or was it clear if it was drunk at all? It strikes me that Mr. Brownell had forgotten, when he was on the stand in the first instance, the real facts in the case. But now he comes upon the stand and declares that he did say at the time, that the charge was drunk all through. But that was said in a sort of a "Pickwickian" sense—it didn't refer to the Judge at all; the Judge was perfectly sober, but the *charge* was drunk. Mr. Brownell himself testifies that when the verdict was received on the night of the first day of that term that the Judge was a little "happy," a little intoxicated; under the influence of liquor.

Mr. Jones comes upon the stand and gives a full statement of that occurrence; and in this connection I desire to call the attention of the Senate to the flourish of trumpets that was displayed by the respondent's counsel when they asked that this Senate should send down to Texas and get the deposition of Mr. R. A. Jones. Evidently they thought, at that time, or hoped that the managment would object to it and interpose some technical objection to their request but the request was acceeded to and the deposition sent for. But for some reason,—unknown to this Senate, of course,—that deposition was never produced and read in evidence. It came here like sort of a dead weight, a wet blanket upon the cause of the respondent, and it slumbers in the files of this court with the secretary, and has never yet seen the light of day. But it so happens that Mr. Jones, after he had given his testimony there, (the object of his having gone to Texas having been thoroughly accomplished, which was to avoid testifying in this unpleasant matter,) returns. And he was brought upon the stand and in response to questions made by Senators upon this floor,—one of the Senators from Ramsey, I think, that he tell the whole story connected with that transaction, he tells it. And I shall take the time of the Senate to read it. (Page 1,150 of the Journal.) To show how thoroughly Mr. Jones refutes the statement of Mr. Brownell, as to the sobriety of the Judge and as to Mr. Brownell's knowledge of his sobriety; for Mr. Brownell testified clearly and distinctly the first time when he was on the stand that he perceived no indication of inebriety in the Judge during that whole day, during the first day.

Now, I ask leave to read the testimony of Mr. Jones as a refutation of that statement:

Senator CROOKS. Tell it all.
The WITNESS. If I tell any of it, Colonel, I would like to tell it all.
The WITNESS. The conversation occurred in consequence of the fact that Mr.

Brownell and I arrived there on the morning of the first day of the term of court. The Judge was not there and we began to make inquiries where he was, and we heard certain reports about him and consequently were a little anxious to know some certain matter as we had a case to try. The Judge arrived there at exactly eleven o'clock in a buggy. I only know where he came from from his own statement. He came into the court room and his appearance was the cause of the first conversation we had. Another attorney said "the Judge is drunk." And if he was it was the first time I ever saw him drunk—my acquaintance with him is, however, very slight.

Mr. Brownell and I were sitting together and the Judge—the morning session didn't last more than thirty minutes I think; there was no grand jury and there was only nine cases on the calendar, if I recollect aright. and they were called and we adjourned until after dinner, and my recollection is, Judge Cox walked down town towards the court house with Mr. Brownell and myself, and I said, referring to the other man who said that the Judge was drunk, "he isn't drunk." Mr. Brownell said "No but he has been drinking some."

Now Mr. Brownell testified that he saw no indications of inebriety in the Judge during that day, but here according to the testimony of Mr. Jones, he concludes that he had been drinking. As has been said here before, by myself, drunkenness comes from drinking; so that Mr. Brownell certainly saw some evidences there of intoxication.

I replied, myself, that it was probably true, from his looks, but that he didn't seem to me to be intoxicated. That was before dinner. Judge Cox took dinner with us that day at our hotel. He didn't stop at the same hotel where we did, but he took dinner with us. In the afternoon, the case of Howard vs. Manderfeldt was the first case to try, and the jury was empanelled very quickly; there may have been a juror excused, but if so, I have forgotten it; there was no special objection to anybody, and all went off quick. Mr. Webber read the pleadings for the plaintiff and talked, I should say, ten minutes—not more than five or ten minutes and called his client as a witness, Mr. Howard; he was sworn and probably testified for may be twenty minutes.

The witness testified for perhaps twenty minutes and Mr. Webber said to Mr. Brownell and myself "You can take ths witness." Thereupon Judge Cox and Mr. Webber had quite an argument before we cross-examined at all, or before we said a word, and Mr. Webber got somewhat excited. I don't mean to say excited in his speech, but he was aroused, a little out of temper I thought myself, and I said to him,—I said to Mr. Webber myself, "what is the matter with the Judge?" and he used the word that Mr. Gould put into the question.

Mr. Gould had asked if it was not stated in Brownell's presence that the Judge was drunk.

Mr. Brownell was sitting beside me,and I said "I guess not." Mr. Webber says "You don't know him as well as I do," and Mr. Brownell said "No 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 occurred 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 occurred at this time that I can remember.

Now upon the receiving of the verdict the witness states this:

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 defendant;" 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 it 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 distiuctly 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.

Now in the evening of that day, the first day of that term of court, the witness says:

Judge Cox came into the hotel that evening and his condition was 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 office of the hotel together, but some one said—I couldn't say who said it, but some one said, "the Judge has been on a spree again," and I made the remark about it. Some one there that represented the house made a remark about it in reply to the remark that I made. Mr. Brownell then said, "Well, he ought to be got to bed," and that was in reply to what the person representing the house said.

Mr. Brownell said he ought to be got to bed, referring to Judge Cox, and I said "I will take him to bed," and perhaps five or ten minutes—another matter having intervened—on my return to where Mr. Brownell was, he said it was a terrible disgrace or misfortune and I won't be sure,—alluding to Judge Cox's condition; he used one of those words and others made the same or similar remarks, my own perhaps was the strongest,—the remark that I said, that it was a disgrace to Judge Cox and to the judiciary as well.

Now, it will be seen from that evidence, gentlemen of the Senate, that there is no question that Mr. Brownell did have a conversation with Mr. R. A. Jones and Mr. Webber and others, at the time of the Howard against Manderfeld case, as to the condition of Judge Cox. And when I asked him distinctly if he had any such conversation and he answered "no," why I say of course that he was certainly mistaken. And that his attention *was* called to the condition of Judge Cox at that time, and that he remarked to others that the Judge had been drinking; and if he had been drinking, why the conclusion follows that he had been drinking sufficient that it should be noticed by a person that he was intoxicated. To what degree as a matter of course it is not particular. But they went on from that time until the evening when the Judge was so drunk that Mr. Richard A. Jones did really say that he was properly placed in bed; and that all within the knowledge of this man "Judge" Brownell so-called, who has testified so distinctly about the respondent's condition at Waseca, and so distinctly about his condition at the time of the trial of the case of Howard against Manderfeld.

Now, we come to the second day of that term. On the second day of that term we find a state of facts existing which has existed but once before in this trial. We find on the second day of that term Mr. Lind and Mr. Somerville, and Mr. Thompson and Mr. Webber and Mr. Blanchard, all testifying that the Judge was intoxicated. And we find that during one of the recesses of that court at that term of court Judge Cox went into a small room adjoining the court-room wherein was Mr. Thompson and Mr. Somerville and others, and that Judge Cox, right from the bench,—fresh from the throne of justice,—takes from out of his coat pocket a bottle of whiskey and asks the boys to take a drink with him, right there in the court-room as it were.

Now, when the case of Coster versus Coster was tried we have found they took a certain quantity of beer to fortify the court and to enable it to discharge its judicial duties properly, but when we get up here to the trial of jury causes the Judge had to be fortified and taken care of by a bottle of whisky, he has it in his coat pocket, at the recess he treats the young attorneys who are thereabouts, and they testify that he was intoxicated at the time. I believe he was intoxicated, and I think you will believe he was intoxicated. Otherwise he would not have so far forgotten his position as to have had that whisky with him upon the bench and at the recess of that court have invited the young lawyers into the room to take a drink with the court. I believe that you think with me that that is good evidence of the intoxication of the court; that no judge not entirely lost to every sense of propriety would commit an act of that kind under any circumstances; nothing but the fact that his mind was crazed and that he had lost his reason by means of having indulged in the intoxicating bowl that day, would have impelled him or permitted him for a moment to have performed that act.

But the great scene of this court is probably upon the last day of the term, when the celebrated case of Wildt versus Wildt was on the docket. It will be remembered that one Rosalia Wildt had brought an action against her husband, and that in that divorce proceeding a certain order had been made that her husband should pay over certain suit money to the counsel for the plaintiff; or alimony as the case may be, I have forgotten which, but it was an order to pay over money,—that money had not been paid and an order to show cause why the defendant should not be punished as for a contempt had been duly made, served and returnable on that day; that upon that day the parties appeared before his honor, to have the defendant Wildt show reason why he had committed contempt of that court; why he had not held that court in such reverence and esteem that he had obeyed with alacrity its mandates and orders. But he had been guilty of violating the order of his honor the Judge of the 9th judicial district, and he was there to show cause why he should not be punished for the same.

They come into that court room and they find the Judge in a state at least not to command the respect of suitors, litigants, attorneys, or even spectators. It is in testimony by Mr. Webber and by Mr. Blanchard, that the Judge was in an extreme state of intoxication while that proceeding was pending. And that he went so far in the exercise of his non-judicial discretion, (I don't want to call it judicial discretion), as to fine Mr. Wildt in sums varying from $100 to $1,250; that he kept piling up the agony from $100 to $200, to $250, $300, etc., and until he arrived at the mountainous sum of $1,250! Now, it is disputed as to intervening sums between $100 and $1,250, but there is no dispute as to $100 and $1,250, because they are foreclosed by the record upon that point. The record discloses the fact that he fined him $100 and then remitted that fine and fined him $1,250, and finally the attorney for the plaintiff, Mr. Webber, who was there in the interest of his client to see that that order to pay that suit money was complied with, or that failing to comply with it, or showing a good cause to the contrary, the defendant should be punished, he was compelled in the interests of justice to stand between that defendant, whom he was there to prosecute, and the drunken judgments of a drunken Judge. That was the humiliating position that Mr. Webber was placed in.

The record upon that case is found upon the 17th day, on the 23rd page, and I am going to read from it just a moment. It is known as "Exhibit 2," Rosalia Wildt vs. John Wildt.

Defendant ordered to appear before the court to show cause why he should not be fined for contempt of court, in not paying money to his wife, per order of court. Defendant not appearing on such order the sheriff was ordered by the court to arrest the said John Wildt, defendant, and bring him before the court forthwith.

Court adjourned till half past 1 o'clock P. M.

Half past one o'clock P. M. Court convened pursuant to adjournment.

At 2 o'clock P. M. John Wildt was brought before the court by the sheriff and was before the court for contempt, and was asked by the Court why the order of the court, commanding him to appear before it, was not obeyed.

Not being able to give to the court any good excuse why the order of the court was disobeyed, he was, by order of the court, fined one hundred dollars, and to stand committed until paid in the county jail, not exceeding three months.

B. F. Webber then moved that the defendant be relieved of the fine imposed by the court on condition that he comply with the former order of the court and pay his wife the sum of thirty dollars. The court then remitted the fine of one hundred dollars and fined defendant $1,250.00.

Court here took a recess of one hour.

There is the record by which I claim that these parties are precluded—the respondent here is precluded from showing that at the time he fined the defendant $100, and that upon the solicitation of the attorney for the plaintiff, in whose interest it was that the money should be paid, or that the defendant should be punished,—at his solicitation that fine was removed and a fine of $1,250 afterwards and immediately imposed and then the court took a recess for one hour.

It was sought to be established here by a system of cross-examination of Blanchard and these other witnesses that the court did not say: "I fine you $1,200," but that he told him, "I could fine you $1,200; I could fine you $100 and $200," etc. Well, now it would be very unreasonable to suppose that a court would tell a party that was before him for contempt that he could fine him $1,250. Why, he could fine him $10,000; why should he stop at $1,250? Why did he draw the line there? Did his jurisdiction go farther than that amount? He had unlimited jurisdiction, and in the condition that he was I think the fact that he fined him $1,250 was very reasonable. It was only mysterious to me that he hadn't fined him ten or fifteen thousand dollars and made a good thing while he was about it. But he fined him that $1,250 and then *took a recess.* No remitting of the fine; there was a recess taken at once of an hour. And he stood there for the hour subject to the fine of $1,250.

Now it goes further:

F. Randall, attorney for John Wildt, appeared and presented to the court an affidavit of John Wildt, asking to be purged of the contempt of which he is held.

Mrs. Rosalia Wildt was sworn and examined.

A contract made and entered into and signed by John Wildt and Rosalia Wildt, was presented to the Court for inspection

The Court then made the following orders:

That the order for John Wildt to show cause why he should not be committed or fined for contempt of this court, is absolutely discharged.

Now he had got to a point where all the orders that he had heretofore

made were absolutely discharged and the defendant was no longer before the court. That proceeding was wiped out. There was nothing whatever for the court to act upon. The order for John Wildt to show cause why he should not be committed or fined for contempt is absolutely discharged. Now Mr. Wildt might have walked out of the door and that would have been the end of it, but the Court then goes on and presuming in his drunken and besotted condition, that he had some business before him after he had discharged the defendant, enters another order in the same matter:

Ordered, That John Wildt pay to Rosalia Wildt $45, as temporary alimony within twenty days from the date of this order, and if not paid within twenty days, he stands adjudged guilty of contempt to this court, and unless he pays a fine of $500, will be committed to the county jail of Brown county for the term of six months, and the sheriff of this county is ordered to see that this order of the court is obeyed.

Well, that is the first time I have ever known in my practice of an order adjuging a man guilty of contempt, being made absolute and final, and without the party having the right to appear before the court and show cause or purge himself of any seeming contempt. But *there* is an absolute order adjudging a man guilty of contempt in advance. The first order had been discharged. There was nothing for the court to act upon; he was not before the court in any manner whatever. But he makes another order—that the defendant shall pay $45, and if he fails to do it within twenty days, that he is guilty of a contempt of that order; not of the order that was made before that, but of the order that was then made. Why, he might have been as rich as Crœsus when the order was made, and his barns might be destroyed and his cattle might have the murrain, and his property might have been wasted as was Job's of old, and when the day came to pay that $45, in twenty days, he might not have had a dollar to pay the fine or the alimony. But it is an absolute and unconditional order—"if you don't pay that within twenty days no excuses will be heard, no reasons shall be given, nothing shall be advanced to show why you have not done this, but the sheriff of this county is ordered, in default of your paying that fine, to commit you to the jail of this county for the period of six months."

Now, gentlemen, I undertake to say that if that is not the best evidence that Judge Cox was drunk at that time, why, we have failed to produce any evidence here. Because no judge, no lawyer, can ever justify an order of that kind. It cannot be justified. That whole proceeding cannot be justified under any other theory than that the party that made it was bereft of his reason.

What evidence do they bring against this charge? They bring Mr. Brownell, Mr. Robertson, Mr. Peterson, Mr. Sturges, Mr. Baasen, Mr. Subilia, Mr. Wright, Mr. Seiter and Mr. Current, all parties, more or less, that had business before that court. Some of them were witnesses, some of them were jurymen, some of them were in and out as spectators. And they all join in saying Judge Cox was sober. Now as I said, gentlemen, in my argument on Saturday, it is a question of opportunity that you will decide here. These parties claim that the Judge was sober, it is true, but the question is which set had the best opportunity to Judge; those that were simply sitting there and looking on, or those that were engaged and endeavoring to control the mind of the

court, to see that the mind of the court worked, those who were not engaged, *simply* in *looking* at his *physical features*, but who were looking within, at his mind. These attorneys that had their cases continued—Mr. Jones, Mr. Webber, Mr. Lind, Mr. Thompson and Mr. Somerville—are they not better judges of the condition of the respondent at that time? It strikes me that they are.

As to this charge the management confidently rely, when you shall come to cast your votes, upon a decision of guilty. We think that if there is any charge that has been proven here and proven even beyond that reasonable doubt that has been argued in your presence; that even if this were a criminal cause you could not say that there was even a reasonable doubt as to the guilt of the Judge under this charge.

The next charge is the

CHARGE OF HABITUAL DRUNKENNESS.

That charge has been commented upon by Mr. Manager Gould and I shall have but very little to say about it. The respondent's counsel has figured up the number of drunks that we have shown the Judge to have been guilty of and he finds them to be 32. I have not figured them up and don't propose to. I don't suppose any Senator has figured them up. There has been a large number of them, I am willing to take his word for it that there are 32. But I desire to add to that 32, about a hundred more that his witnesses have testified to. I think about a hundred. They have had 102 witnesses and nearly every one of them has testified that he has seen the Judge drunk at some time or other, so that would make 132 in the aggregate.

I think it has been demonstrated here by the authorities that were read the other evening by Mr. Manager Gould, and also by the authorities that were read by the counsel for the respondent, that there is a sufficient amount of proof under this charge to warrant any Senator present in voting that the charge has been thoroughly proven; that Judge Cox has been since the 1st day of March, 1878, an habitual druukard. I do not propose to spend any time or argue that article at all.

I have now simply ran over these charges and the proof upon them in a manner which is not at all satisfactory to myself. I was limited for time in the commencement of my argument and endeavored to comply with the known wishes of the Senate that this argument should be concluded within a certain limited period, and therefore I commenced the argument in rather a cursory manner. The analysis of the evidence has not been made as perfectly as I would like to have done in justice to myself, but as the time ran along and I found the Senate was very indulgent in time I have elaborated the argument to some greater extent than I would otherwise have done and yet not sufficiently to satisfy my own mind and conscience taking into consideration the importance of the matter. And now I have just a few words to say in conclusion generally upon this case.

We are asked by the respondent's counsel one very important question, seemingly, to them, and that is: Who is backing up and supporting this impeachment? We are told that in the Page impeachment there was a large constituency in the county of Mower that had felt that they had been outraged, injured and annoyed by the actions of Judge Page,

and that they swarmed in these halls; that they employed counsel; that they were using every lever that was known to them,—not to impeach the Judge, it might be said, but to obtain a purification of the judicial ermine. That there was some solid foundation for that impeachment; that there was something for the Senatorial mind to act upon; that there was some real grievance to be redressed; that there were some real rights that had been trampled upon and which should be vindicated and maintained; but in this case we are told that there is nothing. It is almost as the vaporings of the wind that you are called upon here to decide upon; that there is no constituency that has been aggrieved or injured; that there is no person here knocking at the doors of this Senate and asking that his wrongs shall be redressed; that the whole thing emanates from two individuals; that the people of the Ninth Judicial District are not moving in this matter. Simply two individuals, marplots as it were, have sent down here and fulminated a bull against the Judge of the Ninth Judicial District and the Legislature have taken it up and are carrying it forward to success.

Is that the fact? Has it not been demonstrated here before this Senate that it is not simply two individuals that are endeavoring to purify our highest courts of vice and wickedness? It is true that some one starts every great movement; it is true that the attention of the lower house of the legislature should have been called to it in some manner, either by some member of that body or some one by petition, or otherwise; and it is true there were found two individuals in that Nnitl Judicial District, in one of those new counties out upon the frontier, that had the manhood and the courage, to sign their names to an instrument which called the attention of the House of Representatives to this monstrous indecency which had been and was being practiced in their midst. Those individuals were C. B. Tyler and Mr. Rodgers,—one of them an official of the United States, who has held an office of high trust and responsibility, an office of a very delicate nature involving the handling of the public lands and the deciding of issues as to settlers, as to their rights to those lands, for, I think, this is his third term of office. He has so conducted himself in that community that no breath of slander or suspicion has ever been raised against his good name. The counsel here alleged that Judge Cox had been instrumental sometime in almost sending him to the State Prison for some fancied wrong that Mr. Tyler had been guilty of. The facts are that Mr. Tyler was at one time arrested for some pretended crime in connection with a matter concerning this land office,—as any man is liable to be,—but upon an investigation Mr. Tyler came out unscathed from that furnace of affliction and the response to the charges that were made against him was a reappointment to his then position which he now holds. He stands above the Judge of the Ninth Judicial District; he is out of his reach. He does not move in the same plane, the same sphere with the Judge of the Ninth Judicial District. He is not one of his boon companions. You don't find him consorting with him in beer saloons and in whisky shops and in midnight revelries. He is willing to place his name to a paper which shall call the attention of the legislature of this State to the evils and enormities that have been committed within his county.

The other gentleman is a minister of the gospel, called by the counsel the peripatetic gospel preacher, I believe.

Mr. BRISBIN. I don't quote such English as that.

Mr. Manager DUNN. Well, I think that's just what you said; I think that will be the record when it comes out. He is denounced for what? For being a preacher of the gospel? No; he is denounced because, being a preacher of the gospel, he has seen fit to sound a note of warning throughout the State of Minnesota. We have been told that Father Ireland has been instrumental in doing so much good in the temperance cause. Very true; and we want to accord the same meed of praise to the ministers of every other denomination that shall undertake to put down this hydra-headed monster that is destroying and eating out the vitals of the youth of our land,

This minister is like all other ministers in his place, standing as it were upon the very watch-tower of the citadel of virtue in our midst, and it is his duty as a good sentinel to sound the note of warning whenever he sees the approach of the foe from afar. He has seen the approach of that foe; he has seen the youth of that village of Marshall, in which he lives, becoming debauched and depraved by the action of the Ninth Judicial District Judge. He has seen that band of young attorneys of the village of Marshall there, so craven and cowed before that Judge that they were willing to go into a bar meeting of their own to refute unpleasant resolutions brought by the grand jury censuring that Judge, by crawling out and endeavoring to whithwash him; passing resolutions not germain to the subject under investigation. He has seen them glorying in the fact that they had been on a drunk with Judge Cox, and now they were ready to stand by him. And shall he be abused, shall he be maligned, shall he be traduced, shall he be called an "assassinating preacher" of the gospel, because forsooth he is willing to point out to the people of the State of Minnesota the great errors that have been committed in that district, and ask at least an investigation of those errors and the righting of those wrongs by this Senate? I claim he were recreant to his trust and his calling had he done otherwise.

But they are not the only ones that are engaged in this prosecution. Who is behind this prosecution? I say that the whole State of Minnesota is behind it.

In the body of 106 gentlemen composing the House or Representatives of this State, when these articles of impeachment were voted upon, there were 78 affirmative votes and only 12 negative votes. The evidence that was taken before the judiciary committee was all read in their hearing. Quietly and solemnly under the obligations of their oaths as representatives, to do right, 78 of those gentlemen placed themselves upon the record, that if these things were *true* the Judge of the Ninth Judicial District should be impeached for crimes and misdemeanors. And among those 78 members every member representing a constituency belonging to the ninth judicial district, voted "aye." Not a dissenting voice in that whole Ninth Judicial District. They send greeting to you here, Senators, by their votes, to make good the vote they gave there if the management has succeeded in proving to you that these indiscretions of the Judge have been committed; that is what they ask.

But there is another gentleman that is attacked and that is the gentleman that had the "temerity," as they call it,—I say that had the *courage* to produce to that House of Representatives that petition,—the Hon. Thomas Wilson, of Winona. Thomas Wilson of Winona stands as far above the Judge of the Ninth Judicial District in everything that goes

to make up true manhood as the sun does above this planet upon which we stand. He has worn the judicial ermine honorably and honestly for years and years, in the history of our State. He has preserved it unspotted and unsullied. He has seen to it that those robes that this State gathered about him when he assumed the office of Judge were kept pure and holy, during his administration, and he is jealous that no spot shall appear upon that ermine which he has once worn; but being jealous of it he is willing to lift up his voice; he is willing to take the initiative, he is willing to take a stand against everything that shall bring disgrace and dishonor upon the judicial office.

The management have had no easy task in this prosecution. Gentlemen that have never practiced in court can hardly comprehend the difficulty under which an attorney labors in coming into a court and swearing aught against the presiding officer. Young lawyers especially, dislike to even tell the whole truth relative to the conduct of a court where that conduct is subject to adverse criticism. We have only been able out of all the mass of attorneys practicing in that court, to get those who had been elevated so far above this Judge, who moved in a plane so much higher than he does that they were not afraid of the shafts of vengeance so far as they might possibly be visited upon them, in case of an acquittal here. But we have been able to get such men as Sumner Ladd; we have been able to get such men as B. F. Webber and John Lind, and S. G. Miller; we have been able to get such men as Alfred Wallin; we have been able to get those men who were not the boon companions of this Ninth Judicial District Judge, who had not been on drunks with him; as this young man Seward testified that he had. We have been able to get that class of lawyers to come here and testify to the truth in this matter. And it is upon their evidence that we ask you to convict this respondent. We have been able outside of that district to get such men as Hon. M. J Severance; such men as Robt. Taylor; such men as S. L. Pierce. We have been able to get that class of high toned and honorable men who were not afraid of anything that the Judge might be able to do, perchance he might go acquit here of these charges.

So it is the brave and courageous attorneys; the brave men,—those that care not for what may be said against them relative to their testimony here by this respondent, that have dared to come and tell what they know; they have come (as it is proven before you;) they have come at the risk of having their characters torn to pieces by counsel; they have come at the risk of having everything that they have done heretofore in their lives laid open as it were, and exposed to the gaze of the world. If they have been heretofore in that condition that the Judge is now, they have come at the expense and risk, and have had it actually thrown in their teeth that they come here as reformed drunkards. I say they are entitled to great praise and a high mark of honor for their willingness to come under those circumstances,—for their endeavor to purify and clear up the atmosphere that surrounds the Judge of the Ninth Judicial District. They are not deserving of a rebuke; on the contrary they are entitled to commendation.

We are told that there has been no harm done in this matter. That is one of the theories of the defense. There were three theories as I understand it: one was that he was not drunk, the next was that it was a conspiracy to prove him drunk, and the third was if he was drunk what of it? Those are about the theories upon which the defense has

been conducted. One theory is that no harm has come by these proceedings. The witnesses have all been asked "Were not his rulings all right?" "Didn't business go right along?" "Didn't Judge Cox push things?" "Didn't he do more business in a week than other judges had done in a month?" "Wasn't he the best Judge that ever sat there upon the bench?" That has been one of their theories.

Now, we claim gentlemen, that we are not obliged to show that any harm had come from this, because, in the language of the law-writers they say he shall be removed, not because any harm has been done, but because of the possible harm that might be done. Think of exposing the lives, and the liberties, and the property of any member of this Senate to the uncertain and erratic judgment of a mind diseased and disordered with alcoholic drinks! Why it is appalling! Reflect upon it for a moment. That mind that should work in its normal condition, so distinctly and clearly as to be ready to decide sometimes very intricate and close questions,—to think of that mind being deranged by midnight revelries and debauched with ardent poisons,—to think of exposing any person's rights to a mind so affected.

We claim, gentlemen, that we have shown that harm has come. Great harm, grevious wrongs have been committed, not only to the State of Minnesota but to individuals, by the actions of this Judge.

Take article two, when the lawyers were trying this case of Powers against Hermann, at Waseca, on the 3rd day of April, 1879. And because Mr. Collister was not able to get the attention of the Judge to keep Mr. Lewis from pursuing as he thought an improper method in the examination of a witness; finding that he could not get protection from the court; discovering that the Judge was drunk,—take that case, gentlemen, Senators, and tell me if that adjournment caused, and made necessary by the condition of the Judge worked no harm. It did work harm. It was a grievons wrong perpetrated upon those litigants; it was a wrong perpetrated upon those clients, upon those attorneys; it was a wrong perpetrated upon the county of Waseca. There was one-half day at least of that court that that county was paying the expense of, without any consideration received, and all because the mind of the Judge of the ninth judicial district had been depraved and debased and was besotted and drunken with the fires of alcohol. Now, was there no harm there? Can any Senator conscientously vote and say there was no harm there?

Take the next article; the settlement of the case of Brown against the Winona & St. Peter Railroad Co., at the Nicollet House, when Judge Wilson and Mr. Pierce and Mr. Thompson and Mr. Webber attorneys appeared there to settle that important case in which was the right of $6,000 involved, and the Judge in such an inebriated condition that the counsel were absolutely obliged to leave their business unfinished and go home some of them going a distance of a hundred miles and some a distance of 150 miles; time wasted, the rights of the plaintiff and the defendant held in abeyance until it suited the Judge to become sober. No harm done are we told? No injury worked? Has the Judge always transacted his judicial duties properly and correctly? I ask this Senate if there has been any harm done under that article,—article four?

Take article eight, the McCormick-Kelly case, about which there is some dispute as to the facts, disputes perhaps sufficient to turn the

scale one way or the other; but I claim there was a grevious harm done there by the Judge and I claim that the condition of the Judge was a cause of the expense that Mr. Kelly was put to when that case was obliged to go to the supreme court. It went there by reason of error of the Judge and the judgment was reversed at the expense of a poor man, Mr. Kelly, living at Sleepy Eye, who still wears the scales of blindness on his eyes, and still thinks that Judge Cox was sober at that time. No harm done in these things?

Take article 12, the Renville county term. Take that case, for instance, where the Judge pardoned a man; and tell me if there was no harm done. There was a man that had been tried, convicted and sentenced, according to law,—passed out of the jurisdiction of the court and into the hands of the Governor; and the Judge, without any excuse or justification (as it is admitted by the counsel himself, Mr. Megquier, upon the stand), and upon motion of Mr. Megquier on Monday morning after he had gotten him sufficiently under the influence of intoxicating drinks, upon his mere request sets aside the verdict of a jury, remits a fine exonerates the bail, pardons the defendant and send him out of court scot free! Now what is the effect of that? Is there no harm done? He has judicially determined and so stated to the Board of County Commissioners of the county of Renville, that it is not necessary that a man should procure a license to sell whisky; it is not necessary that he should obey the commands of chapter 16 of the general statutes; it is not necessary that he give a bond; it is not necessary that he should give security; it is only necessary that he shall show that he has deposited money somewhere at sometime, with somebody, and he will be pardoned by the judge of that district, even if he be convicted. No harm done? Has not the State been harmed in such a judicial determination as that? No harm done when a drunken Judge shall undertake to usurp the authority of the Executive of the State? I tell you, Senators, that every man, woman and child in the commonwealth, is injured by decisions of that kind; by usurpations of that kind.

Take article 14; that term at Marshfield and Tyler, where the Judge in going up to Marshfield without right, without authority of law, without a shadow of justification, orders that court to be removed from Marshfield, the legal county seat, to the town of Tyler an adjoining town, wherein no court had ever been ordained to be held, in my judgment merely because the necessary adjuncts and comforting conveniences of the Ninth Judicial District Judge were not present.

No harm done in that to the community? Parties that had prepared that little town to hold court, parties that had got their hotel provisions on hand; parties that had fitted up buildings,—and the county board had fitted up buildings as appears in evidence,—at that town of Marshfield. No harm done to the tax-payers of that county, removing that court from there and taking it to another place? No injury done? The business was transacted correctly and properly! Hardly.

Take the Coster against Coster case. Was there no harm done there? Where the Judge in his maudlin moments undertakes to fine a man for contempt of his high-toned court, and in the midst of the proceedings sends down and gets a quantity of beer to be drank there upon the occasion, and the attorney who was interested in having the order, becomes disgusted and leaves the presence of his Honor's majesty, goes off down to his office disgusted, fails to get the remedy which he had a right to

expect; fails to have that order made which the law would have compelled to have been made but for the condition of the Judge. And yet there is no harm done! Nobody injured! No rights suffer! Ruling all right! Business goes on.

Take the Tower case at New Ulm, on the 7th of August, 1880, when Mr. Wallin and Mr. Morrill from Redwood Falls had met there by order of the court, to transact a certain business,—by the order of the court, himself, had met there,—as is in evidence here, it was a show-cause order. And finding the Judge in an inebriated condition, were unable to perform the duty that brought them there. The matter was delayed along for that reason until the next fall. No harm done? Who pays the bills of these lawyers? Who pays their expenses? It comes out of the pockets of somebody; either their own or somebody's else,—their clients. The rights of the parties are hung up and held in abeyence, all this time. In the mean time property changes hands. Parties that are good to-day are not good to-morrow. And all by the reason of the Judge being inebriated. And yet we are told there is no harm done; no injury has come to anybody.

Take specification 7 of article 17, the one we have argued this morning; no harm done in that, I suppose. When attorneys come upon the stand and testify that because of the condition of the Judge their cases were continued by common consent; that they had their witnesses subpœnaed and were ready for trial, but did not dare to pursue their investigations on account of the condition of the Judge. No harm done? Nor in this case of Howard against Manderfeld, which was tried before the Judge, when it is in evidence here that a new trial was stipulated by the winning party because "the Judge's charge was drunk all through." No harm done? "The charge was drunk all through," and a stipulation was made; they would not even put each other to the trouble of asking the court for a new trial, but they stipulated, because of that drunken charge, that a new trial should be had. No harm done? No injury entailed upon anybody by reason of the Judge's intoxication?

There is a harm which has been done to every person in that judicial district. There is an injury that is being inflicted upon every individual there. There is an injury which has come to the whole State of Minnesota, and that is that the morals of the youth of that community will become debauched and depraved, even as it is allowed in the highest official in our land.

I am persuaded, Senators, that no Senator here, acting under his oath of office, desiring to do justice between the State of Minnesota and this respondent, can vote not guilty on articles 2, 3, 4, 5, 11, 12, 14, 15, and specifications 2, 4 and 7 of article 17, upon the ground that they have not been proven. I say I am persuaded that no Senator can vote not guilty upon either of those designated articles upon a plea that they have not been proven. That if a vote of not guilty upon either of these articles shall be reached by any Senator, it must be reached by some technical and fine-spun theory of the law that militates against it. And I claim, gentlemen, Senators, that if you have regard for the proceedings of a high court of impeachment in as solemn a proceeding as this, that you will not stultify the record that you have made and cast any votes that are inconsistent therewith.

On the 6th day of the session of this court the demurrer of the respondent was argued at length. A vote was reached upon that demur-

rer; the question was directly at issue. Do these offences charged by the House of Representatives amount to an impeachable offense? Twenty-nine Senators voted that they did. Not twenty-one, as the counsel read the other day, but twenty-nine. A unanimous vote was had in this Senate. Not a divided vote as to these articles that I have particularized.

Now I say that no Senator having regard for the rules and decisions of this court, after having cast that vote and put this State of Minnesota to the expense of $40,000 or more, I say that no Senator having cast that vote and having respect for the decisions of this court,—no Senator having regard for the proper rules that should and do govern this court, in the face of that vote taken on the 6th day of this session, by which twenty-nine Senators voted unanimously that these articles so far as I have read them,—these last ones I have named, if found true were impeachable, can vote not guilty if we have succeeded in proving them, without subjecting that vote to an unfavorable criticism before his constituency. Because why? This State and the respondent met in battle array as to the legal propositions, it was done for the purpose that if the Senate should decide that the offenses charged were not impeachable this immense expense might be saved to the tax-payers of the State.

It was with that view and for that purpose that the demurrer was argued, that those legal propositions were settled, as I claim, and settled in favor of the State by that unanimous vote. And how can any Senator now, justify himself to his constituency by voting not guilty upon any article that we have fairly proven? If they are not proven I have nothing to say. But admitted, given the fact that they are proven, that vote cannot be given without subjecting that Senator to an unfavorable criticism; that this Senate ought not to have expended the people's money,—$40,000 or more,—the Senate ought not to have expended that money, if these offenses are not impeachable. Of course these remarks do not apply to any Senator that was not here and did not vote at that time; but those 29 that were here stand affirmatively as voting to overrule the demurrer upon its merits.

Senators, the eyes of the people of not only this State, but of all our sister States are centered upon this body. Our highest and best civilization is on trial to-day. It is not a mere question of temperance or antitemperance; it is not a mere question as to whether some one has been wronged by having been put to improper expense. It rises far higher than any mere personal wrongs; it rises up into the domain of morality. It takes upon itself, Senators, that which is the dearest and most sacred matter to every person in our commonweelth. The purity of the judiciary of our State—the most sacred arm of our government,—has been assailed in the person of this respondent; that judicial robe which should have been kept pure and spotless has been trailed in the mire and slum of wickedness and vice.

No Judge can voluntarily place himself in the position in which the respondent has, without committing an absolute crime,—not only as to himself but against the whole people of the State of Minnesota. That crime you are called upon here to-day, Senators, to punish. You are called upon here to-day to punish that crime against the people of the State of Minnesota by removing the respondent from his high position and disqualifying him, if you shall see fit, from the right to hold this or

any other position in the future. And I trust, Senators, that the people of our commonwealth will not be deceived in your judgment. They have confidence that the honor of this State is in good and safe keeping. I believe that they will not be deceived when the vote of this Senate shall be made public upon these articles, but that this respondent shall have the judgment of this State through the instrumentality of this Senate visited upon him that he is unworthy to fill that position and discharge its sacred duties and that he is and shall be removed.

Now to the respondent, actuated by no feelings of animosity I say herein is illustrated the truth of the inspired writer:

"Who hath woe? Who hath sorrow? Who hath contention? Who hath babbling? Who hath wounds without cause? Who hath redness of eyes? They that tarry long at the wine; they that go to seek mixed wine."

And I indulge the hope that the command of prophetic inspiration which has been so fearfully neglected and disobeyed, may in the future be heeded:

"Look thou not upon the wine when it is red; when it giveth its color in the cup; when it moveth itself aright; at the last it biteth like a serpent and stingeth like an adder."

I submit the matter.

Senator BUCK C. F. Before the learned manager takes his seat, if I am permitted to do so, I would like to ask him one question.

Mr. Manager DUNN. Yes sir.

Senator BUCK C. F. The constitution of the commonwealth of Minnesota provides that a judge may be impeached for "corrupt conduct in office or for crimes and misdemeanors." I desire to ask him if he asks us to vote for conviction here because the respondent has been officially corrupt, or because he has been guilty of a crime or misdemeanor or both?

Mr. Manager DUNN. Well the Senator has probably not listened to the very able argument upon the law that was made here by Mr. Manager Gould.

Senator BUCK C. F. I have.

Mr. Manager DUNN. Not having investigated the law on this subject probably as fully as my brother managers have, I can simply give you my private opinion. My private opinion is that these charges do not go to the extent of corrupt conduct in office, but they do go to the extent of a misdemeanor in office.

Senator CROOKS. In a legal sense?

Mr. Manager DUNN. In a legal sense,—I——

Senator BUCK C. F. But you are not following the language of the constitution,—"corrupt conduct in office or crimes and misdemeanors."

Mr. Manager DUNN. The constitution says, "corrupt conduct in office."

Senator BUCK C. F. You say "a *misdemeanor* in office."

Mr. Manager DUNN. I believe the words in the constitution are, "corrupt conduct in office, or crimes and misdemeanors." Now what is the Senator's question?

Senator BUCK, C. F. All I want to know is whether you rely—whether you ask us to vote for conviction because the respondent has been offi-

cially corrupt; or because he has been guilty of a crime, or misdemeanor, or both?

Mr. Manager DUNN. Well, there are some of the board of managers that disagree with me somewhat upon the words "officially corrupt." They claim that these offenses that have been proven here come under the designation of "corrupt conduct in office." Mr. Manager Gould took that position the other night. That is a position upon which lawyers might disagree, but I do claim most certainly that it does come within the letter and the spirit of the constitution, "crimes and misdemeanors."

Senator BUCK, C. F. That is all I want to know.

Mr. Manager DUNN. I do claim most certainly on behalf of the managers that it also comes within the other portion, "corrupt conduct in office." That is a matter, however, upon which some of us differ.

Senator BUCK, C. F. Then if I am permitted to do so, I will ask one more question; and that is, if you insist that drunkenness is a misdemeanor?

Mr. Manager DUNN. I insist that public drunkenness is a misdemeanor, indictable and punishable as such; and I insist that drunkenness in a judicial officer while in the discharge of his duty, is a misdemeanor in office.

Senator BUCK, C. F. I thank the manager for the explanation. I simply desired to know his position.

The PRESIDENT. What is the further pleasure of the Senate.

Judge COX. Mr. President, I believe that personally I have not occupied the time of this Senate one moment during its lengthy sessions. My mouth has been sealed,—

A VOICE. Louder.

Judge COX. I have taken no part in the discussion, in the argument, in the examination of witnesses; I have not occupied one moment's time of the Senate. I beg leave therefore to ask now, as this matter which involves such grave consequences to myself, my future, to the welfare and happiness of my family, my wife and my little ones,—I ask in the kind-hearted generosity of this Senate to be allowed to occupy its time for a brief period, not exceding one hour, before the result, which is so momentous in its consequences to me and to those that I love, my friends those who have elevated me by their suffrages to the position I occupy,—in their names and in the name of justice, right and honor, I ask this honorable Senate, to bear with me at the little cost to the State, and the little loss of time to the members individually, I ask this privilege.

The PRESIDENT. The Senate have heard the request of the respondent.

Senator GILFILLAN, J. B. Mr. President, I move that the court now go into private consultation.

Senator JOHNSON, A. M. Mr. President, I wish to amend by giving the respondent an hour to speak.

Senator PILLSBURY. I second the motion.

The PRESIDENT. It is moved and seconded that the respondent be allowed one hour to speak if he desires to do so.

Senator CAMPBELL. Mr. President, I believe there was a request of one Senator to go into secret session.

The PRESIDENT. It was not seconded.

Senator CAMPBELL. As I understand it it is not necessary.

Senator BONNIWELL. Please withdraw that motion, Senator Gilfillan.

Senator JOHNSON, A. M. Mr. President, I think we ought not to prevent the respondent from speaking for one hour.

Senator GILFILLAN, J. B. I simply made the motion for this reason: that I suppose under the rules, all discussion of this matter is out of order in public, and it is simply to afford those that desire to say anything on this request an opportunity to do so.

Senator CROOKS. If the Senator insists on his motion it is seconded.

The PRESIDENT. It is moved and seconded that the Senate now go into secret session. As many as favor the motion will say aye: contrary no; the ayes have it.

The Senate then went into secret session.

The Senate having resumed business in open session the Secretary was directed to announce the result of the proceedings in secret session.

The Secretary then read as follows:

Ordered, that the rules be so far suspended as to permit the respondent, Judge Cox, to address the court for one hour, and that the Honorable Managers be permitted to occupy an hour in reply in case they so desire.

Senator PILLSBURY. Mr. President, if the order is satisfactory to Judge Cox, I move that the Senate take a recess until 8 o'clock.

Judge COX. It is perfectly satisfactory to me, Mr. President. I would like very much indeed, if it would not be too much of an inconvenience to Senators, or asking too much of them, that they would be present this evening. I desire to address them personally.

The PRESIDENT. Speak a little louder.

Judge Cox. I will say that I neither intend to comment upon the law nor the evidence. My speech or the remarks I shall make are principally in regard to myself, and directed to the Senators; and I would like to have as large a number of them present as possible. It would be perfectly agreeable to me to meet at 8 o'clock, or whenever it is agreeable to the Senate.

Senator PILLSBURY. Mr. President, my object in making the motion is in order that more Senators may be present. I think there will be several Senators that will be in on later trains this evening. And I think there are none that will go away at this time. This is why I make the motion.

The motion was carried and the Senate took a recess till eight o'clock P. M.

EVENING SESSION.

The Senate met at 8 o'clock P. M., and was called to order by the President.

The PRESIDENT. I hope the Senate chamber will be quiet this evening. The Senators will keep their seats and avoid talking. The Sergeant-at-arms will see that order is maintained. Judge Cox will now be heard.

Judge Cox, the respondent, then rose and addressed the Senate as follows:

MR. PRESIDENT.—Permit me to acknowledge to this honorable court this mark of courtesy in permitting me to address myself in your hearing, nor would I have asked it but for the course pursued by and

granted to the managers in having a feigned opening of their cause upon the evidence, and after counsel for respondent relying upon the established order of the court had closed their argument upon questions of fact, for the first time we learn that it was but a sham, and reply is cut off.

The honorable the managers in this case say they are here to prosecute in the name and on behalf of the people of this State, disavowing in themselves all feeling of personal animosity towards the respondent, with no private feeling of malice to gratify, nought but a duty to perform. As said once before on a famous trial:

"They prosecute in the name of public justice, seeking nothing but a vindication of the dignity and honor of the commonwealth." Have they so done? Have you in the course of your lives heard a defendant in either a civil or criminal case addressed in the language that has been applied momentarily during every argument, injected into every motion by the managers to and of this respondent? Have you ever heard epithets bestowed upon the lowest criminal in a police court compared with the vindictive expletives heaped upon the devoted head of this respondent and that in the trial of this very civil court. They pale into insignificance. "Drunken and besotted Judge, drunken, maudlin Judge, consorting with pimps and harlots, this disgrace to manhood, this drunken or insane Judge, drunk and in the gutter, going through the streets howling like a madman!" Is this prosecuting in the name of justice to vindicate the honor of the State? Alas, that the honor of the fair commonwealth of Minnesota needs such vindicators!

Senators, for long weary days, extending into weeks, weeks creeping into months, you, or a part of you, have patiently sat and listened to the interminably lengthy ordeal to which this trial has subjected you. To me it has appeared like a hideous dream, a foul phantom of a disordered brain, a nightmare. I have listened, I think honorable Senators will bear me out, with due and proper decorum to the remarks of the gentlemen composing the board of managers. Patiently, in wonder and amazement, I have sat and listened to the extraordinary statements of the witnesses for the prosecution and their still more amazing rehearsal by the honorable board of managers. To the sublimity and audaciousness of the one, the sublime effrontery of the other, I have said to myself, can these things be true? I have not suffered myself to speak a syllable in my own behalf, deeming it more honorable not to array my word against that of my traducers, but the very position taken, being the one that Senators must accord me, has been construed by the managers as evidence of guilt. Decency and the solemn law of the land protected me from this, but what is that to those gentlemen sitting there, who so glibly chatter about the great duty they owe to the State of Minnesota?

Mr. President, in the language of another, I have suffered myself, my motives, my character, my conduct, my head, my heart to be assailed and impugned in all the forms which language could invent in a manner in which no felon confined in our State prison has ever endured, no malefactor that ever swung upon the gallows has ever deserved. I have done it because conscious of my own rectitude of purpose, because of my respect for the honorable position I occupy, for the laws of the land, my respect for this court in whose presence I sit with the manacles of the law upon me. I have felt that thrice is he armed that hath his quar-

rel just and he but naked though locked up in steel, whose conscience with injustice is corrupted.

I have not shunned this investigation, nay not even in the dread shape in which it comes. I do not fear or shun a judgment upon the testimony in this case and upon the law I fear not the closest inquiry into my official honesty, integrity or conduct upon the bench. I fear not to stand before my fellow man whatever may be his race, nationality, his politics or religion. I have an abiding faith in the honest manliness of my judges, be they Republican or Democrat, foreign, or to the manor born,

"There is no winter in my soul,
That winter of despair."

I crave the law, I fear not your honest action. Senators, I crave the law; the law which you, Mr. President, to which you are sworn to obey, the law which has been scouted at before this court, the law of the land, the law which this court has sworn to obey, which I have called God to witness that I would obey faithfully and impartially to the best of my learning, judgment and discretion. Not the mangled body of an oath that is found in these charges and dropped in winning tones, as it were, from the lips of managers, but the oath wrapped up and found in that volume, (the statute book.) But greater that oath of the constitution which prescribes alone your duties, conscript fathers of the republic. You are but the created; it is your creator; it is mine; and to it you and I and all of us have sworn the most abject allegience. It is the shield, the palladium of our liberties, of your tenure of office as my judge. That constitution, which is the shield and ægis of the judge upon the bench as well as of the respondent who stands at your bar. In the name of the people of the Ninth Judicial District, whom I represent, by that law I am content to be judged.

Senators, judges of the grand inquest of the commonwealth of Minnesota, I am arraigned before you for *crimes and misdemeanors* I presume committed whilst in the discharge of official duties. In the long array of offenses described in the penal code and statutes of the State of Minnesota, such as offenses against life and person, offenses against property, forgery and counterfeiting, offenses against public justice, against the public peace, against public policy, against chastity, morality and decency, against public health, covering every generally known specific offense, you find no such offense named, hinted at or alluded to as the ones with which I stand here before you charged. I stand upon the law,—my oath,—the grand constitution of the State. I present you, [turning to the President], as a present, Mr. President, the law of this land. To you, Senators, [turning to the Senate], I hand it, I seek not the musty tomes of the past; I seek not to revel in decisions gone by, but I turn to my creator,—yours. I turn to my oath, and I find not the offenses there with which I am charged.

It is said it is found in the common law—that law created when the memory of man runneth back not to the contrarys,—the decisions of court, the unreported acts of parliment. I accept the issue and stand again upon the law. I take up the work of England's present master of the common parlimentary criminal law and I find no such offenses described save the five-shilling fine of James II., which is not law anywhere. I suppose, to you, grave Senators, a case. It is brought before

idge Severance, the great Ajax Telemonious (and I speak this not in rcasm or in ridicule), the great Ajax of the prosecution of a party iarged with drunkenness. He finds such individual, upon conviction, iilty. What fine can he impose; what penalty can he inflict? He akes the law, and the culprit is fined or imprisoned. What court iving jurisdiction would hesitate a moment to discharge such a party, aiming the benefit of a habeas corpus? Nay, I will not do him the justice to suppose such an absurdity, for he but lately I am told, in a eech or charge to a grand jury, proposed a law should be enacted to inish the drunken man, not the seller of the liquor. I heard him use is or similar language myself in a public speech but a few years ago. ut the charge, say the managers, is that I have violated my oath by toxication. But, Senators, do not conceive that the language used in ch article set forth is descriptive of my oath. I say far otherwise. I ive taken an oath to discharge the duties of the office of judge acrding to my best learning, judgment and discretion. The word "and" inserted by the managers to blind the eyes and tickle the ears of enators. It is false and spurious. Read the charge and compare the ith—page 787, statutes of Minnesota.

Turn to that oath: it has been so distorted by the managers that you ill not recognize it. Read it, Senators. I before God and man swore pon the holy evangelist of God to discharge the duties of my office ithfully and impartially: no more, no less. The grandest monument man is one he rears to himself, honesty, fidelity. Has there been a ord spoken against my honesty? Have you heard aught against my iaracter for integrity? Have they been questioned? Are my hands eking with the spoils of office? Have bribes or gifts tainted my char:ter, blunted my judgments or perverted the current of justice? Have wronged any man? Have I denied justice to the poor or oppressed? ave I administered the law in its majesty without fear, favor, affecon, reward or the hope or expection thereof? Have I been to the ch a friend, and to the poor an oppressor? In the long years through hich I have passed, serving this State in various capacities, is there one an who can stand before his God and with uplifted hand say that I ave perverted the course of justice? That I have in my legislative caacity held an open pocket for bribes?

Has equal and exact justice been meted out to all, rich or poor, high low, regardless of all personal consequences to myself? Have I faithlly administered the law as I have learned it, applied it impartially to l sorts and conditions of men, daunted not by the smiles of the rich or the frowns of the powerful? Has any man left the halls of justice ho avers "You have not been impartial, you have not been faithful?" lives there such, him have I wronged; but he comes not here to say Palsy would blast his tongue and wither his frame who would say Then, Senators, I have been faithful to my trust, faithful to my oath office, true to the confidence reposed in me, and the echo of the voices thousands of my fellow-citizens testifies to the truth of these stateents. To them I confidently appeal in vindication of my judicial acon and conduct since I have filled the responsible position of Judge of ie Ninth Judicial District. Senators, I ask you what law there is that inds you that binds me not? What constitution is there that binds ou as a man, a citizen, a public servant, that does not equally bind me? 'hat law exempts you and not me? They bear alike on each and every

of us—judges, senators, men, each protected by the arm of justice and law; we are amenable to its mandates and its requirements. None too high to escape its penalties, none too low to find a refuge under its protecting powers.

Yours as Senators is "to discharge the duties of your office to the best of your judgment and ability," superadded to which is this, "to do justice according to law and evidence." A greater oath then never sat upon the shoulders of any judge in this State. It has been broadly and haughtily laid down here that counsel has no right to call in question the actions of a Senator sitting as a judge of this high court, and whilst I do not by word or deed intend the slightest disrespect to either the court collectively or individually, I hope Senators will pardon me if I disagree with those who view the momentous issue involved in a different light from which they do, and calmly and dispassionately, and with becoming respect for honorable gentlemen, present such ideas as I may have upon this point.

I have said that no man shall be condemned without being heard in his defence. "Is it," says the great lawyer orator of the new dispensation, St. Paul, to Agrippa, "is it lawful to scourge a man who is a Roman and uncondemned?" I have said no man should be condemned without being heard in his own defense. This, I take it, is a right denied to no man since the famous council of King John and the barons of England upon the tented field of Runnimede 400 years ago. It was then that the despotic scion of the Plantagenent line first heard the words of liberty speaking in thunder tones of man's disenthralment from the iron bonds of despotic power.

> "Let every Briton, as his mind be free,
> His person safe—his property secure;
> His house as sacred as the fane of heaven,
> Watching unseen the ever open door;
> Watching the realm, the spirit of the laws,
> His voice enacted in the common voice;
> The general suffrage of the assembled State;
> His fate determined by the rule of right.
> No hand invisible to write his doom;
> No demon springing at the midnight hour,
> To draw his curtains and drag him
> Down to mansions of despair."

Wide, wide to the world disclose the secrets of the prison walls, and bid the groanings of the dungeon strike the public ear. Inviolable gleams the sacred shield, the palladium of our rights—to Briton's sons in those great pillars—freedom of speech, freedom of pen. That none shall be taken, molested or destroyed, but by the judgment of his peers, or the law of the land. No freeman shall ever be convict, save he be heard by his judges in his own defense. Here the sacred right of all free men was sealed and bound in the bonds of the iron convenant that we enjoy to-day—the right of trial and hearing by the means of habeas corpus, the writ of might, majesty and power, the refuge for freemen, the foe of oppression.

Senators—It has been urged here that this is not a criminal prosecution. But what is it then? My offense is charged as a misdemeanor. A misdemeanor is a crime, so declared by the statute classifying all crimes into felonies or misdemeanors. If it is not this, it is nothing; you have

t in vain, for the only constitutional grounds upon which you act as a urt and sit as judges, limits you to corrupt conduct in office, crimes d misdemeanors; but if not this, it involves a conviction for disgrac- g the judiciary for conduct involving moral turpitude in the violation f the oath of office.

But if it is neither corrupt conduct, nor a crime, nor a misdemeanor, I cept their version as true. It is none of these. But going thus far, nators, let us see if we cannot agree what it must surely be. What e learned managers have held up their hands for, and we will agree it s that. I hope the managers will not deny me the little privilege of aying that I accord to them perfect ingenuousness in their conduct of his case; I hope they will permit me to agree with them that those harges that are preferred against me involve, at least, disgraceful con- luct, moral turpitude. The counsel bows. Fellow citizens, Senators, Mr. President, we are in accord. Remember this involves conviction for lisgracing the judiciary of this State, for conduct involving moral tur- pitude in violation of the oath of office.

Let each and every Senator remember that the respondent here is in ccord with the Board of Managers. Are you all? Is there a Senator pon this floor that doubts these charges allege disgraceful conduct? If he does I am wrong in my supposition. Is there a Senator here but hat will say that this does not involve moral turpitude. If there is I wrong him. I pause for a reply. For every Senator must admit that those charges involve the grossest moral turpitude, the most disgraceful conduct. Mr. Story, of whom no greater lived in his exposition of the law, says:

"These prosecutions are a check to crime, an incitement to virtue. A conviction records the guilt of the offender to all coming time while his- tory lasts."

Senators, imagine that broad vista stretched out before us. Time may pass away, centuries may roll, and yet to the convicted man it is a record to all future time—recorded where it cannot be blotted from the pages of history.

In the language of that great lawyer, the late chief justice of Wis- consin, when prosecuting the impeachment of Judge Levi Hubbell, if these charges be true: "Even the present ruin and the future ignominy which may fall upon him vanish out of sight in the consideration of the vast consequences to the public." But, Mr. President, in the course of this trial, involving the terrible consequences it does to the respond- ent, should not, I ask, Senators, the utmost care and every precaution be taken to let no question as to the application of the strict rules of justice, right and law be ever hereafter raised against the management against the respondent. Surely Senators did but jest when, often in their arguments, they used such language as, "That if defendant could prove his innocence;" "if respondent can clear himself." It would be hard to do this, when limited to an equal number of witnesses as the prosecu- tion. Aye, the court reluctantly granted us at times more, so grudg- ingly, (pardon me for saying so,) that the respondent trembled lest he should have one man more in his defense than the number your rules allotted him.

Innocence is presumed in every case until guilt is proven. How is guilt established in courts? I answer, whenever every reasonable doubt that he is innocent is swept away, and the accused stands before the

court in all the naked deformity which the perpetration of crime throws around the hapless wretch; then, and not until then, is he adjudged to be guilty. But we impose no punishment, says a learned member of this honorable court. It may be true that the deprivation of office, to which a citizen has been called by the suffrages of his fellow-men, together with its emoluments, is no punishment. To disfranchise him may be no punishment to some. But to stand as Cain stood before the Almighty, with that burning spot upon his brow, and the curse ringing in his ears, he exclaims that his punishment is greater than he can bear, before the people of the world, the people of his State and district, with the livid spot of shame burning on his forehead, proclaiming him to the world a convict of crimes and misdemeanors, refutes such a proposition entirely. He stands solitary and alone amid the 800,000 citizens of this State; he of all that multitude, however honest, whatever his ability, may not enjoy their confidence nor their suffrages, stands like the ship-wrecked mariner all the waters of the ocean around him, and not one drop to drink.

No crime is charged against the respondent, says one. I ask what are the charges? Our statute makes all misdemeanors crimes. Who in after years will stop to enquire what the evidence was? Detraction wants no such lieutenant; its votaries need no such paltry argument or excuse. The fell spirit of envy, malice, hatred, revenge, stops not to examine into the recorded evidences of virtue and honesty. Before their foul breath like the deadly Upas blasts with infernal calumny the name of the best and purest of men. And if it were not for simulating politics I would ask you to pick up your morning paper and note the foul breath of calumny of the nation's best and bravest. The life of an anchorite will not blot out the disgrace heaped upon a convict at your hands. It is not punishment. My time warns me that I must proceed faster.

Senator BUCK, D. Mr. President, I move, if the gentleman desires more time, that he have all the time he desires.

The motion was seconded.

The PRESIDENT. That will be taken as the sense of the Senate.

Judge COX. Gentlemen, I am most grateful. I use and take for my languge the language of that great and eminent lawyer, Mr. Evarts, in the impeachment of Andrew Johnson. I do not know, gentlemen, that it is necessary for me to urge this upon you, though I think I will convince your minds that this punishment of all punishments is the greatest and gravest, that it needs not the citation of names or language of authors.

He says:

> In the great hall of Venice, where long rows of doges cover with their portraits the walls, the one eraced, the one defeatured canvass attracts to it every eye; and one who has shown his devotion to the public service from the earliest beginning, and you who have attended in equal steps that same ascent upward, and now, in the very height and flight of your ambition, feel your pinions scorched and the firm sockets of your flight melted under this horrid blaze of impeachment, are to be told, as you sink forever, not into a pool of oblivion, but of infamy, and as you carry with you to your posterity to the latest generation this infamy, that it is a trifling matter, and does not touch life, liberty, or property! If these are the estimates of public character, of public fame, and of public disgrace by which you, the leaders of this country, the most honored men in it, are to record your estimate of the public virtue of the American state, you have indeed written for the youth of this country the solemn lesson that it is dust and ashes.

Senators, every speaker upon this floor and in every impeachment trial tried announces to you the solemn importance of a trial of this character. I add my feeble voice to these adjurations. If such it be can the rights of either party be in the slightest degree tampered or trifled with? Can you approach this goal with feelings of party, with feelings of hatred. Alas, with a fore-formed and pre-expressed determination of finding this respondent guilty without evidence at all or hearing but parts or fragments of the defense? Honorable Senators say they have carefully read and weighed the evidence. Have they read the arguments of defendant's counsel? Where? When? It is not yet upon your tables; have you gathered the appearance of the witnesses upon the stand? Do you glean from the newspapers the demeanor, the conduct, the expression of the witnesses when upon the stand from reading a stenographer's report or from the burlesque caricatures drawn by the post-master of the court? You know that the stenographer's report is subject to many changes; it passes through many hands before it reaches your eyes.

It was only the other day the stenographer refused upon the witness stand to testify to the correctness of a report made by himself, and oh, how the managers gloated over it, forgetting that at least eight honorable Senators, whose votes are vauntingly boasted and proclaimed throughout the city, and who were and have been almost uniformly absent from the giving of the evidence and argument for the defense, rely as an excuse to themselves and their fellow judges upon these second, third, or fourth hand minutes, which I say, in all truth and candor, of themsleves are no evidence in any court in the world; and for which statement I am obliged to the prosecution themselves, when objecting to this very stenographer's report alone of the evidence of Mr. Severance before the judiciary committee.

Senators, pardon me for following in the footsteps of the managers, but I appeal to you upon this ground. If you rely, then, upon that which is declared not to be evidence,—and we admit it to be true,—and the vote of learned Senators held the objection good, to the stenographers report,—may not the defendant with all his witnesses around him question the truth of this journal? Will you deny him the right to question the authenticity of that journal as if it and it only spoke only as the witnesses upon the stand. It was denied us, then Senators deny yourselves, —I will not say the privilege of voting,—but if you have made up your minds in this case from that which is not evidence are you going to follow the recorded evidence of the daily journal? It may be true, (I believe it not,) that as remarked by one of the managers, when earnestly asking for a conviction of this respondent, it is not altogether for what the respondent has done, but what he may do. I will add—not that a single charge has been established beyond a reasonable doubt,—but because I have at other times than those charged over-stepped the bounds of propriety and discretion!

I adjure you, Senators, pause before you take a step so fraught with evil consequences, not to me, but to the honor of the State of Minnesota. Let it not be said that one humble citizen of this fair land has been convicted of crimes without truth, upon charges and offenses unknown to the law. Upon the clamor of a venal press, which has formulated the vilest of vile charges against the respondent; which has tried, convicted and sentenced him to the company of malefactors and

robbers in the prisons of this State. Convict him not, I say, upon public opinion. Convict him not, I say, upon anonymous slanders, but in the language of 2,000 of my constituents, "For known and established offenses against the laws of this State."

Would such a conviction as I have described redound to the honor of this State? Would it efface one single blot upon its fair escutcheon, that my alleged misconduct has brought upon it, if true? If every word of that with which the managers have charged me is true, conduct involving moral impurity, conduct disgraceful to the judiciary, I ask you, Senators, whether a conviction found upon, and by and through the means which I have here spoken of, would remove the stain upon the honor of the fair flag of Minnesota?

No, I answer no. A verdict found by such means would cause a blush of shame to mantle the face of every honorable man. It would destroy the confidence our people have in the judicial integrity of the courts of this nature. I adjure you mar not the handiwork of the sires of this people who drank of the bitter dregs of despotism, and by their heroic devotion to liberty bequeathed this land of law and freedom baptized in the waters of their living life and consecrated to liberty and justice to us, their children. I implore you destroy not the fabric of the founders of this commonwealth by overthrowing the foundation stone upon which rests the sacred rights of the humblest man be he ever so low and degraded, the God-given inalienable right—no man shall be condemned unheard.

Convicted of no crime! Have it so if you will, Senators, but you all will admit of conduct to the great disgrace of the administration of public justice and a violation of official oaths all involving moral turpitude. That at least the managers claim and earnestly impress upon your memory, by repeated and reiterated asservations. I accept the proposition, as I proposed to, almost in the outstart of my remarks. I have before urged that conviction was punishment, but even that admit it is not. is this, then, I ask, by the highest law? None but an attorney can hold the position of Judge, because none others in this country are learned in the law. Would it be punishment to deprive a man of the only means of obtaining a livelihood for himself, his wife, his children—reduce them to want, penury, beggary? To this you respond, yes, this is punishment, cruel, vindictive, horrible. Yet such is the exact case in the event of the result mentioned,—in the case of the conviction of a judge. [Stamping his foot.] It may not be of a governor and other officers.

Turn, Senators to the statute book on page 864, section 5. An attorney takes an oath to support the laws of this State. It is the duty of an attorney and counsellor "to support the constitutions and laws of the United States and of this State." By a conviction you declare he has violated that oath, for by his elevation to the judiciary he does not therefore lose his character, or more properly, so to speak, his profession as a lawyer; thus if an attorney of the Supreme Court of the United States, which I have the honor to be, he does not thereby lose his identity as a member of the bar. We will agree then I think. If a stone mason, or a carpenter, or any other person, were elevated to the bench, or elected to the Senate, would he lose his identity in his profession as carpenter, builder, stone-mason, dentist, doctor, lawyer? Would not a lawyer who was guilty of disgraceful conduct,—conduct amounting to a crime,—be

punishable for any violation of his oath as an attorney, as well when on the bench, as off?

Conduct disgraceful in a judge then attaches to his profession as an attorney. I have argued these charges of alleged moral turpitude. Now Senators, turn to section 18, page 867. An attorney may be removed by the Supreme Court, for what? I answer upon conviction of a "misdemeanor" involving immoral, disgraceful, scandalous behavior, and the record of his conviction is conclusive evidence. We have agreed that this offense was a disgrace to the honor of the State; but you have said that this conviction entails no punishment upon me. You have urged and argued that my conviction here would be no punishment to me, but would simply relieve the State of an officer who has disgraced his position.

Section 19 reads:

> An attorney and counsellor may be removed or suspended by the Supreme Court, at a general term thereof, for either of the following causes arising after his admission to practice:
>
> Upon his being convicted of felony, or of a misdemeanor *involving moral turpitude*.

Have you heard that language? Do you fail to comprehend its effect? We have agreed upon my punishment. We have agreed that this is an offense involving moral turpitude and therefore a misdemeanor; and the law here tells us that the supreme court may remove an attorney for the commission of a felony or a misdemeanor involving moral turpitude. Will you say that there is no punishment in the conviction of a Judge, who for long years of his life has made the law his only study, who has but a poor spot on the oasis of the great desert of life if you deprive him of the means of livelihood for himself and children,—they may starve and he be the inmate of a poorhouse,—and yet Senators will you say that that is no punishment?

Will you declare that to be deprived of all that is good and true and honorable, and noble, and grand, is no punishment? Senators, that is not law. What does your action do? Your action does not disbar the attorney. I admit it: you may not inflict that terrible punishment. But if you convict a judge you may. You may say not one word but "guilty." You may not even pass a resolution to remove the respondent from his high position, but the word "guilty," under the constitution terminates his existence as an officer. The Senator from Scott, the other night, called the attention of this Senate to the fact that they should have a record of this court made up. Not that I attribute to him what would be the dire consequences of the word conviction to me, but what does that record mean; what is it? "The record of his conviction is conclusive evidence." That record may be made up and brought into court and the Judge by that solemn word guilty is forever disbarred from practicing at perhaps the only tribunal where he can maintain his wife and children. I say to you Senators, honorable men, that this punishment is greater than death, imprisonment or stripes, to many a man.

"Like the syren that sings
We ne'er can tell where,
Is the fond hope that brings to the soul
The night of despair.

Like the starlight of gladness
When it gleams in death's eye
Like the meteor of madness
In the spirit's dark sky.
Like the zephyrs that perish
With the breath of their birth,
Are the hopes that we cherish,
While we stay here on earth."

With me as with most of us here, Mr. President, the meridian of life is past. Bright hopes have faded away leaving us

"The approaching gloom,
These mists of sadness and these shades of fear."

A few revolutions of springtide, summer, winter, and mayhap loving hands may bear us to our resting place. Kind friends may drop a parting tear and we are forgotten. To each and every man who knows full well he must join that innumerable caravan, there arises unbidden the hope that he may transmit to his children and posterity an untarnished name, a legacy greater far than the wealth of Indus, and more preferable to the noble mind.

I ask not, Senators, for mercy at your hands; it is a quality, a sentiment, a feeling you as sworn judges of the law and the evidence must not, dare not entertain. You must smother every feeling akin thereto. Justice must be done though the heavens fall. The prayers of a tearful, sorrowful wife and mother, loving wildly, madly her unfortunate husband, ascend hourly to the throne of grace, imploring, invoking the divine Author of our being to annoint you with the oil of wisdom, to inspire your hearts with noble, lofty sentiments of justice and right, the grand sentiment, as ye would be judged so judge ye your fellow man in justice and in truth. It may crush the respondent but then he will never bemoan or lament his misfortune if rightly adjudged and justly convicted. But the iron that enters the soul pains less than would a conviction founded upon a violation of every principle of law, evidence and justice. In the veins of such a man burns an unquenchable fire of hatred of all who could bring about such a dire result.

A consuming, burning hatred of his fellow men that the sacrifice of Calvary itself would not efface from the seething heart of our maddening Iago. No Promethius chained to the rock could suffer the agony of such a result. The vulture of despair could never inflict such undying torture as would a verdict founded upon such evidence as adduced in this case by the prosecution. Tossing upon a bed of pain, I dreamed once that by invisible hands my footsteps were led into a great hall where a high and solemn court was being held for the trial of a criminal charged with crime. Upon entering into the chamber the first object prominent amongst the others was an exquisite figure—a statue wrought in finest Parian marble—impersonating Justice holding aloft in one hand a sword, in the other a pair of golden scales perfectly evenly balanced. The calm, clear repose marking every lineament of that chiseled face betokened truth, love and fidelity to principle. On drawing near, I looked and behold this goddess was blind, blind to everything false, blind to the dazzling glitter of a false world. I read on the beam of the scales held aloft "Man, oh, man, Mene, Mene, Tekel Upharsin," and the sword of justice in mine eyes seemed ready to strike the aveng-

ing blow. Gravé and solemn judges sat there rapt in profound attention. The culprit sat alone as it were, absorbed in his fate. No smiles were visible on the countenances of those grave and reverened judges, but each seemed conscious of the responsibility resting upon him. I asked my mentor: "Will the accused be adjudged guilty, guilty upon the law and the evidence?" In sweetest tone and low, yet thrilling every nerve, the invisible spirit answered: "Never! Never! The sword that hangs over Damocles' head will fall hurtless at his feet before the image of Justice." Again I dreamed that my guide led me to a great court where the chosen judges of free and noble people had assembled to try a man, not for his life, but for his honor—his name his sole and only fortune. This man's honesty, his integrity, had not before that tribunal been impeached, but, intoxicated with success, he had o'erstepped the boundaries of prudence and discretion, deeming himself secure among his friends. But yet amongst them, like Abaial, there were found some faithful among the faithless, who, unawed by clamor, hatred, fear, hope, passion and prejudice, stood by the unfortunate accused. Again I saw the statue of Justice, but she bore an altered look —a changed appearance. Her countenance was that of the brazen wanton, leers surrounded the unchaste mouth, and from unbandaged eyes there emitted sparks of unholy fire. But what I wondered at in amazement, speechless I looked, and beheld her ears were sealed, Justice was deaf; I turned, I gazed upon the scene. Long lines of empty seats were filled with attentive listeners, a few were there 'tis true, some chatting, laughing, careless and thoughtless, some sleeping, all heedless of the time and the occasion. Such a scene, I say, greeted my sight.

Again, I addressed my guide, "Will vengeance fall on the devoted head of this man?" In harsh and hissing tones, scarce restrained by the noise and confusion around us, he replied, "He will be convicted, he will fall by the sword of revenge, rancor and malice; he will fall at the hands of the strumpet of corruption." I awoke; I thanked God it was but a dream.

Senators, it is whispered around, but I believe it not, that the accursed night shade of partisan politics has been invoked to crush the respondent. The voices of 1,000 honorable, manly Republican voters of the Ninth Judicial District answer in thunder tones it is false. The voices of thousands of the hardy pioneers of Nicollet, Brown, Renville, Redwood, Lyon and Lincoln stamp the falsehood as monstrous, unworthy of the thought of honorable men.

A word more upon the general question, Senators, and I have done. I ask, and in all fairness and justice, that each article and specification be deliberately considered by itself. That no extraneous matter not belonging to each be injected to aid a conclusion as to guilt in any particular one, outside of the evidence that belongs to it.

Again, judges, I pray you that no past history, nay, no personal private knowledge of any act of mine, not given in the evidence, be used against me. No, not what you, Senators, may with your eyes have seen, nor with your ears have heard, or yet have been told, for your oaths, Senators, is to do justice according to law and the evidence. Then, I repeat, the evidence only, not your private knowledge, can in justice be used against me. If you would do that justice to me, as you would hope for in this world, from earthly tribunals, then I ask you to discard every whisper, every word, line and syllable, spoken or

written, against me, and try me only on the sworn testimony given you at the mouths of the witnesses, present here before this honorable court. and you, sworn judges.

Loud clamors beating the lambient air resound; 'tis freighted with the hoarse screams of the cost of this investigation. And, alas! for that reason you must show your constituents you have earned your per diem by steeping it in the cauldron of a conviction not founded upon truth or justice. The blood of a victim must be offered up as a propitiatory sacrifice to the howls of a frantic press for a conviction based upon a momentary consideration. May the foul fiends be satisfied who projected such outrage!

I feel, Senators, I am trespassing on your kind gratuity of time. I must close. But before so doing, let me draw a comparison, that in the first instance elicits the sympathy of every generous man and noble heart. The second I leave to your sense of justice and honor.

A few days since we read in the daily papers of this city an account of a young man in the flush of life's youth, the only stay of "his mother, and she a widow," who for a long time had been out of employment, suffering the gnawing pangs of distressful poverty. At once, a bright day dawned upon the widow's lonely home. Her boy has found work, labor, a labor of toil and love, for it will gladden with smiles the face where want has imprinted the wrinkles of misery.

With joyous anticipations of a brightening future he seeks his lowly couch at night, the lingering kiss of maternal love upon his manly cheek, and ready words, "Call me early, to-morrow, mother," upon his lips. Peaceful slumber flecked with dreams of happiness attend upon him whose noble heart beats only true for the widowed mother and orphaned sisters, the morning hour. Yet before the day streaks the starlit heavens he hies him away to new-found labors, careless, buoyant with joy. Absorbed with anticipation, he takes the dark and perilous track. He hears not the mutterings, the low rumbling of approaching disaster. His mind, engrossed, is all aglow with bright castles in the air, the *ignis fatuus* of life. Nearer, as he hastens along, nearer, the awful danger draws upon him. Intent, rapt, in contemplation of the realization of his dreams he wears around his heart, he sees not, he hears not. There is none to awaken him from his dreams, a moment more—oh! God, is there no help for the widow's son? Too late, the iron monster has swept by, and he lies crushed, mangled, bleeding, a miserable semblance of the human form.

"Oh, Dies nefastos,
Dies iræ, Dies illa."

To his home that a brief half hour had seen him leave with high hopes accompanied by the prayers of the widow, the orphan sister, he is brought, a miserable, suffering, agonized wreck, bereft of manhood's strength, deprived of manhood's hopes and power.

To the arms of her who bore him in sorrow, nursed him in sickness, who trained him in youth, her pride in manhood, is carried. We draw a veil o'er the scene sacred to such an awful overwhelming sorrow. I dare not describe it. Senators can picture the unutterable woe and anguish of that little household at the terrible, sudden and awful calamity that, like the crashing, blinding flash of the lightning stroke, had befal-

n them, leaving the blackened traces of destruction in its course, where efore all was bright and beautiful.

I know, too, the story of a varied and checkered life of half a century, uch of which has been spent in the service of his fellow-men, one unainted with dishonor, untarnished by corruption. Where, too, the ear ever turned from the cry of misery and wretchedness, who never deied any man from consideration personal to himself, who dwells in the ttle prairie home builded for himself and his loved ones, in years gone y the home of the Indian and buffalo. Thoughtless and careless, the iend of all, loving all men as brothers, fearing no danger, conscious of o fault and void of offense to God or man, elevated by the suffrage of is fellow men, the goal of his ambition may have been reached. Trustl by seemingly all in the various positions of honor and profit, scornig the machinations of malice. Gaily laughing and scouting the imending peril, at once he finds himself environed in the meshes of alost inextricable circumstances.

So sudden is the blow, so overwhelmingly crushing the summons, at it dazes the mind, as it were, leaving one bereft of reason.

The blow descends as it were a clap of thunder in a cloudless sky; paralyzes if it does not kill.

The mighty power of a sovereign State is invoked against him. The ower of the press, the mighty lever which moves the car of Juggernaut popular indignation, is arrayed against the unfortunate man. here, oh where, but in the recess of a heart incased in walls of adaantine fire can he find refuge from they who go about to destroy him?

I answer to you, Senators, to the arms of Justice must he fly, trusting the invisible spirit that guides, guards and protects us in our daily alks, sleeping or waking, averting grim dangers that beset us in life's ilgrimage.

Senators, I appeal not to your mercy, but to your own innate sense of onor and justice; not so much for myself, but I have a son, a bright d of fourteen summers, for whom I would rather lay down my life an that his fair name and future be disgraced among his fellow men y the attainted dishonor of a miserable father. I long to transmit to im not wealth, for each in this fair land should be the architect of his wn fortune, that legacy of untarnished honor bequeathed to me by a ng line of predecessors, whose blood has been freely offered and spent the battlefield of the infant colonies from the storming of the heights Montmorency by the gallant Wolfe to the day when the halls of the lontezumas resounded to the clash of Columbia's braves, and the fiery nblem of the sun paled before the eagle's glance. A suppliant I am r justice—that justice which is the fundamental law of this commonealth, which is your, which is my earthly lord and master in the resective offices which we hold, our creator; I say that justice to which very person, high or low, rich or poor, bond or free, is entitled freely id without purchase, completely and without denial, promptly and ithout delay, conformably to the laws. I am a suitor at your hands, med in glorious array, clothed in the language of the founders of this reat charter of the rights of our fellow men, I sue for justice, complete, ntire, full, and nothing less. I ask it, nay, our creator grants it; you annot refuse to accord it, lest you trample on rights sacred and holy; ghts established and sanctified by your individual solemn oaths, that ot the power of the legions of the evil one itself should suffer you to reak or violate.

Senators, judges of my fate, it has been time and time again asked why I did not take the stand and testify in my own instance. I have given you the reason, but the management have seen fit to despise my offering at honor's shrine. Now, then, let me say with a full conviction and belief, with reverence to an oath recorded in the book of life, with reverence and belief in the state of future reward and punishment in the life hereafter, I do, before God and this Senate, solemnly declare that never whilst sitting as a Judge upon the bench in the discharge of my official duties have I been intoxicated or in any manner under the effect of intoxicating liquor, as charged in these or any of the articles or specifications charged against me, so that my mind or judgment was affected in that I could not discharge my official duties faithfully and impartially. So help me God. Are the managers answered?

Senators, I have finished. To you the solemn hour of judgment comes. I know where, in a sorrowful home, a loving wife offers up her prayers to the throne of a just judge to imbue your minds with knowledge wisdom and justice, to the end that he who linked with her, his fortunes in the journey of life a quarter of a passing century gone, may find at your hands a safe and true deliverance from the chains which bind him, the dangers which environ him, the cruel fate which menaces him, a pardon not for acts of punishment but a solemn verdict based upon truth and justice. God grant to you, Senators, discerning minds that will, or have patiently sifted error from truth, truth from falsehood, and bring you to a verdict founded on the immutable, everlasting principles of truth, honor, and justice. Be true, oh, be true to yourselves, and you can be false to no man, and when you go from this court room, when its scenes shall close upon your eyes forever, take with you the conscious knowledge of the rectitude of your every act, and when your day-spring of life closes its earthly span, you may lie down as 'twere to pleasant dreams, prepared to say to the just and awful "One, as I have judged so may I be judged, and thou wilt hear the words: Enter thou into the joys prepared for the just."

May heaven direct your actions and deliberations aright, that the honor of the State may be protected, and that of the respondent vindicated. Senators, I thank you.

Senator MEALEY. Mr. President, I move that when the Senate adjourn it adjourn till 10 o'clock to-morrow.

Senator CAMPBELL. I second the motion.

The motion was adopted.

Senator MEALEY. I move we now adjourn.

The motion was seconded.

Senator HINDS. Mr. President, this is not the hour of adjournment.

The PRESIDENT. Not quite. I would like to inquire of the managers if they desire to be heard any further?

Mr. Manager HICKS. Mr. President, I would like to consult my associates. My own impression is that we shall not desire to be heard.

Senator POWERS. Mr. President, I move that we take a recess for five minutes.

The motion was seconded.

Senator CAMPBELL. Mr. President, I second the motion to adjourn.

The PRESIDENT. It is moved and seconded that the Senate adjourn. As many as are in favor of that motion say aye; contrary, no. The Senate is now adjourned.

FIFTY-THIRD DAY.

ST. PAUL, MINN., Tuesday, March 21st, 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, Bonniwell, Buck, C. F., Buck, D., Campbell, Case, Castle, Clement, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson R. B., McCormick, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Pillsbury, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, White, 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. 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.* What is the pleasure of the Senate?

Senator GILFILLAN, J. B. Mr. President, I move that the Senate now go into private consultation.

The motion was seconded.

The PRESIDENT *pro tem.* It is moved and seconded that the Senate do now go into private consultation. As many as favor that motion will say aye; contrary, no. The motion is carried.

Senator MILLER. Mr. President, before we go into secret session, I would like to ask the managers whether they wish to reply to the remarks made last evening by the respondent?

The PRESIDENT *pro tem.* I thought that was decided last evening, was it not?

Mr. Manager HICKS. Mr. President, I desire to state that the managers do not deem it necessary to avail themselves of the courtesy extended by the Senate last evening.

The PRESIDENT *pro tem.* All who are not members or officers of the court will now retire.

Senator GILFILLAN, C. D. Mr. President, I would inquire how many Senators appear present by the roll-call this morning?

The PRESIDENT *pro tem.* The Secretary will give the information.

The SECRETARY. Thirty three.

Senator GILFILLAN, C. D. Mr. President there is a little matter of business this morning. After the court adjourns there is the account of the stenographers and that of the public printer. We don't know what their bills will be until after the publication of the journal. I am

rather of the impression that the public printer's account can be settled under the law and the contract of the State without any action upon the part of the Senate, but there is nothing that the stenographers can realize any money out of unless it may be an order of this court. and, as I stated, the court cannot have any basis to act upon until their work is done, which will be after the court has adjourned. Now, I desire to know what to do about the matter. It seems to me that when this court adjourns it cannot delegate any authority to any of its committees, but I have drawn up an order here upon the theory that we could do it. I would like the opinion of Senators Hinds and Buck upon the subject as to whether we have any right to delegate this authority which we now possess, under an order adopted in a session of the court. The order I have drawn is as follows:

Ordered, that the committee on accounts be and they are hereby authorized, after the adjournment of this court, to examine and allow such accounts as may he legal and just.

Senator HINDS. I would answer the Senator, if he desires so far as my own judgment is concerned. I think it would be best not to take a final adjournment, but to adopt the course that was adopted by the court of impeachment in the Barnard case,—when we get through with our business, adjourn subject to the call of the President. There might be in this, as in that case, contingencies arise that would make it expedient for the re-assembling of the court. As a matter of fact, I believe certain contingencies did arise in that case. There might not in this case, still, if there should be any omission or imperfections in the record it could be corrected only by the court. Hence the propriety, if the future should develop such a situation as to make it important to review the record in any manner, and if upon such review there should be some omission or defect found the power of the court to re-assemble ought to exist. Of course that power could only continue during the official term of the Senators. Now if we shall adopt that course, the committee on accounts could perform that duty.

Senator PILLSBURY. Mr. President, I think, in reference to the accounts, the same rule was adopted in the Page impeachment trial and that the Senator from Ramsey and myself approved of the accounts after the adjournment of the Senate, and the stenographers and other parties got their certificates and there never was any trouble about it. I think it is necessary to pass that order, because, whatever necessities there might be for calling the court again, nobody would ever wish to put the State to the expense of calling the Senate together for the purpose of auditing the accounts.

Senator GILFILLAN, C. D. If that idea is adopted, the court being kept alive leaves the committee with full power to act.

Senator PILLSBURY. That will be all right.

Senator SHALLEEN. Mr. President, I would like to offer a resolution.

Resolved, That Charles A. Anderson be allowed two dollars and a half per day for the full time of the session of the High Court of Impeachment, instead of two dollars heretofore ordered by the court, and the Secretary be ordered to draw his order for the increased pay.

The PRESIDENT *pro tem*. Senator Gilfillan, did you offer that order to be acted upon by the Senate?

Senator GILFILLAN, C. D. No, sir; I drew it up, but under the explanation of Senator Hinds it is not necessary if we do not adjourn *sine*

die to adopt the order; if we adopt the idea of Senator Hinds there is no question in my mind but that the authority of the committee continues until the court is recalled.

The PRESIDENT *pro tem.* The Senate has heard the resolution offered by Senator Shalleen. Are you ready for the question? As many as favor the adoption of the resolution will say aye; contrary, no. It is adopted.

Senator RICE. I call for the yeas and nays upon that.

The Secretary called the roll and there were yeas thirty-four and nays none, as follows:

Those who voted in the affirmative were Messrs. Aaker, Adams, Bonniwell, Buck, C. F., Buck, D., Campbell, Case, Castle, Clement, Gilfillan, C. D., Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Pillsbury, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, White and Wilson.

Senator HINDS. Mr. President, I offer the following order:

Ordered, That the deliberation, discussion and taking of the questions on the several articles of impeachment, and the judgment thereon, be held with closed doors; and that the members and officers of the court keep the same secret until final judgment is rendered and publicly disclosed by the court.

Senator BUCK C. F. Mr. President, I hope that order will not be adopted. I have some reasons to give for the vote I shall cast in this case, and while I am not lame enough to think that the reasons I give or the principles which form the basis of my action, will be of any great weight to the Senators, yet the reasons are entirely satisfactory to myself, and such as they are, the people of this State and the respondent are entitled to know what they are, and to know what they are *before* I cast my vote, and not afterwards.

Now, Mr. President, I hate secret sessions If we were going to assassinate this man,—I don't impugn the personal motives of any man,—but if we were going to assassinate this man, we would turn the crowd out of doors and lock the doors, shut out the light and pull down the curtains. Mr. President, when burglars are arranging a plan to rob a bank or a residence, they always do it in secret session; and when a man is arranging a plan to murder his fellow citizens, he always does it in secret session; he never lets anybody else know anything about it. Now sir, as I said before, if we are going to assassinate this man let's do it openly, with the doors and windows open and the light shining in. Let's do it, Mr. President, as Brutus stabbed Cæsar,—in a public place, at noon time, with the populace of Rome looking on,—and all for the good of Rome. Mr. President, I despise these secret sessions, and I think the ends of justice will be best subserved if the consultation, the consideration of these important questions, be held publicly, so that everybody can know what is said, who says it, and the reasons they give for their vote.

Senator CAMPBELL. Mr. President, I would like to have the order read again.

The Secretary read the order.

Senator GILFILLAN, J. B. Mr. President, there have been several allusions to this question before, mostly in open session, not strictly in the order of debate, and really, in violation of our rules of proceedure.

Now I have refrained, myself, from arguing this question because it seemed to me, as I stated the other day, all discussion upon the question was premature as well as in violation of the rules. We have now, however, arrived at that step, in the regular course of this proceeding, which calls for action of this kind, and it is proper that Senators should express their views upon the subject.

Now, I think we ought, in this matter, to follow as near as we can, the course of proceedure that is followed in similar tribunals,—that is, in courts of justice. We have, so far, (I am satisfied, such has been our desire as a court,) I think I am correct in stating that we have extended to the respondent all the leniency that our duties under the law and under our oaths would allow us to extend to him; I think that has been the feeling in the breast of every Senator without a single exception, and I think it is the impression and the feeling with which every Senator has acted. So that no one should hereafter be heard to say that justice has not been done to this respondent.

Now then, the evidence is in, the arguments of counsel have all been heard,—aye, we have gone to the extent of listening patiently to the respondent himself,—and now comes the more responsible part of our own duties. In courts of justice, when a jury has heard the evidence and received the law in the case they are remanded to private consultation. Why? For the simple reason that they may be permitted and enabled, without interruption or disturbance to consult together, review the evidence that they have heard, apply the law as it has been given them by the court to the facts as they find them, and so, a true and just verdict be rendered as between the parties. In our supreme court also, after a cause has been heard, after argument of counsel, and the court, consisting of several members (now five in number in this State), retire for private consultation, to exchange views among themselves, to consider and determine what is the law of the case. They do this so that they may not be subjected to disturbance or interruptions. Now then, shall we proceed in that way? What does our duty now call us to do? I apprehend we are not here to talk to the lobby, we are not here to talk to the outside world, we are here now to deliberate among ourselves; and I should be very glad, for one, to hear an expression from any Senator who has any suggestions to make that may throw any light upon this question or any branch of it or that will aid us in coming to a just and true verdict in the premises. And I believe this can be done much better whilst we are privately and quietly deliberating here among ourselves than if we are subjected by a crowded lobby to the noise and interruption incident thereto. I believe we cannot faithfully and fully discharge our duties to ourselves and this respondent and fully discharge our duty to the responsible issues now pending before us for determination unless we can pursue this deliberation uninterruptedly, without any interruption or annoyance from outside. I think it is due to ourselves that we should be permitted for the rest of this trial, to proceed in this way. Why call this an assassination? There is no Senator, —and I don't suppose the Senator from Winona would impute any such thing,—

Senator BUCK, C. F. I didn't say we *would* do that; I said it we were going to do anything of the kind.

Senator GILFILLAN, J. B. But the Senator did not mean any one was going to do anything of the kind?

Senator BUCK, C. F. I said if we were going to do that we would go into secret session of course.

Senator GILFILLAN, J. B. No, not at all. If we are going to deliberate upon this matter calmly and dispassionately, let us do it where we can be free from interruption. What we say now is noted by our stenographer, it becomes a part of the record, and our words as well as our votes become a matter of public record as soon as we have concluded this part of our business, so that nothing is concealed, everybody may read and know what has been said and done here, and what each one has said and done. So there is nothing secret about it except that we ourselves close the doors to save ourselves from interruption and annoyance whilst we are performing this last duty.

Senator ADAMS. Will the Senator allow me to interrupt him a minute to ask him a question? Has there been any order adopted which provides that the speeches, remarks or explanations of the Senators shall be attached to or become a part of the records of this court?

Senator GILFILLAN, J. B. I may say this, in answer to that question: It will be in the power of this court, at the close of these proceedings to say that they shall be entered upon and become part of the record. I am willing that that vote should be taken now.

Senator HINDS. I have an order already written to that effect; I shall offer it.

Senator GILFILLAN, J. B. I think it would be proper, if we determine to sit with closed doors, that whatever remarks are made, whatever votes are taken and whatever result is reached, both in the nature of a verdict and a judgment, (if any shall be reached,) shall become a part of the published record as soon as our business is transacted. I suppose nobody would object to that, and that would be, as a matter of course, what would be done. But I do hope that we shall have the privilege of staying here now undisturbed, until we can finish up this long, tedious, vexatious matter which has been hanging upon us so long.

Senator GILFILLAN, C. D. Mr. President, it seems to me that the order of Senator Hinds goes too far. It occurs to me that the Senate ought to be free, the individual members, to express their opinion without any restraint, and that the discussion that may arise upon this matter in the court, and perhaps between the different Senators, should be unrestrained, and therefore it should be private. Now I would submit to the members of the Senate with reference to the speech of Senator Buck, [Buck, C. F.] which was a good one, a pointed one and a very strong one, whether they think it is proper that such a speech as that should go upon the record and be handed down to posterity as the opinion of a judge of the highest court in the State. I don't think the Senator himself, upon reflection, would be willing to all allow that to go upon the record and pass down as his deliberate expression as a judge.

Senator BUCK, C. F. On the question of secret session? I certainly would be willing.

Senator GILFILLAN, C. D. I hardly think you would. My opinion is this, that this court should be left free and untrammeled in its discussions in arriving at a certain point, but that when we get to that point I think our votes should be in open session; that the reasons we may have to give for our votes as judges may then be given, but that the discus-

sion that may lead to this point ought to be in private. I offer a substitute to the order of Senator Hinds:

Ordered, That this court do now proceed to the consideration of the case before it, but that the vote upon the several articles be taken in open court, and that the several members of the court may then give an explanation of the reasons for their respective votes.

The PRESIDENT *pro tem.* The question is upon the adoption of the substitute.

Senator WILSON. Mr. President, what thoughts I have given this subject lead me about to this conclusion as to what would be proper: If Senators are to discuss this matter before a vote is taken, I cannot see any objection to having that done in open session, and that the newspaper reporters of the city be allowed to be present if they wish to spread the proceedings before the public before it can reach them through the regular channel of the official record; but I do not agree with Senator Gilfillan (C. D.,) that it would be proper to have the doors thrown open when the vote is being taken, for this reason: If it is understood that the vote is to be taken upon the several charges in open session, the probable result would be that a large and gaping and curious crowd would be here annoying the deliberations of the court and mingling or mixing in with the Senators in the way of lobbying, like a political caucus, trying to persuade Senators how they should vote. I think when the vote comes to be taken, for that reason, if for no other, the court should be quiet, and that we should be undisturbed. But if the Senators are to discuss or to offer their reasens for the votes that they wish to give, I don't see that it would be improper at all that the doors should be open and that the public should see what light each Senator may have to throw upon this question. That is about the view I take of it. I shall most strenuously insist that when we come to vote we shall not be disturbed, that we shall remain quiet, and that all curious men who simply come in here to gratify a mere curiosity shall not be gratified.

The PRESIDENT *pro tem.* The question is upon the amendment; are you ready for the question?

Senator GILFILLAN, J. B. Mr. President, I don't wish to take but a moment, but we have before us at least one precedent, which, it seems to me, is worthy of our serious consideration and worthy of being followed. I apprehend that precedent was established in a court that has had no superior in this country; I refer to the trial of Judge Barnard in New York upon articles of impeachment. A court composed of the Senate of that State and the Lieutenant Governor, I believe, and added thereto the whole of the judges of the court of appeals,—some of the most learned lawyers in the country,—some of the most renowned for their judicial learning, competency and fitness. Now, in that court the doors were closed, not only during the preliminary discussions of the articles, but when they proceeded to a vote,—aye, and until after a final judgment in the case they there sat with closed doors. They took up each article *seriatim*, discussed it as they went along and then would come to a vote upon that article. Having disposed of that they would take up the next article, say what they had to say upon that article and come to a vote upon it; and finally come to a vote upon the judgment that was to be entered. Having done all this,—entered their judgment, —they then declared the votes and the proceedings made public. They not only did this, but it was enjoined upon each member of the court

that secrecy of consideration so far as their deliberations were concerned should be maintained by the members of the court until their proceedings were concluded. Even the sergeant-at-arms and their pages of court were placed outside of the doors and nobody retained in the court room except the secretary of the court and the stenographer.

Now, in the case of Andrew Johnson I don't remember how that was. Perhaps the Senator from Ramsey can tell me.

Senator GILFILLAN, C. D. I have never studied that case much.

Senator GILFILLAN, J. B. Except the case of Andrew Johnson I apprehend that the case of Judge Barnard was one of the highest in character, concerning the constituent parts of which the court was composed that has ever sat upon a trial of a similar character in this country. In the case of Andrew Johnson, I don't remember how that was, but there was not that reason existing for closed doors, because the doors there are constantly closed except to members and officers of the Senate. The galleries were open, it is true, and if we had a gallery here where listeners could come in and sit quietly I would have no objection: but I do feel a strong objection to being interrupted here constantly, to having our deliberations harrassed and interrupted by outsiders interfering. I feel that every Senator here is entitled to the assistance of each of the other Senators; and while that is so, I don't want the lobby to come in here and divert the attention of the Senator from Ramsey or from Scott or from Washington, because I want their whole attention to help in this business. We have an illustrious precedent in the State of New York to follow. No voice has ever been heard that I am aware of, to criticise the proceedings of that court or the conclusions at which it arrived; I hope that we shall follow that precedent and not adopt the resolution of the Senator from Ramsey, but that our whole proceeding may be conducted with closed doors.

Senator CASTLE. Mr. President, I hardly think is is necessary to close the doors if we follow the precedents we have in our own State. I am inclined to think a lawyer arguing a case in our supreme court would find himself in a bad position if he should follow the decisions of other States where he had a decision of our own State in point. What the decisions are outside is hardly material. My own recollection is that the general rule is the same as was established in our own State.

In the case in New York, which partook more of the character of a court regularly organized for law and equity purposes than any other of the impeachment courts of this country, it is true they decided all their questions in secret session. My recollection is that it is not true with reference to any of the impeachment cases in Congress; I am not certain about that, but it is my recollection that that is the fact; that there has been no impeachment in Congress with reference to the final disposition of the case when the action of each member has not been open to the eyes of the people of the world. It is certainly true with reference to the deliberations of the high courts of impeachment in England, and has been for the remotest period of time, so far as I know; but we do know this, if precedent is to cut any figure whatever in this case, that precedent in this State is in favor of an open vote. The only valid argument that has been used, to my mind, is the one that we should not be embarrassed, interrupted or disturbed by outsiders, if we should have an open session. I have no recollection of ever having been interrupted since I have had the honor to occupy a position upon the floor

of this Senate by any other than some Senator; I certainly have no recollection of ever being interrupted by an outsider. I am not aware that our meetings have ever been of a character that a person who desires to express his opinion could not do so and be heard by all, or could not act in perfect freedom, free from constraint and embarrassment. I am one of those, a little like the Senator from Winona, that believes if a thing is to be done at all (a matter affecting grave interests to the public, as we have been told here from time to time, until it has become a trite saying), I am one of those who believes that it should be done open and above board, bravely done, fairly done.

I don't believe there is a Senator on this floor,—I would not do him the injustice to assert or suggest, even, that he would give a vote or a reason for a vote, either upon the final determination of this question or upon any interlocutory question, of which he would or ought to be ashamed. I don't believe he will. All this evidence, all these long arguments have been made, they are before us. Our duties to-day and from this time forward are of a judicial character, and we should weigh and consider them as men and judges, not as barristers or as advocates. Hence, I am in favor, and I would call up, if it be in order, or I will give notice that when it is in order, I will call up the resolution or order that I asked for several days ago, unless some gentleman here will say that he desires to be heard for a longer period than that. My order and my idea on the subject is simply this: that having heard all this testimony, having heard all these elaborate arguments, and having listened to everything that has been said in the premises from the beginning down to the present time, it is about time for us to act for ourselves; that if any judge desires to give the reasons which influence his vote he may do so, but that anything like discussion would be undignified and ought to be avoided. I protest, Mr. President and Senators, earnestly against turning this court at this stage of proceedings into a debating society. My convictions in the premises I presume are well known. I want to say right here, as far as I am concerned, I am entirely willing you should open the doors of this assemblage, but I do not think it is for the best iterests of this court or for the best interests of this State that we should turn this chamber, at this stage of the proceedings, into a debating society. Opposition whets the passions, sharpens the prejudices, and the effect would be inevitable.

Now it seems to me it were far better to open the doors and let the sunlight of heaven shine in upon our every act and every proceeding, and not to try to cover ourselves with a dark mantle nor to make of ourselves a Star Chamber; let us open the doors and say to the world "Gentlemen, we are not ashamed of our acts and our conduct and our proceeding in this transaction and in this trial." And then when we come to pass upon this question of momentous importance,—as it certainly is, because it involves a great constitutional question, a question lying deep in the foundations of our judicial system,—I say when we shall come to pass upon that, let us be careful that we do injustice to no one. I have no private opinion. I have expressed my views upon the subject, which I submit for what they are worth.

The PRESIDENT *pro tem.* The question is upon the adoption of the amendment.

Senator ADAMS. Mr. President, I have an order which I offer as a substitute.

Ordered, That the discussion had upon the several articles of impeachment, shall be in public, and that the speeches, remarks or explanation of any of the members of the court, shall be taken by the stenographer and become a part of the record and be published in the proceedings.

The PRESIDENT *pro tem.* The Senator offers this as a substitute for both of the other orders?

Senator ADAMS. Yes sir.

The PRESIDENT *pro tem.* The question will be upon the adoption of the substitute offered by Senator Adams.

Senator POWERS. Mr. President, I don't know that I have any choice individually as to whether our deliberations from this out are in private or in public, and I certainly have no speech or speeches prepared that I care to ventilate before the public or anywhere else,—not to the extent of ten consecutive words; but I do desire that I may have an opportunity, if I wish, to explain my vote and to give a reason why I vote as I shall, on the several articles and specifications.

It seems to me that there is not the danger of getting into a wrangle and jangle and angry dispute as was suggested by the learned Senator from Washington a day or two ago, nor descending to the level of a common debating society, even if we do wish, not only to explain our vote, but to give "a reason for the faith that is in us."

Now, while I do not anticipate that I shall take up a great superabundance of the time of this Senate in discussing any question, there are two questions that I may perhaps, probably will, desire to say something upon, and I want to give a very brief epitome or synopsis of the evidence upon a few points. I am aware that we have somewhere in the neighborhood of 1,500 or 2,000 pages that are taken up largely with the testimony in this case. The trouble is we have too much,—too much. We have a great deal that is not relevant to the subject at all; and it is not every man,—I know *I* would not attempt to retain in my own memory all of that mass of evidence. It is true that the lawyers have gone over the evidence, but we have too much of that,—it is spread out too much; it is too thin, it is not boiled down and crystalized,—and it is not fairly presented, either. There was one case referred to yesterday, and we were told here that there was not a single witness on the part of the defense. There was a witness, a county attorney and a surveyor, and a very intelligent man, who testified under it. Unless a man had the evidence spread right out before him he would be in danger of taking that statement for granted. We were told within a few moments of the time that assertion was made that there was one witness on another article on the part of the defense. As a matter of fact, I had spread right out here in a nut-shell, the testimony of ten witnesses.

Well now I have tried, as this case has progressed, to crystalize, to boil down, to throw this evidence into a single nut-shell, so that when I am called to vote on any given question I can forget all the other questions, all the other specifications, all outside influences, and give the very marrow, I think, of that evidence; and I want to do that, and that is all. I never expect to attain reputation as an orator; I don't want to, but I simply want that to stand, not distorted in any body's speech or speeches, not spread out over 1500 pages of printed matter, but to stand with my vote. I want to do that, if I am to have the privilege, and I don't care one continental whether it is in the presence of this Senate

here in secret session, or in the presence of a thousand or fifty-thousand people. If we can conduct our deliberations with any more freedom, with any less restraint, any more calmly and dispassionately, any more courteously and kindly,—if we can rise any better to the dignity and sublimity and solemnity of passing a sentence upon this respondent here with closed doors, I go in for closed doors. I don't care whether there are any more than ourselves here or not; I don't care anything about it. I do not anticipate, from the past, that we should be disturbed at all by people here. I have never had a man come and buttonhole me and ask me to vote for or against any specification, in this house or out of it; and there is no man who knows me that ever would do it; but, as I said before, I don't care whether we have our session here in secret or not, but I want it understood that I can explain my vote; and that means, not simply telling in a word or two, or ten why I vote, but, if it is necessary, I want to exchange sentiments and reasons with any of the Senators.

If a Senator has made a statement that I don't look upon as he does, I want the privilege of saying so, and I can say it not like a member of a boy-debating school or society, not in a wrangling or angry spirit, but I believe that I can say it kindly and courteously. And I believe it is our duty—a sworn and solemn duty—to deliberate and exchange thought and reason and feeling and sentiment, and refresh each other's memory, and close this thing in a way that we shall not be ashamed to see hereafter, and let every man go upon the record with a reason why he votes as he does.

The PRESIDENT *pro tem.* The question is upon the substitute of Senator Adams.

Senator HINDS. Mr. President, if this court were to do nothing further in this matter excepting to vote, it would matter, it seems to me, very little whether it were with closed doors or with open doors. The precedent in the Page impeachment trial has been referred to. I recollect very distinctly how shocked my feelings were when the court by an order proceeded directly to vote upon the various articles of impeachment,—not that it proceeded to vote openly, because, in that matter there was no discussion whatever,—I believe that there were only two Senators that occupied perhaps half a minute each in explaining a vote, but my feeling arose from the fact that they proceeded, in a matter so grave, of such immense importance to the public and to the individual, without deliberation.

It seemed to me to be like a jury which after the arguments of counsel upon the evidence and the instruction of the court upon the law had been given, should rise openly and publicly, before the assembled spectators, parties and witnesses and commence to tell deliberately what their opinion was, without ever having considered the matter at all. It would be like the Judges of our Supreme Court conducting their business in the same way, after they have listened to the arguments of counsel there to commence and cast a vote that finally determined the rights of the parties one way or the other without ever having interchanged an opinion with each other in regard to the matter. It astonished me. It is a precedent which I hope never will be followed in that regard. But they did not go to a still worse step,—that which is here proposed on the part of some of the Senators, that the deliberation and interchange of opinion between themselves shall be open to the public,—

which would be, to carry out the simile that I have already given, like the jury, after they have heard all, and the matter has been submitted to them, to commence their discussion, their interchange of opinions openly, before being placed apart from the spectators and the court. It certainly would be very unseemly. It would be equally unseemly for the Judges of our Supreme Court or of any other court to commence their deliberations, discussions and expression of opinions openly and in view of all that might be present.

Now as a matter of fact, I believe that all deliberative bodies that have submitted to their consideration any matter upon evidence, of any kind, written or oral, do retire for deliberation upon it. Our Judges of the different courts do; referees do, where more than one or if there is but one,—even our railroad commissioners, while they travel over a line of railroad, never, in the presence of the parties wishing a hearing upon a question, pass upon a question of damages, or enter into an interchange of opinion, in the presence of the interested parties, but they step aside, and come to their conclusion either deliberately upon a discussion, or by interchange of views between themselves.

Now, deliberation upon this matter involves the idea, that each member of this court will consult with himself and each other member in regard to the evidence and the law in the case. How unseemly such an interchange of opinion or consultation would be, open to the world!

Questions are often asked, objections are often made with the very view of having them answered, explained and considered by the other members of the court. This may be done privately candidly and we may reach a result perhaps unanimously. I have hoped that we would. Certainly we ought to reach that result deliberately, upon consultation with each other. Now, which of these three orders would accomplish that result? If it is desirable that we should deliberate at all, it seems to me there can be no question but that our deliberations should be by ourselves. Certainiy the one that was first offered embraces that idea and nothing else.

Now, if we should proceed in the natural order it occurs to me we should proceed, in regard to this matter, it would be something like this: We have here some fifteen or eighteen different articles and specifications to act upon. Some of them may be of slight importance, others may be of large importance. Some may involve a difference of opinion, others may involve no difference of opinion. It seems to me we should take them up in some order, perhaps in the order in which they stand in the impeachment. If there is any one of them that stands out prominently from any of the others as to the evidence or the law that applies to them, we should consider it separate. Take the first one, take the second one, and so on with the rest. The law of these cases, with the exception of the eighteenth article, applies to one just as much as it does to any other one of the articles. The discussion, then, of the law (and I believe there is a difference of opinion), there has been a difference of opinion expressed by some Senators in regard to the law of the case, that difference of opinion should be fully expressed at that time. That would involve a discussion of the law that applies to all of these articles and specifications with the exception of eighteen, and there would be no utility of its being repeated upon the consideration of any of the other articles.

Now, that discussion of the law may involve a considerable time; it

may involve the expression of opinion of all of the Senators. Whenever it is determined upon any one article it is determined for all the other articles and specifications except eighteen. But this is not so with the facts. When the arguments shall have been ended, the question of fact would arise only in regard to one article, because each article is supported by different evidence from that of any other article. The question of law relating to all of these articles having been determined by the discussion, then follows up an examination of the facts relating to the article then under consideration. Then, Mr. President, we are ready to vote upon that article. Shall we open the doors to do it? Wherein the propriety of opening the doors simply for taking the vote? Courts and jurors do not open their doors when they have determined one question involved in the matter to let the public know what their conclusion is upon that one division of the subject, but they continue still to deliberate. They have decided one question, others remain to be decided and they will continue until they have reached the final result, and when the final result is reached their deliberations are ended. Then the doors are opened and the record is shown to all the world.

When we have got through with the first or one article, both as to the law and to the facts, then perhaps we will have no further discussion of the law, but when the next article is reached it may be convenient simply for us to speak to that article and so on until we come to the eighteenth article, which involves a different question of law as well as a different state of facts.

Now it seems to me that this course can be pursued in no other manner that would be seemly to ourselves, excepting we be in private by ourselves.

Senator BUCK, C. F. Mr. President, I desire to ask the gentleman a question. I understood him to say that the law in this case had been settled by the action of the court.

Senator HINDS. I did not say so.

The PRESIDENT *pro tem.* The question is upon the amendment offered by Senator Adams.

Senator HINDS. The order I have offered is the course precisely as pursued in the Barnard case.

The PRESIDENT *pro tem.* The question is upon adopting the substitute of Senator Adams. If that is adopted it takes the place of the others. Are you ready for the question?

Senator AAKER. Let us have the amendment read, please.

The Secretary then read the order proposed by Senator Adams, as follows:

Ordered, That the discussion had upon the several articles of impeachment shall be in public, and that the speeches, remarks or explanations of any of the members of the court shall be taken by the stenographer and become a part of the record, and be published in its proceedings.

Senator RICE. Mr. President, it seems to me that the order offered by the Senator from Scott, [Senator Hinds,] is the best one to be adopted. Now, all this talk about star-chamber business, secret session, burglary, and all that, is well enough for talk, but it hasn't anything to do with the case. Every word that may be said here in our deliberations, and every explanation that may be given by any Senator while he casts his vote, is to be recorded in the journal; it is to be published before the

world; anybody can see it. There is no secrecy about it. The only object is that we can be here by ourselves and deliberate, without being subject to a crowd of outsiders.

Now, the *modus operandi* in the Page case was very much different, and it cannot be used here as a precedent, for it was agreed that just as soon as the discussion was over we should go right on with the vote. There was to be no discussion upon the part of the Senators. There was to be no explanation in giving the vote, but if any Senator saw fit he was allowed to write his opinion and have it published afterwards in the journal. That was the mode of procedure in that case, and there was no discussion and no explanations. The Senator from Scott, who was a manager at the time, finished his argument and we adjourned; we came back at half-past seven o'clock in the evening, and in about an hour the vote was taken and we adjourned.

The PRESIDENT *pro tem.* The question is upon the substitute or amendment of Senator Adams. If this is adopted it takes the place of the other two. Are you ready for the question?

The ayes and nays were called for.

Senator CASTLE. Mr. President, I desire to suggest this: Now, I presume the motion of the Senator from Scott, judging from experience in the past, will be adopted, and I presume that the gentlemen who have offered and advocated the other motions would desire to preserve their record in the premises; that, at least, they ought to be entitled to; and therefore I ask that all the proceedings had be published in the record. Then if we are to have a star chamber, and the roof is to be taken off some time hence, why the light will shine, in the course of human events.

The PRESIDENT *pro tem.* The secretary will call the roll upon the adoption of the substitute.

The secretary then proceeded to call the roll.

Senator POWERS, (when his name was called). Mr. President, I haven't much feeling on this resolution one way or the other; I will vote for it, however.

The roll being called, there were yeas 9 nays 24, as follows:

Those who voted in the affirmative were,

Messrs. Adams, Buck, C. F., Campbell, Castle, Crooks, Howard, Johnson, A. M., Powers and Simmons.

Those who voted in the negative were:

Messrs. Aaker, Case, Clement, Gilfillan, C. D., Gilfillan, J. B., Hinds, Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Rice, Shaller, Shalleen, Tiffany, Wheat, White, Wilkins and Wilson.

So the order was not adopted.

The PRESIDENT *pro tem.* The question is now upon the substitute offered by the Senator from Ramsey.

Senator GILFILLAN, J. B. Mr. President, I hope this substitute will not be adopted for this reason: In the Barnard case they proceeded to consider each article by itself, so far as the facts were concerned, and then voted, giving each Senator an opportunity to explain his vote with reference to that article if he desired.

Senator ADAMS. Mr. President, the substitute of Senator Gilfillan being before the Senate, I desire to say this: I am not in a condition to talk at all, and shall occupy but a brief portion of your time. My own

snbstitute having been voted down, I do not desire to say anything in relation to that, only this: Being unable to accomplish all that my substitute proposed to do by rendering the proceedings had public, enabling the Senators who desire to be heard upon the various questions to have an opportunity—as that has not been accomplished, I shall now support the substitute of Senator Gilfillan, as being the next best thing, in my opinion, to accomplish the object I desired to accomplish by the substitute which I offered. Senators need not make speeches, nor remarks, nor explain their votes unless they so desire; but I think it is applying the gag rule to myself and other Senators who desire to be heard upon any of the questions of law or fact in this case to say that, when his name is called, he can merely rise and answer and offer a few words in explanation of his vote without being permitted to give the reasons which impel him to that explanation and to that vote.

Senator BUCK, D. I think the Senator is mistaken as to the order of the Senator from Scott. That evidently has in view a consideration of the whole matter.

Senator HINDS. There is no limitation in the order that I proposed at all.

Senator ADAMS. Does it provide then that the remarks and speeches or explanations offered shall become a part of the record and be published in the proceedings of the court?

Senator HINDS. It does not of itself, because it is confined to simply one subject,—shall it be private or public. I have the other order which I propose still in reserve.

Senator POWERS. I wish you would read it.

Senator HINDS, (reading). Ordered, that the stenographer of the court keep a complete record of all the arguments, explanations and proceedings of the court while sitting for deliberation; and that the same be published in the permanent journal.

Senator ADAMS. While I have strong opinions yet I do not want to force them upon the consideration of my fellows, and if the Senator will immediately, upon the adoption of the order which he offered, offer that, and give me an assurance that this Senate will adopt it, then I shall vote for the order first offered by the Senator from Scott as well as I certainly will for the order which I now ask him to offer, if there is any reasonable probability that that order will be adopted. If it is however to choke off the order offered by the Senator from Ramsey county, then I shall be compelled to vote for his substitute.

Senator HINDS. To explain the inference that the Senator makes I certainly shall offer the order, but I cannot give any assurance that this court will adopt it; that is for the court to determine. I shall certainly offer the order.

Senator CASTLE. Mr. President, will the clerk please read the order we are to act on now,—the one offered by Senator Gilfillan.

Senator GILFILLAN, J. B. I would like to ask for the reading of the original order offered by the Senator from Scott and then of the others

The SECRETARY. Senator Hinds' first order is as follows:

Ordered, That the deliberation, discussion, and taking of the questions on the several articles of impeachment, and the judgment thereon, be held with closed doors; and that the members and officers of the court keep the same secret until final judgment is rendered and publicly disclosed by the court.

The one to be offered next is,—

Ordered, That the stenographer of the court keep a complete record of all the arguments, explanations and proceedings of the court while sitting for deliberation, and that the same be published in the permanent journal.

The substitute offered by Senator C. D. Gilfillan to the first order is as follows:

Ordered, That this court do now proceed to the consideration of the case before it, but that the vote upon the several articles be taken in open court, and that the several members of the court may then give an explanation of the reasons for their respective votes.

The PRESIDENT *pro tem.* The question is upon the substitute of the Senator from Ramsey. Are you ready for the question?

Senator POWERS. Mr. President, I think the two orders prepared by the Senator from Scott are preferable, for the reason that it seems to me voting in open session afterwards is just simply going over the whole ground again. We shall probably make up our minds here, after deliberation and a care ul interchange of thought and sentiment, about how we shall vote, I suppose there will be a sufficient expression of feeling for us to know about how the vote will be. Then I can see no particular object, after, in calling the public in, throwing the doors open, inviting the respondent, his counsel, the managers and all the rest, to come in, simply to hear us vote. It would appear to me like going through a sort of mental gymnasium, for the benefit of the public. If our votes, and our speeches, if we make any, go upon the record, I think that that is fully better and will save time.

Senator HINDS. I move that the second order that I proposed be added to the original order.

Senator ADAMS. I move that the second order of Senator Hinds be added to the original order offered by the Senator from Scott as an amendment.

The motion was seconded.

The PRESIDENT *pro tem.* The question will be upon the substitute of the Senator from Ramsey.

Senator HINDS. The offering of a substitute does not supercede the right to amend the original.

The PRESIDENT *pro tem.* If you vote the substitute down it does not prevent amending the original order after it is before the Senate.

Senator GILFILLAN, J. B. The Senator from Scott can accomplish his object by assuring the Senator from Fillmore that as soon as the substitute is voted down he will offer his second order in connection with the first.

The PRESIDENT *pro tem.* Is that the understanding?

Senator GILFILLAN, C. D. I withdraw my substitute.

Senator CASTLE. I call for a vote upon that, Mr. President.

The ayes and nays were called for.

The roll being called there were, yeas 6 and nays 30, as follows:

Those who voted in the affirmative were: Messrs. Castle, Crooks, Gilfillan, C. D., Peterson, Simmons and White.

Those who voted in the negative were: Messrs. Aaker, Adams, Bonniwell, Buck, D., Campbell, Case, Clement, Gilfillan, J. B., Hinds, John-

son, A. M., Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Pillsbury, Powers, Rice, Shaller, Shalleen, Tiffany, Wheat, Wilkins and Wilson.

So the order was not adopted.

The PRESIDENT *pro tem.* The question now is upon the amendment to the original order offered by the Senator from Scott. Those in favor of the amendment will say aye, contrary no. It is adopted.

The question now is upon the adoption of the order as amended. The ayes and nays are called for. The secretary will call the roll upon the order as amended.

The roll being called there were yeas 34, and nays 2, as follows:

Those who voted in the affirmative were—Messrs. Aaker, Adams, Bonniwell, Buck, D., Campbell, Case, Clement, Crooks, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Pillsbury, Powers, Rice, Shaller, Shalleen, Tiffany, Wheat, White, Wilkins and Wilson.

Those who voted in the negative were: Messrs. Castle and Simmons.

So the order was adopted.

The PRESIDENT *pro tem.* There is no question before the Senate.

Senator CASTLE. Mr. President, I move that we now proceed to take up seriatim the articles of impeachment and specifications of the several articles and pass upon them in their order.

Senator CROOKS. I second the motion.

Senator CAMPBELL. I will move an amendment, Mr. President, that we proceed to hear any arguments that any Senator may have to offer upon the question of the articles as a whole.

Senator CASTLE. I hope the Senator will not press that motion, Mr. President, for this reason: Some gentlemen might select his own time for making his speech, and there would be an implication that the Senator was discourteous if he should select any other time than the one preceding the vote. I am not one of those who has any prepared speech; still, when I come to vote, I might or might not care to give the reasons for the vote I gave.

Senator CAMPBELL. My object, Mr. President, is just this: I thought if we were to commence to discuss the articles seriatim this thing might last a week.

Senator GILFILLAN, J. B. Mr. President, I move that the court now proceed to vote upon the several articles.

The PRESIDENT *pro tem.* Will the Senator send up his motion in writing?

Senator GILFILLAN, J. B. sent up the following order, which was read by the Secretary:

Ordered: That the court now proceed to consider and vote upon the several articles of impeachment in the order in which they occur in the record.

Senator HINDS. I move to amend by adding at the end thereof these words: And that the same be first read by the Secretary.

Senator CASTLE. Mr. President; our rules already provide that the article shall be read as soon as it is reached.

The PRESIDENT, *pro tem.* Does the Senator from Meeker insist upon his amendment?

Senator CAMPBELL. I don't want to insist if it is the judgment of the

Senate that that is not a proper way to proceed; but it occurred to me if we were going to discuss these articles one at a time that the discussion might last a week. I would like to hear from the Senators generally that have remarks to make on the question of impeachment.

Senator GILFILLAN, J. B. Mr. President, it seems to me that under the order just offered by the Senator from Washington the proper method of proceedure would be, strictly in accordance with the rules and with the precedent found in the case of Judge Barnard. I should think that would be a very good form for the record in this case and strictly under the order just offered.

Senator CAMPBELL. I will withdraw my motion.

Senator BUCK, D. It seems to me that if any Senator desires to express his views generally in regard to the law of this whole case he ought to be allowed to do it and get through instead of being called upon to make a speech every time an article is called up.

Senator GILFILLAN, J. B. Let me change it, then, so as to let each Senator, in making any remarks that he sees fit, make them upon the first article, that he may cover as much of the case as he pleases.

Senator CASTLE. What is the use of any such rules at all? I am perfectly surprised that Senators should try to lumber up the record in this way. When we are called upon to consider article one, as we will be. under the first resolution offered, what are the privileges of a member of the Senate? To get up and discuss generally, if he wishes to, the whole law of the case, and the facts upon that particular article. Now, when the second article comes up——

Senator WILSON. Will you permit me to ask you a question? What do you mean?

Senator CASTLE. If he desires to be heard upon that point it is his privilege to be heard upon that. Of course it would be simply a matter of taste——

Senator WILSON. I would like to know what the Senator means.

Senator CASTLE. A matter of taste with the Senator,—when the second article came up, whether he would go over the whole of the question again or only such parts as in his judgment would be applicable to that particular article or specification. Now, it seems to me it is not necessary that we should adopt any particular rules in reference to this. The ordinary rules, the ordinary provinces of a court are ample, it seems to me, to cover every emergency that could possibly arise. Suppose we take up article one. It is read, pursuant to the orders we have already adopted. Suppose the name of the Senator from Blue Earth and the name of the Senator from Washington is reached; either of those Senators or both, desire to explain their vote; that explanation will go to the whole root of the matter of all the articles.

Senator BUCK, D. If that is the understanding, I am satisfied.

Senator CASTLE. And it may go, within the rules of propriety and of parliamentary debate, to the facts that are included in that particular article. And if any Senator desires to refer to other facts or other articles clearly he can do that.

It seems to me that the matter is simple and that we should not adopt any arbitrary rules with reference to these matters. I don't think any Senator here is going to transcend the courtesies and proprieties in the consideration of this question or that it is necessary to bind him down to anything; because, so far as I am concerned, I am

willing to sit, and would do so with pleasure, to hear the speech of any Senator upon any question, whether it be a question of law or of fact: and I have no doubt the other Senators feel as I do in regard to this matter. That it is not desirable, at this period of the proceedings, that we should turn this thing into a farce, but that it is desirable,—I concur entirely with the Senator from Scott in regard to that,—that we should carefully weigh and consider, as we go along, all the propositions that may arise.

Senator WILSON. I may be a little obtuse; I certainly cannot understand what the gentleman from Washington has been talking about for the last half hour. He seems to be sensitive about answering any question; when he has a fair question asked him he is not willing to give a fair answer. Does he propose that the roll shall be called on the first article and the Senator say nothing upon that article or any other until his name is reached, and if he has an hour's speech to make that he shall make an hour's speech while the roll is being called? Is that what he means? He didn't state what he did mean, so that I could understand it.

Senator CASTLE. The Senator from Hennepin has kindly furnished another order, which I will offer, by permission of my second.

The Secretary then read the order as follows:

Ordered, that the court now proceed to the consideration of the articles of impeachment and that the vote thereon when reached shall be taken in the order in which the several articles occur in the record.

The PRESIDENT *pro tem.* If there is no objection this will take the place of the order. The question will be upon the adoption of this order.

Senator PILLSBURY. Mr. President, there seems to be one thing which the Senate does not understand which I don't understand myself,—whether the Senators are to make their remarks during the roll call or have their discussions before the roll call.

The PRESIDENT *pro tem.* You commence considering the articles commencing with the first, each Senator who desires discussing it.

Senator GILFILLAN, J. B. Mr. President, I understand that this order would carry this privilege to each member. Now to enter upon a discussion of any or all the articles and to make his remarks to the extent of speaking to all of them if he desires; any member who merely wants to explain his vote with reference to any one article can do so if he pleases when the vote is called upon that article.

Senator POWERS. Mr. President, there is so much talking I did not catch the first remark of the Senator from Hennepin, and it was upon a point that I feel a little interest in. The question is, shall Senators have a chance, if they wish, to discuss any article or specification before their name is reached on the roll-call?

Senator BUCK, D. That is the understanding.

Senator GILFILLAN, J. B. The order now offered carries the privilege of any member to discuss one or more, specifically or generally, to the extent that he desires, without limitation, the articles of impeachment.

Senator POWERS. My reason, Mr. President, for asking that question is this: I suppose the presumption is, not that a man shall explain his vote just simply for the purpose of having it go on the record to be read or not read in the future, as the case may be, but that if he has anything

to offer on testimony or law or anything else, that we may all have the benefit of it.

Senator BUCK, D. That is the understanding.

Senators POWERS. Now, I happen to stand near the foot of the list, so that my chances are pretty good. I can hear the Aakers and the Adamses and the Bonniwells and the Bucks, but those that stand at the foot of the list like Senator Wilson and others would afford very little light to the Powerses that come ahead on the list. [Laughter.]

Senator GILFILLAN, J. B. Under this order Senator Powers can be heard first,—before the vote is taken.

Senator POWERS. I would like to ask if that is meant to be sarcastical. [Laughter.]

The PRESIDENT, *pro tem.* The question is upon the adoption of the order. The secretary will call the roll.

The question being taken on the adoption of the order and the roll being called, there were yeas 32 and yeas none, as follows:

Those who voted in the affirmative were: Messrs. Aaker, Buck, D., Case, Castle, Clement, Crooks, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Miller, Morrison, Officer, Perkins, Peterson, Pillsbury, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, White, Wilkins and Wilson.

So the order was adopted.

Senator WHEAT. What is the order of business?

The PRESIDENT *pro tem.* The order of business is to take up the articles. The first article will be taken up, if there is no objection.

The secretary then read as follows:

ARTICLES OF IMPEACHMENT.

Articles exhibited by the House of Representatives in the name of themselves, and of all the people of the State of Minnesota, against E. St. Julien Cox, Judge of the Ninth Judicial District, in the maintenance and support of their impeachment against him for crimes and misdemeanors in office.

ARTICLE I.

That E St. Julien Cox, being a judge of the district court of the State of Minnesota in and for the Ninth Judicial District, unmindful of his duties as such Judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Martin, in said State, to-wit: On the 22d day of January, A. D., 1878, and on divers days between that day and the fifth day of February, A. D. 1878, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and there pending in the district court of Martin 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, 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 learning and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

The SECRETARY. Shall I read the rest of the articles, or only upon the request of some Senator?

Senator HINDS. They are to be considered in their order. After the article is read it is to be considered.

The Secretary then read to the court the order last adopted as follows:

Ordered, That the court now proceed to the consideration of the articles of impeachment, and that the vote thereon when reached shall be taken in the order in which the several articles occur in the record.

Senator GILFILLAN, J. B. That has reference to the vote. Each article should be read before the vote is taken. I suppose, Mr. President, under this order which has just been adopted, that remarks of Senators, if they have any to make, are now in order. I haven't any speech to make, but I should be glad to listen to any.

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

The PRESIDENT *pro tem.* Has any Senator any remark to offer?

Senator WHEAT. If that is the order, I wish to say, sir, that before proceeding to a final vote I desire to make some expression of sentiment or feeling with regard to this case before the court, not jndicial, of course, simply personal.

The case, sir, is important involving a great moral question; a question on which laymen (so called) may entertain and express an opinion. I am satisfied that one's sense of morality will have something to do with the opinion which he may form and the vote he may cast; and there may be such a thing as a false or strained sentiment of morality in the hearts of men. I trust that no such thing enters my heart, that no bias or prejudice either against the respondent or the State of Minnesota will be allowed to enter there.

I take it that the offense itself, its nature its degree, should settle the question of impeachment by, and with conformity to law. Now what is the nature of the offense? It seems to be simply and solely the offense of drunkenness in the judicial office. Is that an offense against the State of Minnesota? Is that an offense with which this court has anything to do? Those seem to be the questions before the court. I propose to answer these questions on general principles, as I view them in a few words. Starting out with the proposition (which may seem new to some) that the public welfare is the primary object of law, and courts; that the primary object should be the first thing to secure. I believe that law should be so constructed that the ends of justice may be reached or as near as possible. Now to measure the gravity of that offense, it will be necessary to notice somewhat, the nature of that state known as intoxication, as well as the nature of the judicial office.

The best authorities on drunkenness agree as to the essential facts; all agree that drunkenness disturbs, impairs, or suspends altogether the mental faculties. Brown's Medical Jurisprudence on Insanity, which is good authority, says: "Drunkenness is marked by confusion of thought, delirious excitement, nausea and vomiting, and ultimately induces narcotism. Some of these symptoms, not all of them, are present in every given case." This then may be taken as a fact, that in a state of drunkenness the mental faculties have lost their normal condition; have lost their reasoning power, are unquestionably of cool deliberate action, or indeed, of any normal action whatever. Such then is the condition of mind in a state of drunkenness or of intoxication, which is a word expressive of a degree of drunkenness.

Now as to the judicial office. That is an office which must be filled by the incumbent himself. It is not one of those accommodating offices in which a good clerk can do the work while the incumbent is at his leisure; he must do the work him self. It is perhaps the most sensitive office in the administration of public affairs. The most sensitive to external impressions and adverse circumstances. It is from its nature exacting and inflexible, tolerating no delay or suspension of the faculties of the mind of the incumbent.

The reason is obvious, should this occur, official acts if performed would be performed under a state of bewildered faculties and might be a mockery of justice instead of justice, while at best, ligitants would be greatly inconvenienced by reason of vexatious delays and unnecessary expense. Drunkenness then in the judicial office is in the nature of a most extraordinary and glaring inconsistency.

Now on assuming the judicial office a judge assumes its duties and responsibilities, he does this under all the forms and solemnities of an oath, promising to use the best abilities he has to meet those duties and responsibilities; promising to use the gifts and all the gifts he has both by nature and acquirement. But we have seen that if intoxicated a judge cannot perform the duties of his office, because he cannot use the necessary faculties of mind to perform them.

It is true that the official oath of a Judge does not say in so many words that he shall use the gifts and all the gifts he may possess to meet the duties of his office. It does say, however, that he shall discharge those duties impartially, which is presumptive evidence that he is to use the best of his abilities, in order to do this. Any denial that this is the fact to my mind is simply an evasion and equivocation.

As intoxication is a voluntary act, not the result of accident, disease, misfortune or any other cause, that the person could not forsee and avoid, it may be said that a judge who becomes intoxicated has by voluntary act impaired or paralyzed, as the case may be, those very faculties on which he relied to enable him to perform the duties of his office, the faculties on which the people relied who elected him to office, by reason of which the public service would be jeopardized and scandalized by his official acts. By the word paralized, I mean a state in which the mind has lost the usual and normal condition. I say by the free volition of his will he has done this and no man is compelled to drink and get drunk. No judge has aught but the greatest inducements to live a sober, decent and upright life.

Now to me it does not seem necessary to read long essays on contracts in order to get an idea of the nature of such an offense. The guilty party has broken his contract with the State, or the people who has elected him to office, has violated his oath of office; has betrayed the trust reposed in him. That is my opinion. Let me repeat: I say, the guilty party has broken his contract, because on assuming the office he promised the State to perform its duties; and the State accepted his promise. There was a contract. Now he has impaired his faculties of mind by intoxication, and he cannot perform his duties. It is an impossibility. Again he has violated his oath of office, because he cannot discharge its duties impartially as he *has* agreed to. When the mind is impaired by intoxication, still again he has betrayed the trust imposed in him, because whatever may have been his mental reservations on sub-

scribing to an oath, the people expected him to remain in the full possession of his mental faculties and use them as occasion should require.

So far this case appears to me perfectly clear; what the penalty at law for such an offense would be, is not so clear. On common-sense principles, to me the offense appears sufficiently grave to come within the scope and meaning of "crimes and misdemeanors," known to the constitution as impeachable offenses.

I do not arrive at this conclusion, however, from a knowledge of law, its sufficiency or insufficiency. I do not understand law. I arrive at the conclusion from a knowledge, moderate though it be, of justice, it might be called common inherent natural justice. I have been taught to believe in a moral law; in an innate sense of justice and in inherent natural rights of men.

I rely on these matters now somewhat because I think they are good law, because I think I see in them a chapter of very good, as well as very ancient law. A chapter not written, it is true on parchment, nor yet on tables of stone, but on (if I may so speak) the tables that canopied heaven when the morning stars sang together; and also because when I look out on the pleasant earth, when I attempt to count the stars, witness the benificent design of God everywhere and in everything, I think I notice the same chapter of ancient law. It has not been repealed.

So I rely on it now, feeling that the happiness, the well-being of mankind is still the first law of nature and that there can be no injustice in applying such a law to the affairs of men to-day.

Perhaps some member is saying, "What nonsense! All that stuff cuts no figure in this case at all. You are bound to judge according to the law and the evidence."

That is very true, but I judge evidence with this law written on my heart and burning on my brain. It is the lamp to my feet, the solid foundation on which I trust they rest.

So then I may say that on common-sense principles, the offense is sufficiently grave to come within the scope and meaning of offenses known to the constitution as impeachable. I say this, keeping in view the principle enunciated at the outset, that the public welfare is the primary object of law and courts; I say it, also keeping in view the words of the constitution as authorizing impeachment.

If it is not a crime for a judge to become intoxicated, if a judge who holds the life, the property, the characters of men in his hands, and who only is able to do justice by preserving a well balanced mind, I say if it is not a crime for such a man, holding such an office, to become intoxicated, then, sir, I have lived 56 years, without so much as learning how to comprehend the meaning of the word "crime;" yet I am not positive on the legal point, because I do not understand law. I notice those who do, disagree on this point.

To my mind if the statute law of the State of Minnesota, is supplemented by this ancient law to which I refer, which may be called the statute law of nature, and of reason, all difficulty in my mind will be removed, as to the gravity of the offense of intoxication in a Judge. I am encouraged in these views by reading in the morning paper a charge made to the jury by the Judge in a somewhat noted case now pending in the State of Wisconsin, a portion of which charge reads as follows: "The reason of courts of justice and of jurors, is the reason of common

sense, by which men of common sense and justice are guided in forming their opinions as to the conduct of others."

If this is good doctrine certainly it will apply on points of law where lawyers disagree.

Mr. President, morally considered, there are many reasons for impeachment in a Judge. I hardly know how to arrive at conclusions at all without considering the moral features of the case. It appears to me they greatly assist in arriving at conclusions as to the gravity of the offense.

The inconvenience and loss to the State outside of loss of character, might be condoned for a time, were it not for the official oath of members of the court, but it is a sin to condone the loss of character.

I ask the indulgence of the court a moment only on this phase of the question. Drunkenness in a private citizen is bad. It has bad influences but drunkenness in a judge is *very* much worse. It has far greater influence for evil. Its first effect is to humiliate society, to outrage its sensibilities, to cloud, and to tarnish its excellence, which is, as all know, the slow attainment of 1,800 years.

Now we associate dignity, royalty, and white robes even, with the judicial office. This is not extravagant doctrine. If there is an office this side of that great white throne, it is the judicial office that is pure, or that we expect to be pure. With such associations the vice of drunkenness is singular and startling to behold. The humiliation and shame is very, very great; but the worst feature of the case is the influence that goes out on society from drunkenness in the judicial office. It reaches all classes and conditions of society, and is fearfully destructive to good morals everywhere it reaches. An ancient bard once wrote.

> "Vice is a monster of such frightful mien,
> That to be hated needs but to be seen;
> Yet seen too oft, familiar with her face
> We first endure, then pity, then embrace."

This is the influence of common drunkenness—drunkenness in a private citizen; but it does not reach the influence of the drunkenness of a judge. We might say of that, in the domain of poetry, (as that has been somewhat invoked during the course of this trial):

> "Vice is a frightful thing to see
> In creatures e'en of low degree;
> But when in better station thrown,
> It looks a monster overgrown."

Such is the influence of drunkenness in a judge, with the further feature that the influence is lasting. Yes, it is lasting; men die, but such influence lives. It is one of the vices that in the economy of nature lives after its cause is removed—lives while the very years drop away into eternity. This is not the time or place to reason with regard to those influences, but to my mind they are all presumably in evidence, and must be considered in arriving at conclusions on this case.

Now, in answer to the question, what is drunkenness in judicial office, we have seen first, that drunkenness so disturbs the mental faculties that they are unfit for use; second, that the judicial office tolerates no disturbance of the mental faculties of the incumbent. The conclusion we have arrived at is this, that if public interests are to be sub-

served, the judicial office must be divorced from the drunken citizen. As a further conclusion we feel that this court has a natural, as well as a statutory right to make the decree.

I am sorry, sir, that these conclusions are forced upon me. I am sorry that the respondent has not been able to show himself an innocent man. He has not, in my opinion, and I see but one course to pursue. Should that course be successful, it will be a success for decency, sobriety and virtue. Should it be unsuccessful it would be a result not so much in the interest of the respondent as for the vices that surround him. To my mind the issue is great and far reaching.

You and I, Mr. President, you and I, associate members of the court, may not feel the benefits—our ways are formed—but the State of Minnesota will feel it: the millions who people and are to people the globe will feel it.

Perhaps it would not be improper here to say also that this court will be noted, that these weary days, these scenes in the court, the passions of men will be observed, will pass in review long after the actors have ceased to act. Perhaps it would not be improper, either, to say that each member will be represented in the opinion which he holds, and the vote which he casts. Such might well be said. Now, unselfish, as I hope I am, I want to stand in that position, so as to be approved of men; I want to stand in it so that the blush of shame shall not tinge the cheek of any who bear my name or blood. I would like to stand, in this whole matter, so as to receive the smile and not the frown of Him who judgeth all the acts of men.

So then in view of an oath which I took when I entered on the discharge of my duties as a representative of my constituents, and in view of another and more recent one which I took at the inception of this trial before this Senate, sitting as a court of impeachment, I shall use the discretion which I feel to be just, and act in accord with convictions of duty.

The explanation that I have given upon this article applies to all of the articles: I wish to say right here, however, that I do not view the first article as having been sustained. I do not consider that the State has sustained its allegations in the first article. With regard to others my view will be indicated by my vote; I shall make no farther explanation.

The PRESIDENT *pro tem.* It is now within about fourteen minutes of the usual time for taking a recess. If any Senator has a speech to make, he can perhaps make it before we take a recess.

Senator JOHNSON, A. M. I move we take a recess.

The PRESIDENT *pro tem.* It is now 17 minutes past twelve.

Senator POWERS. I hope that no time will be lost in taking a recess before the time.

The PRESIDENT *pro tem.* It strikes me that if a Senator has a speech to make he might put it in.

Senator POWERS. I haven't a speech quite as long as your finger; I have no speech prepared, and yet I want to say something on this question.

The PRESIDENT *pro tem.* Say on.

Senator POWERS. If I were satisfied entirely that every Senator here, or a majority of them, or a minority of over one-third of them, felt as I feel on this question, I should not refer at all to this article, because I

do not wish to take up the time of the Senate; but, as I said this morning, I propose to refresh my own memory, and, if you please, the memory of some others, in reference to the testimony. I cannot convict this respondent on general principles. Now, what is the evidence on this question? I can give it briefly.

My friend from east Fillmore [Senator Wheat] has said he hardly thinks that the charge has been sustained, and the worthy manager, Mr. Dunn, also told us that he thought we might conscientiously and consistently vote against it. For myself, I think that the article has been sustained as much, as near, and *nearer*, than some of the other articles.

What is the evidence? There were five witnesses on the side of the prosecution, there were four on the part of the defense. The first witness, briefly, to boil the thing right down, (Mr. Everett,) tells us that the Judge was sober every time he was with him but once; that once he *thought* he was the worse for intoxicating liquors. He is not positive, but that was his opinion. His mind seemed confused; he knew nothing about his acts. That is all that I thought was important. That gives the substance of his evidence. Mr. Graham saw him use intoxicating liquors at Capt. Jones' and in his room at the hotel and in one saloon; he had a glass of beer in the saloon; he saw him drink two or three times,—perhaps four times a day on an average. He was not drunk at any time the witness saw him. He was able and competent and discharged his business as well as judges usually. On the third day, he *thought*, he was slightly intoxicated. He didn't see anything improper; he was very quiet and didn't say much of anything. That is the substance of his evidence. Mr. Higgins tells us that once or twice he was under the influence of liquor he thought; "at least that" he says, "was my opinion." Never saw him drunk; never saw him go into a saloon. Mr. Wolleston, a very candid man, who gave testimony here, says, the first week he was perfectly sober. The second week I had *grave* doubts. Saw him go into a saloon. His behavior seemed strange on one or two occasions. *Thought* he was the worse for liquor; and in reply to a request from Senator Buck says, "It was my opinion he was drunk." On his cross-examination he says his instructions to the jury seemed incongruous and unintelligible I thought. One more witness, Mr. Livermore, thought that he acted differently the last week to the first. Didn't see him go into a saloon, didn't see him drink, but he made some very peculiar remark to him out on the street, out of the court. He don't remember what it was, but he thought it was peculiar for a judge to make.

There is the evidence for the prosecution. One man *thought* he was slightly intoxicated; another man knew he was not drunk at any time he saw him but he saw him drink two or three glasses for three or four days. Another one was under the impression that he was slightly under the influence of liquor, and Mr. Wolleston had grave doubts of his sobriety, and finally, upon being questioned again, thought that he was drunk; and another thought he acted a little peculiar. That is the evidence upon the part of the State.

Four witnesses swear to his sobriety. Mr. Blaisdell saw no signs of intoxication during the trial of the McDonald case,—that is one time they thought he was drunk,—"In my opinion he was perfectly sober." During the liquor cases he was perfectly sober. There was nothing pe-

culiar in his actions, nothing different on the second or third day from any other. Perfectly sober when he gave his charge to the grand jury. No confusion in his manner. His eyes were not red nor inflamed during the ten days that he saw him. There was a very large amount of business transacted,—four jury trials,—and went on and gave other details that I won't stop to speak of. Have attended every session of court for the last ten or eleven years; more business transacted at that session of court when Judge Cox presided than at any other term he thought: it was a matter of general remark that there had been more business transacted then than at any other term. Mr. Allison Fancher, clerk of court, thinks the Judge was sober; didn't notice any difference between the first and the last; thought he was the same. Did not make any order to the witness that he did not understand; very plain in his orders. "He assisted me very much; seemed perfectly sober. No confusion in his manner. His eyes were not different from usual. More business transacted at that session of the court than generally. He was sober at the time of the charge to the jury. One evening he seemed a little tired and sleepy. That was towards the close of the session. Saw no signs during the entire term, of the Judge being drunk. Was there all the time.

Now, Mr. Berg, the sheriff of the county was there through nearly the entire term, more or less, every day. He was there at the evening sessions. The Judge was sober. I saw no difference in his actions, manner, speech, or anything of the kind during the entire term. He seemed free and easy. He made no order that I did not understand; no incoherent remarks, no confusion in his manner. I was with the Judge on the evening of the second day. Saw him refuse to take liquor. Never saw him going into or coming out of a saloon. In my opinion he was sober in mind and body. Gideon Smales, the last witness. Clerk of hotel. Saw no difference in his manner, conversation, actions, or deportment during the first and second week; think that the Judge was perfectly sober during the entire term. Saw nothing peculiar in his manner, actions, appearance speech or bearing during the term. Saw him drink some old English ale. Was out and in the court during the term.

That is the evidence in the case. That is where we are told, and told over and over again, that within ten days after the respondent had taken a solemn oath to perform the duties of Judge he went and got into a state of intoxication up at Fairmount. Now, I happen to know that the first agitation through the press of the State started in my county and in my colleague, Dr. Wheat's district. A man went up there, attended a part of the term of court and wrote and published in his paper that he was "beastly drunk," or something to that effect, and it was copied all over the State. The editor of that paper lives about eleven miles east of where I do. I never saw him drunk, I don't know that he does drink; he was deputy collector of revenue and he seized six or seven hundred gallons of crooked whiskey and put it into his cellar, and it never came out of it again, except about one or two hundred gallons. The rest of it all leaked somewhere,—either down his œsophagus or into Mother Earth,—every bit of it. I dared to ventilate it, and it has been impossible, thus far, to get him to disgorge that whiskey. I believe, farther that the man is incapable of writing one-quarter of a column in a newspaper without stretching the truth almightily or shrinking it so that no

one would recognize it; so I have very little confidence in the way that story started. When it comes to the vote I have no speech to make and shall vote not guilty.

The PRESIDENT, *pro tem.* It is now within a minute of the time for recess. The Senate will take a recess until half past two.

AFTERNOON SESSION.

The Senate, sitting as a court of impeachment, met at 2:30 P. M. in secret session, and was called to order by the President *pro tem.*

Senator BUCK, D. Mr. President, it has been suggested to me that we have the reporters here, as they will not interfere in any way with the Senators. I don't know what the feeling of the Senate is. I will make the motion, anyway, to test the sense of the Senate, that they be admitted.

Senator WHITE. I second the motion.

Senator RICE. I hope the Senator will not press the motion when there are so few present.

The PRESIDENT *pro tem.* It would be necessary to suspend the operation of the order we have already adopted to do that.

Senator BUCK, D. Well, if there is a feeling of opposition to it, I don't want to insist upon it.

Senator HINDS. We have got into working order and let's keep at it.

Senator BUCK, D. I would not have had any objection this morning to the managers, the respondent and the reporters being present, as far as I was concerned.

Senator RICE. I object to that most decidedly; because if we are to have a secret session at all, let's have it.

Senator HINDS. It is withdrawn.

Senator BUCK, D. Mr. President, if there is no other member of the court who desires to say anything, I will occupy the attention of the Senate for a little while.

The PRESIDENT *pro tem.* The Senator from Blue Earth has the floor.

Senator BUCK, D. I had intended, Mr. President, to wait until we reached the second article before saying what I have to say upon this subject; but I see no difference now in saying what I have to say, as it relates to the whole subject and pertains to every article. And while I may occupy three-quarters of an hour or an hour in what I have to say I want to give the Senators an assurance that it will be the last that I intend to say upon the subject. I do not intend to enter into a discussion of the questions of fact or of any question of law that may arise as each article is reached, unless some Senator shall happen to pitch in, speaking generally upon the subject and make it absolutely necessary. What I say, I want to close up now, and perhaps what I have written may seem more lengthy, more in detail than what is necessary for the occasion; but I have prepared this opinion for several reasons:

First, Because several of my brother Senators who are not lawyers, have requested me to do so;

Second, Because what I have to say I desire shall be in writing, that I may not be misunderstood nor misrepresented;

Third, Because of the legal questions involved in this proceeding, I think it proper and the duty of those who are lawyers to discuss them.

Perhaps I may discuss some of the points more at length than may be necessary, but the wide range of discussion entered into by the respective counsel and the contrariety of views advanced by them, together with the somewhat confused and uncertain law and procedure of impeachment is the apology for all I may say upon the subject. As an aid then, in emerging from this uncertainty and confusion let us inquire whether we are acting as a Senate or as a court, whether we are an omnipotent tribunal, bound by no defined rules, whose proceedings are irreversible, and from whose judgment there is no relief.

By section four, article 13, of our constitution, we are designated a a court. Blackstone designates the House of Lords as a court while acting in the trial of impeachments. Webster defines sitting to try accusations of this nature, as a high court of impeachment. Many of our law books so define it. The solemn oath taken by each one of us, upon the organization of this body, was that we would do justice according to law and evidence. That oath differs widely from the oath we took when sworn into office as Senators. One was the legislative oath, the other judicial; both are binding in their proper sphere, but different in the duty imposed.

What is it to do justice according to law and evidence? Certainly not to legislate but that in every act we do here we will conform to the rules and proceedings of the law of the land; that whatever is due the respondent we will render unto him and that while doing so we must not hesitate, halt or falter, for any cause, in our duty to the State. Judges and jury, as we are, we must lay aside our friendship or ill-will, forgetting our partizanship, disregarding the clamor for conviction or acquittal, and in our final judgment remember the right of the accused, as well that the public good must be advanced and maintained. How do this unless according to law and the evidence? That is the judicial oath we have taken; the oath required by our constitution, judging without malice, impartially, rightfully and legally. These are the attributes of a court, the sacred principles of administrative law. As a Senate with our legislative oath, we could legislate; as a court we can act judicially, not otherwise. An authority to legislate and to act judicially at the same time would be the very essence of despotic power. When we threw off the legislative robes, we put on the judicial ermine. Our whole proceedings are evidence of this. We organized as a high court of impeachment. We so provided in our rules. We issued a writ to the respondent to appear here. He has done so and sworn evidence has been introduced for and against him. Respective counsel have discussed the questions of law and of fact. Our functions are two-fold, but both judicial. We act as judges and as a jury. We determine the questions of fact, and upon those facts we apply the law and say whether the respondent has forfeited his office. We condemn or acquit. If we say guilty, we can grade the punishment, either removal from office, or removal and disqualification to hold and enjoy any office of honor or trust in this State. Our determination is a judgment of record. It is *res adjudicata*. Its verity cannot be impeached. These acts are thoroughly and essentially judicial. Our legislative functions have ceased; executive functions we never possessed. Special and limited as our jurisdiction is, yet acts done within that jurisdiction are binding and irreversible. Our authority is measured by our judicial power. That power is expressly conferred. We need no implied power, for that

springs from necessity. Governed by evidence, it must be legal evidence for that is our constitutional oath. That our proceedings are judicial see Wells on Jurisdiction of courts, 378; 12 American Law Register, 514.

Next let us examine the question as to whether the trial by impeachment is a criminal proceeding. It is material in this case, only as it affects the question whether a preponderance of evidence is sufficient to convict or whether the doctrine of reasonable doubt should prevail, except an attempt has been made to magnify the judgment we may render into a great criminal punishment if we find the respondent guilty. So settled are my convictions that this is not a criminal trial or proceeding, that I feel that it is my duty to do what little I can to brush away the dust and mold that seem to be gathering around this vexed and difficult question.

It is strenuously insisted that by the very terms of our constitution this is essentially a criminal proceeding. By section seven, article one, we find that no person shall be held to answer for a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment, and by section one, of article thirteen, it is provided that certain officers may be impeached for "corrupt conduct in office, or for crimes and misdemeanors, but judgment in such case shall not extend farther than removal from office and disqualification to hold and enjoy any office of honor, trust or profit in this State. The party convicted thereof shall nevertheless be liable and subject to indictment, judgment and punishment according to law."

The party must answer in two ways, one by presentment, or indictment, the other by impeachment. Both methods of answering are for the same specific offense, and both might be tried at the same time by different, independent tribunals. We could not stop the wheels of justice if the accused was being tried in one of our district courts for a crime against the laws of his country, nor could such a court issue its mandate to this body and enjoin us from making the accused answer for the same criminal offense at the same time. Why? Because one is a criminal proceeding and the other is not. Answering by indictment is a criminal proceeding in every land where indictments are known. In every respect, step by step, by every principle of law, by every rule of practice, it is purely a criminal proceeding. By sworn, secret evidence the indictment is found. The bench warrant for arrest carries with it the force and strength of the criminal law. In impeachment his plea is by answer; upon indictment, not guilty of the crime. As a criminal he must give bail or go within the walls of a dungeon; as an impeached officer he goes forth without bonds or manacles. As a criminal he is entitled to a speedy trial by an impartial jury of his district. Tried criminally he can challenge his enemies upon the jury; upon impeachment his doom may be sealed by an implacable foe. If criminally guilty, the money punishment by fine may take his last penny, imprisonment may take him from home and kindred, or the death penalty may be the atonement for violated law. But if fine or imprisonment is the punishment can he be tried again fer the same offense? If so what becomes of that notable safe-guard and constitutional guaranty that distinguishes the civilized from the despotic government, viz., no person for the same offense shall be put twice in jeopardy of punishment? Can you harass the citizen by repeated vexatious criminal proceedings when

there is engrafted into your fundamental and organic law an explicit provision that you shall not do so?

It is true he must answer twice for the same criminal offense. But the vital question is, how shall he answer twice? Criminally by indictment, and then by impeachment. Because he must answer for a criminal offense by impeachment, does not make impeachment a criminal proceeding. That would be reasoning in a circle. The constitution does not make the proceedings criminal. Our criminal works are silent upon the subject. Judge Lawrence, in his able article on impeachment, in 6 American Law Register, page 644, says: "It is absurd to say that impeachment is here a mode of procedure for the *punishment of crime*, when the constitution declares its object to be removal from and disqualification to hold office." When we examine the constitutions of the United States and of this State it seems strange that such absurd views have ever found a foothold in the jurisprudence of this country. The error arises in confounding the English law of impeachment with the proceedings under our constitutional laws. There the death penalty has been inflicted by the House of Lords as a punishment upon trial by impeachment. But the House of Lords is the court of last resort, sitting as a legal tribunal, and deciding legal questions other than those of impeachment. That court has discretionary power to punish criminally or by removal from office. Here no such power exists except removal and disqualification to hold office. That is not criminal punishment in a legal sense.

The right to hold office is not a natural right any more than the right to vote. It is granted upon condition that the officer is faithful and pure in the administration of his official duties. Disqualifying a man to hold office is the same in principal as removal from office. A cause of removal is cause for disqualification. The same act that justifies removal authorizes disqualification. It may be a greater hardship to remove a man from an office to which he has been elected for seven years, than disqualifying him from holding office for the next seven years, or for life. His past election was sure, the future uncertain. In this country an office is not property. It cannot be bartered, sold or assigned—37 N. Y., 518. It is a place of trust. Our supreme court says: "Public offices in this State are mere agencies of the government, created for the benefit of the public, not for the benefit of the incumbent. * * The incumbent having no property in the same as against the government. * * Neither the offices themselves nor their emoluments are rights or privileges secured to any citizen of the State."—18 Minn., 199.

Neither is an office a contract with the government. While the officer may not encumber it he may resign it at any moment. If he misbehaves, the strong arm of the government is set in motion to the end that disorder be repressed, peace secured, and the public welfare maintained. This is done by impeachment, not as a punitory procedure, but a preventive one, not punishment for the past, but security for the future. The flow of justice has been interrupted. Impurities are creeping into the body politic. There is rottenness in the administration of the government affairs. Shall the commonwealth suffer, decay, perish? No, the remedy is impeachment, removal of the cause. The offender answers for his offense, not by property, liberty, or life,

but forfeiture of his office. That which has been given has been taken away, that the State may live.

It is said if a judge commits a felony and is convicted, that his office becomes thereby vacated. This is not true under our constitution as to officers removable by impeachment and trial, although it is true as to officers created by statute. If conviction alone vacated the office there would be no need of impeachment. When the mode of removal is specifically pointed out by express provision of the constitution, that mode excludes all others. The moment a judge is impeached, his right to exercise the duties of his office cease until his acquittal. The constitution so provides. Conviction for crime is to punish, while the sole object of impeachment is removal from office. To remove an officer created by the constitution there must be a direct proceeding for that purpose. Suppose an impeached judge is tried and acquitted by a court of impeachment, could his conviction criminally for the same offense vacate his office when he had been declared innocent by the very court created to try the question of his removal? Such a construction is absurd.

This question was expressly decided by the Supreme Court of New Jersey where the court say conviction of an infamous crime does not *ipso facto* work such a forfeiture of public office as to make the office vacant. 12 American Law Register, 514. It is a proceeding that comes within the police power of the State. This power affects a person either as a man or as a citizen in his public or private capacity.

Various illustrations might be given of this, like a proceeding in bastardy which has been adjudged by our Supreme Court not a criminal proceeding, notwithstanding in such case there is a complaint, warrant of arrest, issue of guilty or not guilty, and punishment even by imprisonment in certain cases. State vs. Worthingham, 23 Minn. 528.

Conviction refers to civil as well as criminal proceedings. Burrell's Law Dictionary, vol. 1, p. 282.

Analogous to this power is the authority vested in a city council to impeach, try and remove city officers and disqualify them to hold any corporate office. Dillon. M. C. 219.

The Governor of this State may remove various officers whenever it appears to him by competent evidence that such officers have been guilty of malfeasance or non-feasance in the performance of their official duties, and he alone determines their guilt or innocence. Gen. Stat. 165. The officer answers for his crime or misdemeanor or corrupt conduct in office. The right of trial by jury is denied him and he is even deprived of the poor consolation of being tried by the court of impeachment. The evidence is taken by commissioners who report it to the governor, and if the officer is found guilty he is removed from office. For years this has been the law of this State. Upon this law different officers have been removed from office. There is the great constitutional bulwark of trial by jury if these proceedings are criminal. Has the Governor been treading upon a bed of quicksand during these many years, when he has removed these rascally and unfaithful public servants? Is this statute law unconstitutional and void? Certainly it is, if removal from office is a criminal proceeding.

Any office created by statute law of this State, including its elements may be discontinued or abolished by the legislature at any time, and

the incumbent has no remedy, even though the office be a valuable one. 18 Minn. 199.

Abolishing an office is as fully a criminal proceeding as removing the incumbent. Office is not a right or privilege of any citizen of this State, as we have already shown. The State is the principal; the officer the agent. If the officer is unfaithful, he is discharged and the State says, "Your services are not wanted any further, and we will not employ you again."

Take another illustration. An attorney may be suspended for wilful misconduct in his profession. He is an officer of the court. If he violates his official oath or is guilty of corrupt and fraudulent conduct, or ceases to possess a good moral character, and for ill practices against the principles of justice and common honesty, he may be suspended or disqualified as an attorney. Weeks on Attorneys, chapter 4.

"Expulsion may be proper when there has been no contempt at all as in cases of brutality, *drunkenness*, and the whole circle of infamous crimes." "The end to be attained is protection, not punishment." Same authority.

Now, the right to practice his profession is as dear to the lawyer as the right of a judge to hold office. The prosperity of an attorney's whole life may depend on his practice or right to do so. The fruits of early training may be destroyed. The prospect of years of toil and practice may be blasted, bringing destitution to himself and family, and disgrace upon himself, yet this common law and statutory power has existed for ages. Who ever heard of its being a criminal proceeding? What a startling anomaly it will be in the jurisprudence of this country when a drunken judge can summarily remove from office a drunken attorney for that cause, and yet the judge can escape because it is no offense, or because the removal of one is a civil proceeding and the other is a criminal action! Such absurdity is unparalleled.

The rule, therefore, of reasonable doubt, does not apply to this proceeding. That was a rule of the common law which was tender in favor of persons tried for crime which affected their lives or their liberty when cruel punishments were inflicted for very trivial offenses. Now when the reason for the rule ceases the rule itself ceases, and the great weight of authority now is, that where a criminal act is charged in a civil action, it need not be proved beyond a reasonable doubt; 8 N. W. Reporter, 675; 9 N. W. Reporter, 893. That is, a party may be held to answer for assault and battery, larceny, robbery and many other criminal offenses, by a civil action, and to sustain the action all that is required is a preponderance of evidence.

In all criminal prosecutions the accused has a right to be confronted with the witnesses against him, yet it will hardly be claimed by any sane person that the State could not send a commission to take the deposition of a witness against the defendant either in or out of the State, whether he was present or not at the giving of such evidence.

It is true we are to do justice according to law and evidence. So our courts, in equity practice, when a referee is appointed to take testimony and report it to the court. Such was the old chancery practice, when the report was made to the court by a master in chancery. So the governor removes officers upon evidence taken by commissioners. The witnesses are never seen in such cases by the tribunal that finally determines the action, no matter how vital the question or great the amount

in controversy. Occasionally, by reason of sickness or other unavoidable cause, a member is absent, but with a sworn stenographer to take the testimony and the respondent present during the trial, the evidence can be examined by the court like the report of a referee, master in chancery, or commissioners. This is not only common usage but common sense. Some impeachment cases have lasted for years; a majority of them lasts for months.

A construction of the law that requires each member to listen personally to every word of evidence as it falls from the lips of the witness, exhibits an inexcusable ignorance. It never has been done in any impeachment case, and it never will be done by any senatorial body sitting as a court of impeachment. The Judge himself, who is being tried, has decided many a case, without doubt, upon report of a referee, and upon evidence given by witnesses he has never seen or heard.

This brings us to another point. A district judge may be impeached for "corrupt conduct in office, or for crimes and misdemeanors." What constitutes corrupt conduct in office or crimes and misdemeanors within the meaning of the constitutional provision? The honorable managers, or some of them have argued, that we may impeach and convict an officer for political offenses, that is, for offenses not actionable at law. There is strong authority for this doctrine if we rely upon the English precedents, as well as some American authorities. But I regard such doctrine, as the assertion of a dangerous and arbitrary power. It will be idle for us to boast of our civilization, of the advancement we have made in the progress of civil liberty and of the superiority of our republican form of government, if an officer can be impeached and removed from office for reasons of a purely political character. It is said that political power is not partizanship; but what is it? What is meant by a political or governmental power, that is exercised for the removal of officers? Can you go beyond the law and the evidence? Your oath says not. Where does this political power rest? Where is its fountain head under our constitution?

Corrupt conduct in office, or crimes and misdemeanor, are legal offenses. Can you go beyond these and revel in the realms of undefined power? If so, who shall determine the boundary line that divides liberty from despotism? If we travel in any other pathway than that of law and evidence, will we not be bound in the meshes of unrestrained despotism and bring public odium upon ourselves? Our constitution is a limitation upon the power of the people as well as the government. It protects the weak as well as the strong. While the people may not be enslaved, the individual must not be persecuted; while the life-blood of the nation must be preserved, no death-blow should be struck at the life, liberty, property, or reputation of the individual citizen. If the individual offends against the majesty of the law, he must answer, not because it is a political, but because it is a criminal offense. If an officer, he must answer only for a crime, misdemeanor or corrupt conduct in office. These offenses do not rest in the whims, caprices or passions of an irresponsible body. If so, perchance, before one tribunal to-day certain acts might be punished, which, to-morrow, before another tribunal might be adjudged innocent or perhaps commendable. Through the omnipotent decree of the English court of impeachment men have been beheaded and officers punished for political offenses. We want no such despotic doctrine to find a foot-hold in this republic of ours. I speak

of political offenses as distinguished from criminal acts or known public offenses. Treason, in one sense, may be a political offense, but it is punishable, not for that reason, but because it is a crime. Of what it consists has been wisely defined, because, in times of great political excitement, attempt might be made to impeach an officer for acts or utterances which in law would not constitute public offenses. Political impeachments are too dangerous for the life or safety of a free people. They are seed plats of communism and mob-law. Done under the assumed forms of the law, it might be a mere day glory, but the deadly poison would be there still, but more covertly and more dangerous.

The perpetuity of this nation rests upon its adherence to law. No political inquisition should be allowed to inject its obnoxious doctrine into the administrative functions of this government. It will be a day of unutterable woe to this Republic if amid the shifting strength and power of the different political parties, the doctrine becomes established that you may punish not a criminal offender but a political foe. Then he who precedes for reform in governmental matters will be impeached for his presumption. Criticisms upon the administration in power will be construed to be treason and we shall have taken the primal step towards a revolutionary and Mexicanized government,—for,

> "'Twill be recorded for a precedent,
> And many an error by the same example
> Will rush into the State."

Let us examine this constitutional provision, "Corrupt conduct in office, or crimes and misdemeanors." Crime is an act committed or omitted, in violation of a public law forbidding or commanding it. Blackstone says that while the words crimes and misdemeanors are, properly speaking, synonymous terms, yet, in common usage, the word crime is made to denote offenses of a deeper and more atrocious dye, while misdemeanors comprise faults or omissions of less consequence. Under our constitution, crimes, misdemeanors and corrupt conduct in office, are impeachable offenses. Such offenses may consist in the violation of, first, a constitutional law, second a statutory law, and third, the common law.

Now, what is the meaning of corrupt conduct in office? It is not a common law phrase, and we look in vain for adjudicated cases explicitly defining it, in its broadest sense, although certain acts have been declared corrupt conduct.

It may, however, be asked why examine these questions when the articles of impeachment do not charge corrupt conduct in office, but only crimes and misdemeanors? I answer, it is quite immaterial what offense the articles of impeachment accuse the respondent of having committed, so far as the particular name of the offense is concerned. The material and vital question is, do the articles state or allege facts that constitute crimes and misdemeanors or corrupt conduct in office? In State vs. Hinckley, 4 Minn., 345, our Supreme Court say: "The facts constituting the offense must be stated, and from the facts the law determines its nature, which cannot be affected by any terms or appellation which the grand jury may apply or fail to apply to it."

No matter, then, whether the respondent is charged, in terms, with corrupt conduct in office, but do the facts stated charge him with such conduct? Because he is charged with misdemeanors, either in or out of

office, in express terms, it seems to me does not exclude the right of this court to hold him responsible for corrupt conduct in office, if the facts stated and proven constitute the offense, by whatever name they may be called.

The answer of the respondent denies corrupt conduct in office, showing that he understood the articles of impeachment to charge him with such conduct.

In an indictment against an officer or justice for corrupt misbehavior, it need not be charged to have been done knowingly, where the act is one of negligence. Wharton's Cr. Law, sec. 1573. It is necessary for the State that it should have at its command, knowledge and vigilance in the guardians of its liberties and treasuries. In those holding public offices, want of knowledge or vigilance, resulting in negligence, is a penal offense. Same authority, sec. 1582.

The rule laid down by Archibald, in his Criminal Pleading and Practice, vol. 2, p. 1333, is that a person holding a public office has been considered as amenable to the law for every part of his conduct, and obnoxious to punishment for not faithfully discharging it."

Bouvier, in his law dictionery, vol. 1, p. 330, defines corruption, as something against law. It is not true, as many suppose, that the words "corrupt conduct in office," as used in our constitution, relate only to a pecuniary or valuable consideration. It means far more than mere bribery. The constitution of the United States contains the word "bribery," as an impeachable offense, but the term in our State constitution is "corrupt conduct in office." The change is very significant. These words mean, as Archibald says, that a public officer is amenable to the law for every part of his conduct, whether act of omission or commission.

The oath that the Judge took is in the precise words as follows: "You do solemnly swear that you will support the constitution of the United States, the constitution of the State of Minnesota, and discharge the duties of your office faithfully and impartially, according to your best leaning, judgment and discretion. So help you God." This oath is a part of the statute law of the State, and its violation, a public offense. The constitution requires that a judge be learned in the law. This oath, and each word thereof, and the requirement of the constitution, have a meaning weighty and significant. The mandate of the law requires honesty, capability, intelligence, discretion; but if the Judge is drunk, he cannot be faithful in the administration of justice. His judgment may be that of the despot or imbecile; his discretion the wild ravings of the maniac, and his learning useless in the utterings of the idiot. Would that be pure conduct in office? Would it not be corrupt conduct? What is corrupt conduct? It means broken, contaminated, depraved, debased, wicked. Not alone acts done wickedly, viciously, with a wrongful intent; but acts of omission may be as corrupt as acts of commission. If a judge is drunk publicly, on the bench, he invites and encourages a disrespect for the law. Drunkenness in an officer, is impurity, corruption, criminal, especially if such officer voluntarily puts himself in such a condition, that he is incapacitated from discharging the duties enjoined upon him by law.

In the case of the *State* vs. *Flinn, et al.*, 3 Blackford, 72, this question of corrupt conduct is discussed. A justice of the peace issued a summons before a cause of action had accrued, received a false return, rendered a

judgment, allowed interest before the debt was due, and issued an execution immediately, and defendant's property was sold at a sacrifice. The court held this corrupt, although there was no bribery or pecuniary consideration to induce such conduct. The court say: "The faithful discharge of duty involves not only the integrity of the justice, but attaches to the various duties of his office. Is palpable and gross corruption, a *faithful* discharge of duty? It is a violation and abandonment of duty,—a disregard of the trust reposed, its prostitution to the gratification of the worst passions, and the application of a power pure in itself, to the production of the greatest possible evil."

To well and truly execute the duties of an office, includes not only honesty, but reasonable skill and diligence. If they are violated, from want of capacity or want of care, they can never be said to have been well and truly executed. 1 Peter's U. S. report, 46.

Where a justice of the peace heard a cause at an hour different from that fixed in the notice, it was held that he was guilty of corrupt conduct and that he had not acted faithfully and impartially. 12 Iowa 496. The court say: "If a justice be so permitted to act, and such conduct is tolerated by law, it brings the judicial department into merited odium and contempt."

If the respondent was drunk at Waseca, to such a degree that he was incapacitated from discharging his duties properly, and thereby causing an adjournment of the court, he was guilty of corrupt conduct in office. If, while holding court at any time, he was confused in his rulings, or acted illegally, or became incapacitated to properly discharge his duties by reason of voluntary intoxication, he was also guilty of corrupt conduct in office. So, too, if his assault upon a person who went before him to be naturalized, and his threat to fine a suitor in his court if he did not plead gullty to an indictment, if caused by the voluntary use of spirituous liquor, whereby he became incapacitated from discharging his duties faithfully, was corrupt conduct in office. The judicial acts of a judge are official acts, whether done in or out of court, whether in term or in vacation. They are the acts of the Judge, not of the individual. If done with want of care, skill, or capacity rendered so by the voluntary act of the Judge, he is punishable.

The other impeachable offenses, crimes and misdemeanors, are acts which may or may not be done by an officer while acting in his official capacity; and the same criminal act which constitutes a crime or misdemeanor, might also be corrupt conduct in office; as for instance, bribery. That would be corrupt conduct in office beyond question, and yet, under our laws it is a felony.

It will thus be seen that our constitution is very comprehensive as to impeachable offenses. Its object is to secure official purity. Government exists through its officers, and they should be pure as men, as well as officers. The corrupt man will soon become the corrupt officer, and no government can long endure where, through the acts of its officer, corruption thrives and crime fattens. No corrupt man is fit to fill a place of public trust or honor. To guard against impurities creeping into governmental affairs, the constitution punishes any officer for an offense committed by him either in or out of office, that is while holding a place of public trust, he is required to be guiltless of any public offense, whether done in the line of an official act, or otherwise. The murderer is not to be judge, The judge is the representative of the

stability and good order of society. In him repose the majesty, the strength and power of the law. These called into active exercise, protect the life, liberty and property of the citizen. Can such a representative commit murder and say that it is not an impeachable offense? Years might roll around ere his final trial, criminally, and during all that time can such an officer occupy the judicial bench, with robes stained with the blood of his fellow man? Could he commit highway robbery day after day and defy the law of impeachment? I do not believe it. Our laws are not a farce and a mockery, in this respect. There is protection against crime and corruption and debauchery, though done by an officer, even though a judge. There is law enough to punish the guilty, and if the offender escapes, it is not for want of sufficient law, but a lack of duty in those who administer it.

With this view of the law, let us inquire whether the respondent has committed a crime or misdemeanor even though not acting at the time in the discharge of his official duties. He is charged with being drunk at various times while acting as judge. Suppose these various acts of drunkenness are proven, it is immaterial whether he was acting officially or not; the question is, was he actually drunk at the times and places alleged; not drunk as an official but personally and individually drunk, frequently and in an open and notorious manner. He might be drunk as an officer and drunk as an individual. That it is an impeachable offense to be drunk, while acting, or attempting to exercise the duties of his office, will be referred to hereafter. But proof of his having been drunk as an officer is competent evidence to prove him drunk as an individual.

It is true that each article, or most of them, conclude by alleging that the respondent was thereby "guilty of misbehavior in office and of crimes and misdemeanors in office," yet these are mere conclusions, based upon the alleged facts. The same may show that he was guilty of an offense while acting as a judge or as an individual. Each act, therefore of proven drunkenness, may be used to establish the fact that he was frequently, openly, notoriously and publicly drunk, individually and personally.

Competent evidence, introduced generally, in an action, may be used to establish any fact alleged, if pertinent and material.

Now, it is immaterial whether he was habitually drunk during the time alleged. That he is an habitual drunkard within the legal definition I have no doubt. But it is immaterial whether he is or not, so far as article eighteen is concerned. If he be proven, under that article, to have been frequently and openly drunk, either while acting officially or as an individual, he is guilty of a misdemeanor, providing that drunkenness, in either of those respects, is a public offense or misdemeanor.

I mean if he was habitually drunk he is punishable, and if frequently and openly drunk at various times, he is also guilty under that article, if such conduct is impeachable. Is open, public and notorious drunkenness, by any person, a crime or misdemeanor at common law?

The rule laid down by Wharton in his American Criminal Law, Vol. I., p. 3, is that at common law, whatever openly outrages decency, or disturbs public order, or is injurious to public morals, or is a breach of official duty, when done corruptly, is the subject of indictment. And among the many offenses that he cites as coming within the common

law definition of crime is offensive drunkenness. Not by the officer, but by the individual.

In Russell on crimes, Vol. I., p. 45, the rule is laid down that whatever openly outrages decency and is injurious to public morals is a misdemeanor at common law, as "open and notorious drunkenness." The author says that the in lictment need not charge that the defendant was a comm n drunkard and a nuisance to society. It is enough if he was openly and notoriously drunk. Any offense which, by its nature and example, tends to general corruption of morals is indictable at common law. Same authority, Vol. I., p. 44.

It is not necessary that there should be actual force or violence to constitute an indictable offense. I. Peter's R., 390. The corrupting example is sufficient. The only authority that seems to question the applicability of the law to drunkenness is Bishop in his criminal law, Vol. I., Chap. 27, where he says: "There are old English statutes early enough in date to become common law with us making drunkenness punishable or finable, yet they seem not to have been regarded as of common law force in this country." No authority is quoted that sustains this assertion, and it is entirely unwarranted by the American decisions. Even in the same chapter Bishop says that the law deems it wrong for a man to cloud his mind, or to excite it to evil action by intoxicating drinks; and he adds, that the jurisprudence of this country deems drunkenness *malum in se*, that is, criminal in itself, by the common law. How the assertion that punishment for drunkenness has not been regarded as of common law force in this country could find its way into any respectable criminal work, so directly in conflict with the author's adverse statement, and of various other authors of criminal works, and of all the adjudicated cases, is a mystery incomprehensible to lawyer or layman. Not only this, but in his work on criminal procedure, Vol. 2, Sec. 257, he says: The common law offense of becoming a nuisance by acts of drunkenness may sometimes be made the subject of indictment, and he there furnishes a common law form for indicting a man for being openly and notoriously drunk.

Barbour in his criminal law page 239 says: Drunkenness is also indictable, if it is open and exposed to the public view.

Archibald, in his Criminal Practice, Vol. 2. p. 1006, says: If a man be frequently and publicly drunk, he may be indicted as a common nuisance. As sustaining this position, I refer the following authorities: *State* vs. *Waller*, 3 Murphy, N. C. 229, decided in 1819. Henderson, Judge, says: "Private drunkenness is no offense by our municipal law. It becomes so by being open and exposed to the public view to the extent that it becomes a nuisance. This was a decision upon the common law."

State vs. *Tipton*,—2 Yerger 542,—supreme court of Tenn. 1831: "Public drunkenness is an indictable offense. The pernicious influence of an evil example is plain to every reflecting mind, and the powerful influence of this vice upon society, not only in its effect on the relations of private life, but as also the origin, the fomenter and the promoter of the greater portion of the public crime of the country proves it to be what it is, an indictable offense."

State vs. *Smith*, 1 Humphrey, 396, supreme court of Tenn., 1839, Green, J.: "It is laid down in Blackstone's commentaries, that sobriety is a duty that every man owes to the community. It is, therefore, an offense to good morals, for a man to be publicly drunk, and for this offense he may be indicted."

State vs. *Bell*, 2 Swan, 42, same court say: "It would be tedious to enumerate the cases in which offenses have been held indictable as *contra bonos mores;* a few will suffice. Public drunkenness and others. *State* vs. *Graham*, 3 Sneed, 133, 1855, same court again say: A single act of notorious or public drunkenness was an offense against good morals until changed by statute. This referred to the common law.

State vs. *Figures Smith*, 3 Haskell, 466, 1872, Supreme Court of Tenn., Sneed, J.: "Prior to the act of 184, C. 94, it had been uniformly held that a single act of public drunkenness, from the use of intoxicating liquors, was an indictable offense at common law." After referring to the repeal of the statute law, the Judge says, the principle of the common law, therefore, which made a single act of public drunkenness indictable, is in full force in this State.

Now, let us examine the question, whether it is an impeachable offense for an officer to be drunk while in the discharge of his duties, or to be so intoxicated that he is frequently, or occasionally, disabled from discharging his duty. Drunkenness is alcoholic poisoning. It is the cause of nearly half the idiocy of this country; more than fifty per cent. of crime, at least fifteen per cent. of insanity, of innumerable accidents, and a large percentage of the suicidal acts may be traced directly to its effects. Now, whatever invites or nourishes crime or immorality, whatever weakens the bonds of society and creates disorder, or lessens the security of the people, should be treated as criminal. The State is deeply interested in the repression of disorder and the upholding of morality. To this end the law should be observed with fidelity and the rules and forms of administrative justice should be applied carefully and faithfully. The judge upon the bench must interpret and apply the law and adjust the wavering balance, that right shall prevail and wrong not triumph. He is the arbiter and guardian of our judicial rights. It has been truly said: "Legislatures erect the temple of justice but judges preside therein."

Each judicial or official act of the Judge, whether on or off the bench, should be done with care skill and ability, as well as with integrity.

The following are principles of the common law applicable to official duty: If a public officer wilfully or grossly neglects the duty of his office, and more particularly where such neglect operates as a hindrance of public justice, he is guilty of a misdemeanor at common law, and may be indicted accordingly, and punished with fine and imprisonment. Burns' Justice, vol. 3, page 1097; Archibald's Criminal Practice, vol. 1, p. 591; Russell on Crimes, vol. 1, chap. 14.

Gross negligence in the discharge of a fiduciary duty is evidence of fraud and misbehavior in office. Russell on Crimes, vol. 1, p. 206, note 1.

Wharton, in his late edition of American Criminal law, vol. 2, sec. 1583, says: It is an indictable offense for a public officer voluntarily to to be drunk when in the discharge of his duties. No harm may come to the public from his *misconduct*, but he has put himself in a position from which much harm *might*, and for so doing he is amenable to penal justice.

Again he says: "Being intoxicated with spirituous liquor, while in discharge of his official duties, is a sufficient *misbehavior* for which a justice of the peace ought to be amerced and removed from office."

Bishop, in his work on Statutory Crimes, sec. 967, says: "It has also

been held that a grand juror is indictable at the common law for getting drunk when on duty, thereby disqualifying himself for the office of a juror. And he adds that the same proposition doubtless applies to other officers, on the general ground of a misbehavior in office."

Dillon, M. C., vol. 1, page 275, says: "Habitual drunkenness, disqualifying from performance of duty, is a sufficient cause to remove an alderman or officer charged with magisterial duty."

The following decisions sustain this elementary doctrine: 3 Bulstrode, 189, decided in 1688. Chief Justice Coke says: "If a magistrate be a common drunkard, and not by accident, he is an unfit person for government, and there is good cause to remove him."

In 3 Salkeld, 231, decided in 1694, court of kings' bench, says: "Habitual drunkenness makes a man unworthy to be a magistrate and disables him in point of government, and the removal of an alderman was sustained on the ground of his being a common drunkard." These are all at common law.

Pennsylvania vs. *Keffer*, Penn., 1795: "A grand juror was so intoxicated as to be disqualified from discharging his duty. The court held that it was his duty not only not to disqualify himself but to take reasonable care to preserve himself in a state for doing duty."

Commonwealth vs. *Alexander*, 1808, General Court of Virginia, Virginia cases, 156; 4 Henry & Munford, 522: "Defendant was prosecuted for taking his seat as a magistrate on the bench of the county court of Loudon county, and acting as a member of said court while in a state of intoxication from the drinking of spirituous liquors which rendered him incompetent to the discharge of his duty with decency, decorum and discretion. and disqualified him from a fair and full exercise of his understanding in matters then judicially before him. The six judges unanimously decided that a judgment of removal from office should be rendered against him and that he was guilty of misbehavior in office."

The commonwealth vs. *Mann*, Virginia Cases, Vol. 1, p. 308, Nov. 11, 1812. Defendant was charged with drunkenness while acting as a magistrate, and was thereby guilty of misbehavior in office. He was convicted in the Superior Court and upon appeal to the general court the judgment was affirmed by the five judges.

In addition to all this, we have a statute passed in 1852, which is as follows:—"When 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 specific provision is made for the punishment of such delinquency or malfeasance, is a misdemeanor, punishable by fine and imprisonment."

Upon principle, then, and upon numerous authorities, the correct rule seems to be this:

1st. If any officer is drunk while in the discharge of his official duties, he is guilty of misbehavior in office.

2nd. That misbehavior in office is a misdemeanor, both at common law, and under our statutes.

3rd. That a misdemeanor, under the constitution, is an impeachable offense.

These propositions of law cannot be successfully assailed, and it is believed that no court ever decided otherwise. And the assertion is ven-

tured that no responsible court, that understands the law, will ever decide to the contrary.

The court, in deciding upon the demurrer to the first sixteen articles of impeachment, without a dissenting vote, held that all of the charges in those articles were impeachable offenses,—at least if there was a dissenting vote, I did not hear it. Is this court now going to retrace its steps, without any law, without authority or precedent to justify them in so doing? Have these months of weary listening to this tedious trial, and this great expenditure of money, been spent only for us now to present the humiliating spectacle or reversing our own legal decision, made deliberately, and after full argument? Not that the respondent should be convicted upon such ground, but that the court should not change its decision, solemnly made, unless it clearly appears that it acted erronously. But no authority has been produced that drunkenness in an officer while acting officially is not a public offense, because no such law exists, or ever has existed, and no such law can be found.

Upon the evidence in this case I shall not dwell. It presents a condition of affairs unparallelled in the jurisprudence of any civilized country. Very much of the respondent's evidence has confirmed the charges in the articles of impeachment, and it is painfully evident that the evil and corrupting example of drunkenness has left its blighting, demoralizing influence in far too many places throughout the ninth judicial district. The history of this case, of the scenes proven, of the vicious and wicked doctrine advocated by some of the respondent's counsel,—worse than leprousy itself,—will go down to posterity as the darkest page in the history of this fair State of ours. Of all these charges against respondent, he has not denied one. A witness himself upon the stand, we looked for a denial or explanation of these charges, but his lips have remained sealed as though the silence of death had fallen upon him. What can we, what shall we, infer from that silence? Shall it be guilt or innocence?

The law of this case is unquestionably against the respondent. No man should defy it or disregard it. To me, the path of duty is plain. The right of the people to have a pure and upright judiciary must override the personal and political friendship that has existed between the respondent and myself for nearly a quarter of a century. The drunken scenes testified to, in which the respondent has been the main actor, bring the blush of shame to every respectable citizen of the State. They are a disgrace and burden too grievous to be endured any longer. And there is no evidence of repentance, no hope for reform. Unwarrantable as his conduct has been, the same spirit meets us here, and his counsel defy the law and tell us that we are powerless in the matter. Nor is this all. We are not only told that a judge may become maudlin drunk upon or off the bench and there is no remedy, but men high and foremost in the love and esteem of the people of this State, have been violently assaulted in their character by scurrilous and unprofessional language of counsel, because they testified to these drunken and disgraceful scenes. What a scene is transpiring here in the history of this fair young State of ours! Are we dreaming or is this a sad and disgraceful reality? Whither are we drifting to-day? Do we realize what an amazing spectacle we shall present to the world if we allow this muddy current to carry us hopelessly along, ever dark and never to be purified? Can we rear a State with such a judiciary, disorganizing so-

ciety, engendering crime, nourishing immorality, its drunken trail all over the land? Of all human institutions the judiciary is one of the grandest and noblest, but it is tottering from pinnacle to foundation. The storm blast of human passions and human weakness is beating against it, in its fury and its madness.

Oh, it is pitiful, that such a reproach should come upon the law, that justice should be thus perverted, its temple violated, and a great fear come upon the land! A great calamity has already overtaken us; shall we nurse a greater one, with its shame and humiliation? For ages we have struggled for a civilized republic, for a christian land, for pure manhood, for integrity in official life; and now when glorying in the grandeur of the institutions of our country, we are confronted with the startling proposition that a drunken judiciary is honorable and beyond the jurisdiction of human tribunals. If so then the tidal wave of corruption will soon engulph us in its foam and its raging, and the dark stain upon the history of this State will not be washed away in a hundred years; and I now say in the language of another, "When learning shall go down before trickery and cunning, and honor and integrity shall be at a discount, when the judge shall drink with the politician and spend his nights with the gambler and debauchee * * * * who that has pride or decency will practice himself, or rear his child to the bar? All these things may be near, if we shrink from the struggle or forget * * * * * the dangers to which we are exposed."

Senator POWERS. May I ask you a question before you take your seat?

Senator BUCK, D. Certainly.

Senator POWERS. I understand you to say, in substance, that the incumbent of an office is the servant of the people, and that the State is the principal and may abolish an office without regard to the interest or convenience of the incumbent. Is it not a fact, in a case of that kind, that the salary of the incumbent is continued during his term of office?

Senator BUCK, D. I think there was a qualification in my statement to the effect that it referred to statutory offices.

Senator POWERS. Perhaps I did not catch it.

Senator BUCK, D. Any office that is fixed by the constitution we cannot abolish nor can we abolish the salary, except by an amendment to the constitution. I was speaking, by way of illustration, that any statutory office the legislature can abolish, no matter if the incumbent is just elected to it, and no matter how valuable. We can abolish or wipe it out entirely, so that the emoluments shall be taken away from him. We could not abolish a constitutional office unless the constitution were amended.

Senator POWERS. Would not the salary in that case continue during his term, until his term would expire?

Senator BUCK, D. Oh, no. You will find this thing illustrated in this Minnesota report to which I have referred.

Senator POWERS. Another question: In a large number of the cases where the evidence is taken by a referee, where the judge never sees the witness, is it not a fact in those cases that the evidence is written out, read to the witness, and signed by him?

Senator BUCK, D. Sometimes it is, and sometimes it is not. It is not always necessary to sign it, because he takes the oath before he testifies;

but in order to get the proof before the court, we very frequently have him sign it.

Senator POWERS. But it is almost always read to him?

Senator BUCK, D. Yes, that is true; but the point I was making was not in relation to the witness but the tribunal who decided the case, that he did not see the witness or take his testimony.

Senator POWERS. My question was if the testimony was not always read to the witness to test its accuracy.

Senator BUCK, D. Well, that would not make any difference with the point I make—that he don't hear the witness or see his manner of testifying. So with reference to the governor, he may remove officers upon written evidence, without seeing the parties at all.

Senator BUCK, C. F. Mr. President——

Senator WILSON. Mr. President——

Senator BUCK, C. F. I wish to say——

Senator WILSON. I will yield the floor, then. if you wish to make a speech. I prefer to say what I have to say, now, if you will consent to it.

Senator BUCK, C. F. I am entirely willing to yield the floor.

Senator WILSON. Mr. President and Senators: You will bear me out in the assertion that since the commencement of this trial I have occupied but very little of your time, and I do not expect now, by anything that I may say, to influence one vote of this Senate; but I desire to go upon record, that my constituency, my neighbors, and the people of this State may know just where I stand upon this question of drunkenness in official position.

The time having arrived when the Senate, by its vote, is to pass upon the guilt or innocence of the respondent in this case, I desire to state as briefly as I may, the principal considerations that will govern me in pronouncing my vote. This trial has been a long, patient and wearisome one. The majority of the members of this Senate has sat day after day for several weeks patiently listening to the voluminous testimony of witnesses, and the argument of counsel on either side. The respondent has had every favor granted him and his counsel to prepare and present his defense, that has been within the power of the Senate to bestow. He has been allowed the privilege of summoning as many witnesses to disprove the charges brought against him as he chose to call. On nearly every charge he had to meet, he has had double, and in some cases, treble the number to which the State was limited. All the time his attorneys have desired has been allotted to them to present their case exhaustively to the court. I feel glad that this is so. I have from the first been in favor of granting the respondent every privilege to disprove the accusations brought against him. He has not only had double the number of witnesses permitted to the managers, appointed by the House of Representatives, to present the case to the Senate; but his counsel have occupied more than three-fourths of the time of the protracted session of the Senate in examining and cross-examining the witnesses, and making their arguments. I am glad this is true. I am glad that neither the respondent nor his friends can truthfully say, no matter what the result of this trial may be, that he has not had a fair trial. The State owes it to herself to grant to every one of her citizens who may be accused of crimes or misdemeanors, justice and fair dealing, under the laws and the constitution. I have been present every day

during the progress of this trial. I have heard the testimony and have seen every witness who has testified in the case. I have classified, arranged and analyzed the evidence of each witness under each of the charges and specifications. I think I fully appreciate the solemnity of the oath I have taken to decide this case according to the law and the evidence.

The constitution of Minnesota provides that the governor, secretary of state, treasurer, auditor, attorney general, supreme and district judges may be impeached for corrupt conduct in office or for crimes and misdemeanors. It does not say for crimes and misdemeanors in office. It does not mean that. Such a construction cannot be given to the language. If that were the meaning of the phrase, or for crimes and misdemeanors in office, it should have read, for corrupt conduct, crimes and misdemeanors in office. The grammatical construction of the language does not justify the understanding of the clause, in office, after the phrase or for crimes and misdemeanors. That construction being evidently the intention of the framers of the constitution, they contemplated that the above named officers might not only be impeached for corrupt conduct in office, but also for crimes and misdemeanors which they might be guilty of when not in the discharge of official duties. What is a misdemeanor? Webster defines it to be, first, ill-behavior; second, any crime less than a felony. The synonyms are misdeed, misconduct, misbehavior, fault, trespass, transgression. What is misbehavior? Webster defines it to be, "improper, or uncivil behavior, ill-conduct." Ill-conduct is bad conduct, or evil conduct. Now, is drunkenness in a judge, during a regular term of court, either on the *bench* or off the bench, misconduct within the meaning of the constitution? I think it is. From a personal examination of the law on the subject, I have *no doubt of it.*

Is drunkenness in a district judge in public places, on the trains, going to and returning from terms of court, on the streets at night time, visiting drinking saloons at all times of night and drinking and carousing in the company with the "boys," a misdemeanor, or misbehavior, within the spirit and meaning of the constitution? I think such misconduct comes under both the spirit and letter of the provision of the article of the constitution providing for the impeachment and removal from office of certain public officers for crimes and misdemeanors. I have no doubt of it. A man may truly be said to have intemperate habits "if it is his rule to drink to intoxication whenever occasion offers; and sobriety is the exception with him. It is not necessary that he should be drunk every day before his habits can be called intemperate." A "common drunkard is not a regular tippler, but one who is frequently drunk." That is the language of the Commonwealth vs. McNamee, 112 Mass., 285.

"An habitual drunkard is one who has the habit of indulging in intoxicating drink so firmly fixed that he becomes drunk whenever the temptation is presented by being near where liquor is sold." Magahay vs. Magahay, 35 Mich, 210.

Do the habits of the respondent justify us in saying that he comes under this definition? It is in evidence that ever since his election to the office which he now holds, and for several years before that time, he was not able to resist the temptation to indulge in the habit of drinking intoxicating liquors, to the extent of *very* frequently becoming intoxicated. As strange as it may seem, there are very few men who will not

feel insulted if they are called drunkards; and yet, they are notoriously known to be common drunkards by everybody else who observes them any way closely. The rule of law is that people and things are presumed to continue *in statu quo*.

In California, a jury was instructed by the Judge that to render a man an "habitual drunkard," the intoxication must be such as to completely disqualify him from attending to his business avocations;" but the court held that that was laying down the rule in too stringent a manner, and that if there was a fixed habit of drinking to excess to such a degree as to disqualify him from attending to his ordinary business during the principal portion of the time usually devoted to business, it is habitual intemperance. Mahone vs. Mahone; 19 Cal. 627.

The Iowa supreme court had occasion, on an application for a divorce on the ground of habitual drunkenness, to consider this point, and when referring to the Californian case, remarked: "This definition [the one in Mahone vs. Mahone] was sufficient for the case in hand; but we do not understand it to have been held that nothing short of the standard fixed in that case would be. It is not regarded to affirmatively define what constitutes habitual drunkenness; we are not prepared to say, however, if a person has a fixed habit of drinking intoxicating liquors to excess, is frequently drunk, and that such is his condition during the night and in hours not devoted to business, that his wife would not be entitled to a divorce. 22 Vol. Albany Law Journal, p. 66. Now, it strikes me that anything that would give a wife a divorce,—on account of drunkenness in a husband,—would be sufficient to displace a Judge from occupying a position on the bench.

"Drunkenness is a species of insanity." Duffield vs. Robeson, 2 Harrison, 375.

Much effort has been made by the respondent's counsel to make it appear that a judge may become drunk at any other time than when sitting upon the bench holding court. Now, I think there is no time between the period of taking the oath of office, and the expiration of his term of office, when he is not the judge of his district. There is no time when he is not liable to be called upon to transact official business, either by day or by night. The Statute of Minnesota, Young's revision, page 745, chap. 66, section 244, reads: "In addition to the general term, the district court is always open for the transaction of all business; for the entry of judgments, of decrees, of orders of course, and all such other orders as have been granted by the court or judge, except the trial of issues of fact." Hence it is the duty of a district judge to be in a proper condition to transact business. The inference, therefore, is irresistible, that to get drunk while off the beuch, by a judge, is just as much an impeachable offense as to be in that state while on the bench holding a term of court.

A judge of one of our courts occupies one of the most important positions in the State. Every citizen of his district is interested that the man who occupies this position should be one pure in habits, spotless in character, of unquestioned integrity, and a worthy model of imitation for all the young men who know him. In this nineteenth century of Christian and enlightened civilization who desires to see a judge of one of our district courts going over his district, in railroad trains, on the streets, and in hotels, visiting drinking saloons, and other disreputa-

ble places, consorting with revelers, in a disgraceful and notorious state of intoxication.

If I, as a Senator, representing the 16th Senatorial district of this State, should enter this Senate Chamber every day or two, in a state of inebriety, caused by the indulgence of an acquired habit of tippling; with my mind clouded by drink, and thereby disgrace myself, and outrage my constituency, it would become the duty of those who placed me in the position, to unanimously petition me to resign the place I would be disgracing. If this would be true in reference to a Senator, who occupies a position where he can do very little harm, by demeaning himself disreputably, what should be said of a Judge, who is alone to pass upon the important matters and interests of every suitor coming into his court? If a locomotive engine driver, attached to a passenger train, to whose skill and cool judgment is entrusted the lives and limbs of scores of innocent women and children, unconscious of danger, were to voluntarily put himself into a situation by drinking intoxicating liquors, whereby he could not exercise his best and coolest judgment, in case of sudden danger and emergency, he would deserve to be dismissed from his position instantly. Much more does a District Judge, where he allows himself to go upon the bench, a position in which there is placed in his hands the life, reputation, liberty and property of every citizen of his district, in a condition brought about by the voluntary indulgence of intoxicating liquors, whereby he should become unable to exercise his mind and judgment to his best learning and discretion, deserve to be removed from his position, at once; from a position which he outrages and disgraces.

My acquaintance with Judge Cox commenced in 1862—soon after the Indian massacre at Redwood agency, nearly twenty years ago—although that acquaintance has not been *very* intimate, it has always been pleasant I have ever found him to be courteous and gentlemanly; and of course, towards him personally, I can have none but the kindest feeling; but I must not, I cannot let personal friendship weigh against my oath, or my sense of public duty. Should the result of this trial eventuate in the removal of Judge Cox from office, he will have nobody to blame but himself. He will have been held responsible for his own acts. He has voluntarily become the victim of his own folly and a lack of will to restrain his unfortunate appetite. I am known to the people of Minnesota to be neither radical or fanatical upon the subject of temperance. I have opposed every such attempt in my place in the legislature whenever the opportunity occurred; but I have always favored holding every man, public and private, who is a free moral agent, whatever position he may occupy, strictly accountable for his own acts.

What are the facts in reference to the condition and conduct of the respondent in this case, as to sobriety or inebriety, since he has held the office of District Judge of the Ninth Judicial District of the State of Minnesota, as exhibited by the witnesses, during the progress of this trial? The evidence shows that if one were to place his finger upon the map of the Ninth Judicial District of Minnesota anywhere, the drunken trail of this respondent might be discovered. The witnesses whose testimony prove the charges in the case, (and among whom are some of the most distinguished citizens of Minnesota,) are ex-Chief Justice Thomas Wilson, Judge M. J. Severance, Robert Taylor, Sumner Ladd, B. F. Webber, M. D. Collester, B. S. Lewis, F. S. Livermore, J. B. Hayden,

Frank A. Newell, C. C. Goodenow, John Lind, S. L. Pierce, A. J. Lamberton, James Thompson, S. W. Long, Thomas Downs, Ole Skogan, C. M. Wilcox, Geo. Miller, Geo. A. and A. G. Chapman, A. C. Mathews, M. B. Drew, C. E. Patterson, A. C. Forbes, John A. Hunter, E. and Geo. Kuhlman, A. Wallin, A. Blanchard, Geo. W. Somerville, Ed. Casey, P. S. Clancey, Thomas George, G. J. Lidgerwood, J. M. Liscomb, O. P. Whitcomb, J. A. Everett, P. Walleston and Hon. Richard Jones.

I do not propose to comment upon the evidence, either for the prosecution or the defense. I do not feel justified in saying that I believe any of the witnesses have lied, or have desired to prevaricate or misrepresent facts, as they have observed them. I will simply call the attention of the members of this Senate to the character of the witnesses, especially to the majority of those for the prosecution, and also to the opportunity of the several persons testifying, for observations and conclusions. It should be remembered that the former swore directly and positively to what they saw and the conclusions which they came to by actual observation. The latter testified negatively, to what they did not see, and what they failed to observe. In my judgment, the two cases are similar to the following supposition: Two or three persons are in a crowd on the streets; they testify as to an affair that occurred at a certain time and place which they witnessed. A dozen other persons might be produced who would swear just as positively that they were in the same crowd, at the same time and place, and that they did not observe any such affair as the two witnesses had testified to. There you have the whole thing in a nutshell. Which witness would be in the more favorable position to observe the condition of a judge on the bench: The experienced lawyer who is trying a case before him, standing immediately before him, addressing him, and closely scanning every expression of his features, or one who comes into court as a spectator, and casually observes him? I need not remark further upon this matter. All the members of the court, who were present, had an opportunity of judging between the two classes to which I have referred, and to judge of the character of the several witnesses and the weight that should be given to their testimony.

Fellow Senators, there is such a thing as right and justice. Whatever else is transient, right is eternal. Many men may be unconscious of the existence of an all-seeing God; but justice and judgment are his habitation.

In approaching the determination of this case we each have a duty to perform which we may not shirk. Each must decide for himself, in the light of his oath and conscience what his duty is. The eyes of the whole State are upon us. The outrages and the wrongs suffered by the people of the Ninth judicial district, appeal to us to redress the evils they have suffered from the disgraceful conduct and disreputable practices of this respondent. The result of our decision will affect the moral sentiment of this young and growing state for a generation to come. Our decision will stand, and continue to be a part of the history of this great State, when all of us who have had any part in it, will sleep in the dust. I feel unwilling that my children should blush with shame by seeing their father's name recorded as having voted to continue a judge in office whom the Hon. Richard Jones said had disgraced himself and the judiciary of the State. I feel unwilling that the people of the State of Minnesota should see that I can excuse or palliate in one occupying a high

official position such crimes and misdemeanors as have been charged, and in my judgment, proved against this respondent. I am compelled, therefore, in sorrow, and not in any spirit of hatred, prejudice or ill-feeling to vote guilty upon some of the charges against the respondent.

Senator BUCK, C. F. Mr. President, I hesitate in following in the wake of the distinguished gentlemen who have made such able arguments in favor of the conviction of the respondent, and especially do I hesitate to follow in the wake of the very able opinion read by the solid and substantial and able Senator from Blue Earth, (Senator Buck, D.) But as I have made up my mind how I shall vote when the Secretary reaches my name in the final and important roll calls in this case, I wish in common with other Senators to give the reasons and to state the principles upon which my action is based. And in order to make my explanation more intelligible, or as intelligible as possible, I will ask the attention of the Senate to the constitution of this State—the ground-work of our action here,—that instrument which gives us our authority and which limits our power. That instrument declares that certain officers, and among them judges of the supreme and district courts may be impeached for "corrupt conduct in office, or for crimes and misdemeanors." Now, in order to justify a vote for conviction in this case, it was incumbent upon the managers upon the part of the State to show, I think, beyond a reasonable doubt (notwithstanding the Senator from Blue Earth differs with me) that the respondent has been guilty of corrupt conduct while acting officially, or upon the other hand, that he has committed some crime or misdemeanor.

I cannot agree with the position taken by the counsel for the respondent here, and I think the position taken by some of the Senators, notably the Senator from Ramsey—the broad Senator from Ramsey,—and as they are both pretty broad, I will say the broadest Senator from Ramsey (laughter),—that this body ought not to take cognizance and would not have jurisdiction in case an officer during his official term should commit a crime or misdemeanor unless connected with his official duties.

I am very happy to agree for once with the Senator from Blue Earth on that subject. I believe that the builders of our organic law used such language as they intended to use and that the language that they did use is susceptible of but one construction, and that an officer may be impeached for corrupt conduct in office or for crimes and misdemeanors. That is, if an officer, during his official term, should commit a crime or misdemeanor, although not connected with his official duties, then this court would have jurisdiction. If this construction of the constitution be correct, then there are two or three very important questions to be considered by this body, by this court or by the Senate. I am not particular, so far as my argument goes, about that question.

One question is what is corrupt conduct in office; another, what are crimes and misdemeanors, and then comes perhaps the final question, and the important one, whether the respondent has been guilty of either. Now I apprehend it will not do, Mr. President, for every Senator to erect a standard of his own by which to judge of corrupt conduct in office or to determine, without any reference to the jurisprudence of the country, what are crimes and misdemeanors; on the contrary, I suppose we must adopt those definitions of words and phrases which have been adopted by the great jurists of the country in authori-

tively construing constitutions and laws. If that is the sense in which corrupt conduct must be used here, then corrupt conduct in office means dishonest conduct while acting in an official capacity; corrupt conduct in office must mean, then, venal conduct while in the discharge of official duty; it means being actuated by mercenary motives, or motives of hatred or of friendship, whereby the rights of others are affected.

The Senator from Blue Earth (Senator Buck, D.) has referred to Bouvier and his definition of the word corruption. He did not read it all and as it is necessary for me in this argument, I will read it.

Bouvier, in his Law Dictionary, defines corruption in this way: "Official corruption is an act done with intent to give some advantage, inconsistent with official duty. It includes bribery, but is more comprehensive because an act may be corruptly done though the advantage to be derived from it be not offered by another." And that is the sense in which the term official corruption is used in the science of law in this country, in the legal business of the country and in the jurisprudence of the country. If an officer, during his official term, shoul l cheat his neighbor in a horse trade I hardly think we would be justified in convicting him of corrupt conduct in office; if an officer, during his official term, should rob a hen-roost, in the dead of night, I do not think we would be warranted in saying that he had been officially corrupt; and even if a Judge should become intoxicated, and intoxicated on the bench, and act in a disgraceful maner, if you please, we are not warranted in convicting him of corrupt conduct in office, because in law there is not the first element of corruption in the simple act of getting drunk. So far then as corrupt conduct in office is concerned, that clause in our constitution has not been violated unless the position taken by the Senator from Blue Earth, (and I think which was taken by one of the managers, —and perhaps the same notion is entertained by other Senators) and that is that when E. St. Julian Cox was elected Judge of the Ninth Judicial District he took upon himself an oath or obligation that he would discharge the duties of his office faithfully and impartially, with his best learning, judgment and discretion (I wish that the gentleman would see that I get this position right) and that afterwards the said E. St. Julian Cox rendered himself incapable in consequence of the inordinate use of intoxicating liquors from bringing to bear his best learning, discretion and judgment, to the discharge of his official duties and that consequently he violated his oath, broke the law and is guilty of corrupt conduct in office.

Now, I submit to Senators that it requires a terrible stretch of the imagination to reach that conclusion, and if I am permitted to relate an anecdote, it will illustrate just what I think of that conclusion. An old maid who had reached and passed the noon-day of her existence and had gotten part way down the hill on the other side, was found one day weeping bitterly by the side of a red-hot oven. I suppose it was one of those old-fashioned brick ovens that we don't see very much of now-a-days. And when she was interrogated as to the cause of her grief, she said that she was thinking that if after awhile she should get married and should be blessed with a nice little girl, and that little girl should crawl into the oven and burn up how terrible she should feel. [Laughter.] Now, Mr. President, there is just about as much sense in that old maid's trouble as there is law in that conclusion. Why, sir, when the

people of the ninth judicial district elected E. St. Julien Cox judge, they took him as he was, and when E. St. Julien Cox took upon himself the oath required by law, the law took him as he was; took him with his habits, took him with his infirmities, took him with his whole character, and if you can convict this respondent on any such pretense, then there is not a judge sitting upon the high judicial bench in this country, from Chief Justice Waite down, that could not be convicted by this tribunal if that doctrine is to prevail.

Mr. President, show me the judge who has so regulated his life, who has so regulated his habits, who has gone to bed at the right time and got up at the right time, who has taken the right kind of nourishment at the right time, and in the proper quantity, and in the proper place so as to develop his highest and best understanding, and I will show you, Mr. President and gentlemen, the only judge who could not be impeached by this tribunal. Why, sir, if that is the law, judges are violating the law every day. How many of them have so gorged themselves with baked pork and beans and corned beef and cabbage, as to render their brain as lifeless and torpid as a rattlesnake in winter! But nobody would think of impeaching a judge for any such excess. It seems to me, sir, that that position is too trifling to be seriously entertained. I do not believe that it could bear for a moment the test of judicial scrutiny. Then, Mr. President, E. St. Julien Cox has not been guilty of corrupt conduct in office.

The only remaining question then is, has he been guilty of a crime or misdemeanor? And that question has been narrowed down by the action of the managers in this case, and by the action of the Senate, into the simple proposition whether drunkenness is a crime or misdemeanor.

Now the statute of our State divides crimes into two classes,—felonies and misdemeanors. It defines a felony to be an offense which is punishable with death or which may be, in the discretion of the court, punishable by confinement in the penitentiary. That, I think, is very near the language. All other public offenses are misdemeanors, and as Judge Cox stated last night, it defines felonies against the sovereignty of the State and fixes the penalty. It defines offenses against the life and person; it defines offenses against property; it declares that forgery and counterfeiting are offenses and fixes the penalty; it defines offenses against public justice, against the public peace, against public policy; it defines offenses against morality, chastity and decency; and it defines offenses against the public health. But nowhere does it declare drunkenness to be a crime or misdemeanor or an offense of any kind.

Then, Mr. President, if it is a misdemeanor at all, it is a misdemeanor under what is denominated the common law: consequently, it will be necessary for us to find out, if we can, what the common-law is upon this subject; and, as Hamlet says in his celebrated soliloquy, "There's the rub."

There is a great deal of mystery and uncertainty, concerning not only the origin but the nature of the common law. Hume, the great English historian, says that the code of laws prepared by Alfred (Alfred was an Anglo Saxon king that lived away back I think in the eighth or ninth century) that the code of laws prepared by Alfred was generally regarded as the foundation, the basis of this so-called common law. Hallam, another writer,—and I think he was a law writer,—says that

common law originated at a very much later period. And Sir Matthew Hale says that the origin of the common law is as undiscoverable as the source of the Nile. There isn't anybody, Mr. President, that knows where or when it did originate.

Now, what is this common law? Why, nobody knows. There is a greater diversity of opinion upon that subject than there is upon the origin of the common law. Now, I have no doubt that the able Senator from Blue Earth (Senator Buck, D.) could get up a very readable paper on that subject; I have no doubt that the astute Senator from Scott (Senator Hinds) could give us an opinion of the common law and of what it is, but when it came down to details, he and the Senator from Blue Earth would be wide apart. So, I have no doubt that the learned Senator from Washington, (Senator Castle,) could tell us what it is and enforce his opinion by cogent reasoning, and that the Senator from Hennepin, (Senator Gilfillan J. B.) could elucidate the subject to his, and perhaps our entire satisfaction; but when it came down to details he and the Senator from Washington would be as wide apart as the poles. There are no two men that will agree as to just what it is.

Now I will refer to some authorities upon that subject. Reeves, in his history of English law says: "The common-law is the custom of the realm, on which courts of justice exercise their judgment, declaring by their interpretation what is and what is not common-law." Another author defines the common law to be, "The experience of the past and the wisdom of the present age." Another authority says, "The common-law consists of those laws which are not comprised under the title of acts of parliament but which are for the most part extant in pleas, proceedings, judgments, in books of reports and judicial decisions." Somebody else says "The common-law is immemorial usage;" another authority says it is "The custom of the country;" another says it is the concentrated wisdom of the ages.

It is utterly impossible, Mr. President, to find out what the common-law is. It is as utterly impossible to find out what it is as to find out the cause of the Gulf Stream; and I begin to think that it ought to go down to future generations along side of that great philanthropist P. T. Barnum's "What is It?" [Laughter.] But there *is* one thing very certain, that whether there is any common-law or not, or whether it is ascertainable or not, if there is any common-law, it must have for its foundation, it must have for its basis, the judgment, the assent and the approval of the people of the country. I believe that that proposition is assented to by all parties. Now, I hazard the assertion that nine men in every ten in this country you meet, if you ask them if drunkenness is a crime, will tell you no.

Why, Mr. President, public drunkenness is as common in this country as school houses. Public drunkenness is almost as common in this country as the cattle on the hill tops. And yet when and where in the judicial history of this country was this question adjudicated by a court of competent jurisdiction? Why, public drunkenness is a great deal more common than murder, and men are frequently sent to the penitentiary and to the gallows for committing that heinous crime. It is a great deal more common than man-slaughter, and yet men are being convicted almost every week for that offense. It is a great deal more common than burglary or larceny, and yet your penitentiary is full of men who have been convicted of these offenses. Yet where and when is

public drunkenness declared to be a crime in this State, or even in this country? Why, a former President of the United States, the chief magistrate of this great nation, was publicly drunk in Washington, publicly drunk in the city of New York, publicly drunk in the city of Chicago, publicly drunk in the city of St. Louis. Who ever thought of impeaching him, or arresting and trying him for an infraction of your so-called common law? A former member of the United States Senate from the State of Massachusetts, a former member from the State of Delaware, a former member from the State of California, a former member from the State of Illinois, from Michigan and from Wisconsin, have reeled and staggered through the halls of Congress, publicly drunk. Yet who ever thought of arresting them for a violation of this common law? Why, sir, a distinguished citizen of our sister and adjoining State, a judge of the district court, by the use of intoxicating liquors, rendered himself utterly unable to discharge the duties of his high office for three or four years before he died. But who ever thought of arresting him for violating the law? I do not, Mr. President, refer to this unfortunate gentleman with a view of casting a shadow over his memory—God only knows the tortures of the brain that drove him to that method of producing forgetfulness—and while I must deprecate such conduct and deprecate such habits, yet, Mr. President, I am not throwing stones in that direction.

Again, some of our most eminent citizens, some of our most distinguished statsemen, some of our great poets, some of our most learned and able lawyers, some of our best doctors, and even some of our divines, are daily violating and defying your so-called common law. And why, I ask, are they not arrested, tried and convicted? I will answer the question, Mr. President. Because there is no such common law. If this law has been lying around loose in this country from the time when the memory of man runneth back not to the contrary why is it that the temperance reformers of our times or of former times, reformers who have adopted every legitimate measure, who have adopted every legal and moral device to eradicate from the body politic the great evil of intemperance,—why is it, I say, that these reformers have not utilized this law in their warfare against this great evil? I will tell you why. It is because there is no such law. Apply any test you please and that doctrine won't materialize in this country.

Let us take the definitions of the common law as I have read them and see if we can squeeze or torture the doctrine maintained here out of them. Let us take Mr. Reeves' definition of common law,—"The common law is the custom of the realm on which courts of justice exercise their judgment, declaring by their interpretation what is and what is not common law." Now, when and where in the judicial history of this country have courts exercised their judgment in declaring public drunkenness a crime or misdemeanor at common law? I am aware that the gentleman [Senator Buck, D.] referred to two or three cases, but I want to ask him, and I want to ask the members of this Senate if they think that two or three black sheep in a flock of a million make a black flock of sheep.

Senator CASTLE. I want to say to the Senator that the cases cited did not go to the extent of constituting drunkenness a crime.

Senator BUCK, C. F. Well, suppose they do. Those two or three cases in a million wouldn't make the common law. And why, if you find

hen violating your so-called common law (and I can think of half a ozen men in the city of St. Paul to-day who have been publicly drunk), f they are violating the common law I say, why not put the law in force nd punish them?

Another author says, "The common law consists of those laws which re not comprised in the several acts of parliament, but which are, for he most part, extant in pleas, judgments, books of reports and in judi- ial decisions." Now, where, in the judicial history of this country, ill you find this doctrine? Will you find it in your judgments, in our books of reports? Will you find it in your judicial decisions? Vhy, you may possibly find a single instance, but that don't prove that is the common law.

Some one says that the common law is immemorial usage. Now let us e if we can squeeze this common law doctrine out of that definition. t is "immemorial usage" of a great many men in this country, and omen, too, to get drunk, but it is not "immemorial usage" for the ourts of justice to fine or imprison them for so doing.

Then, Mr. President, unless this so-called common law is to be invoked or the purposes of this trial and for the purposes of this conviction, and or no other purpose,—unless it is to apply to the respondent here and o noboddy else,—then, E. St. Julien Cox has not been guilty of a crime r misdemeanor. I am not here, and I do not believe that this court as organized to determine whether the respondent is a moral man or n immoral man; I am not here to determine, so far as my vote goes, whether the respondent is a temperate man or an intemperate man; I m not here to determine whether in my judgment his conduct, his ctions, or his manners have always been, in all respects, in strict ac- ord with the aesthetics of judicial circles. I am not here to determine whether, in my opinion, he is calculated by nature, by disposition and by abits to grace the bench of the Ninth Judicial District; that right, that prerogative, has been wisely left, by the laws of the State, in the hands f the people of that district.

The law, and my oaths of office, will not permit me to vote for this an's conviction because he swaggers when he walks, because he wears is hat on one side, and acts, if you please, like a loafer. The law, and ny oaths of office, will not permit me to vote for this man's conviction ecause while sitting upon the judicial bench he killed a mosquito in a trange, unique and demonstrative way, and different, Mr. President, rom the way you and I would have done. [Laughter.] The law, and ny oaths of office, will not permit me to vote for this man's conviction ecause he has been intoxicated; because, in law, there is not the first lement of criminality in the simple act of getting drunk.

We are asked by the managers and by Senators to load this fellow itizen with infamy, to disgrace him and those who belong to him, ren- er their lives wretched and hopeless,—and for what? Because he has een guilty, as it were, of a crime in office? No; unless you can reach hat conclusion by the hair-splitting process of the Senator from Blue Earth, and I don't believe in hanging a man by any such process. Be- ause the respondent has been guilty of a crime or a misdemeanor? No, that is not it. When it comes down to the real facts, sifted of all urroundings, we are asked to convict this man because he has not be- haved as you and I and any gentleman ought to behave. And I shall vote, Mr. President, for the respondent's acquittal; feeling that the law

impels and justifies my action. My sense of right and justice will approve of that vote. My judgment tells me that his conviction would establish a precedent that would endanger every judge in the State. Then, Mr. President, my sense of right and my judgment are in perfect harmony with the humanity side of my nature.

Senator CASTLE. Mr. President, I should have been far better pleased had the members of the Senate, or of this court, in their wisdom seen fit to have adopted a different rule in regard to the consideration of these articles of impeachment,—the rule that one might simply and briefly state the reasons for the vote he gave. By the rule that we have adopted and as recognized by the Senate, it would seem that a full exposition of the reasons and the law upon which the individual members of this court act are to be given. I have prepared no written argument. Had the resolution or order which I offered been adopted, I probably might have done so. I have, however, carefully examined with a view of doing justice to myself as a lawyer and as a member of this court and in justice to this commonwealth and the respondent, the legal propositions involved in this case.

Before considering the main proposition (and really, there is but one) perhaps a word might be in order with reference to the character of this tribunal. It is asserted by some that this is not a court and hence rules applicable to legal tribunals do not apply. I hardly think it is worth while to answer so absurd a statement. The definition of a court, as I recollect it from old Coke, is, a place where justice is judicially administered. This tribunal is created for that purpose. The constitution calls it a court. We organize and select officers as a court. Our oath of office is the oath of a judicial officer. All the elements of a court exist here.

Again, it is claimed by some that this is not a criminal tribunal, or, in another form, that the offense charged is not a criminal offense. What is a criminal offense, Mr. President? I understand it to be the infraction of law, the violation of some law which obtains in the jurisdiction in which the person resides.

Now, sir, if there be no violation of law here, then this trial must come to but one conclusion. The gravamen of the charge is that the respondent is guilty of crimes and misdemeanors, guilty of a violation of some law. It is true that the punishment under our constitution that may be meted out to one convicted by a tribunal of this character is not of the same degree as was the punishment that might be meted out at common law by the House of Lords; but it is the first time in my experience as a lawyer that I have ever heard the doctrine advanced that the measure or degree of punishment determined whether or not an offense was a crime. At common law the punishment might be the same as here, both removal and disqualification from office. It might be incarceration for the period of the life of the person convicted or for a shorter period. Very many kinds, grades and degress of punishment have in the past been meted out to persons convicted by impeachment under the laws of England.

It has been claimed here that our court of impeachment is not like the court of impeachment in England. We are told the reason why, and the reason assigned is the one I have given—simply that the mode of punishment or the degree of punishment is not the same here that it is in England. Why, Mr. President, but two or three lines comprise all

there is in the constitution of the United States with reference to impeachment. A few lines only, include all there is in the constitution of our own State in regard to the subject. A few lines comprise all there is in the constitutions of the various States as to this court. What then is the conclusion? No lawyer upon this floor (I have too high respect for any of them to think that they would differ with me upon this point,) no lawyer upon this floor but will admit that by declaring that the Senate shall have the power of trying impeachments preferred by the House of Representatives as is done by our constitutions, the common law power of the House of Lords is incorporated into this court and becomes a part of it—the only change being that in England it has a difference in name.

By authorizing the higher branch of the legislature to try impeachments preferred by the lower there is conferred everything necessary to exercise that power and there inheres in and attaches to and permeates through the court of impeachment of this country every element, every characteristic,—the very essence of the old court of impeachment that has obtained in England for long centuries. Hence, every principle that attaches to that tribunal, every rule that has become precedent in that tribunal is a precedent to us including the discriptive character of the tribunal itself. And what was that? I can find no writer and I believe none can be found but what describes the court of impeachment in England as a criminal tribunal. Such was its characteristic from the days of its foundation to the last act of which her history gives us any account.

But it is urged that it is not for the purpose of punishment alone that this is instituted, neither was it for the purpose of punishment alone that the old House of Lords had jurisdiction in cases of impeachment. Why, Mr. President, who has ever read the famous argument of Burke in the trial of Warren Hastings who does not know that the point that raised to the highest pitch the voice of that great accuser was that it was necessary for the welfare and the well being of England and that alone that Warren Hastings should be impeached. It was the very object in theory at least of the court of impeachment of England to remove from office and to remove from the right of holding office, public officers and that the public might not suffer from the conduct of those who had been guilty of crimes and misdemeanors.

I say the Senate of the United States, the Senate of the State of Minnesota possess the same inherent powers of impeachment to-day, but when restricted by their constitutions, that did the peers ever in their history; and hence I say, Mr. President, that every element, every characteristic that entered into and became a part of the House of Peers of England inheres as an impeachment court in and is a part of this tribunal sitting upon this occasion.

Now what was the original object of the court of impeachment? One of my brother Senators very truly remarked to me the other night that there was a dangerous doctrine going abroad in the land, which was that men might be impeached for anything—anything that a majority of the House of Representatives might present to the impeachment tribunal—that two-thirds of that tribunal might deem in its wisdom to be and constitute a crime and misdemeanor. I am not prepared to say that that doctrine is gaining ground. I should be sorry to think that it was gaining ground in this country, for if it be, then we, in this later time,

in this proud-boasted republic of ours, are reaching a position that all the nations of the earth have reached when they are tottering to their fall. I say if the remark that my friend, the Senator made, be true, that there is a tendency among men to regard anything as an impeachable offense which in the judgment of the lower house may be impeachable, and which two-thirds of the upper house in its judgment shall recognize as impeachable, we are reaching a pass, we are reaching a position that will cause the deepest and most poignant grief and dismay in the heart and mind of every statesman and patriot. Why, sir, the court of impeachment in theory, and the court of impeachment in practice, has ever been to arrest, to try and punish men that could not be reached and punished by the ordinary tribunals.

Mr. Blackstone in referring to this (4 Blackstone, 259), says: "The impeachment must be for known crimes and misdemeanors clearly defined by the law or created by statute, and it applies only to those persons and officers who cannot, from the nature of their office, from the nature of their position be tried by the ordinary tribunals of the land. An extraordinary court; a court whose proceedings cannot be reviewed nor set aside by any earthly power; a court which may be a law unto itself; a court armed with the power for wrong and injury to the commonwealth and to the people unparalleled by any tribunal in the history of the world." Why the powers exercised by the old democratic conventions of Athens, whereby by ostracism, by popular vote, the highest grades might be struck down and banished from the State, was not more arbitrary, more tyranical more irresponsible in its power than is this same court of impeachment; and hence, Mr. President, in exercising our powers, in exercising this extraordinary power, that the footprints we leave may not be precedents for those who come after us to abuse the trusts reposed in such a mighty and dangerous tribunal, is it not eminently proper that we should carefully study the steps we take?

Now, Mr. President, one word with reference to the main point. I desire to say here, that I have but one wish in giving my vote in this case. It will probably not affect the general result; I speak with that knowledge. I would simply desire as a sworn judge responsible to my conscience, responsible to my people and to my God, that I should render a judgment according to the law and the evidence as I have faithfully sworn to do.

The respondent in this case is charged with having on various occassions,—the difference in the several articles is but a difference in time and place, save I believe a single article. It is charged that on a certain time and at a certain place, when acting as, and exercising the powers of a judge, he entered upon the trial of certain causes and examination and disposition of other matters and things then and therein pending in the district court of a certain 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 caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from the use 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in

office, by reason whereof he, the said E. St. Julien Cox was then and there guilty of misbehavior in office and of crimes and misdemeanors in office. The essence of the charge is that the respondent, while acting as judge, voluntarily became drunk, and that he thereby committed a crime and a misdemeanor in office.

The PRESIDENT *pro tem.* For "crimes and misdemeanors."

Senator CASTLE. "Crimes and misdemeanors"—*in office* is understood. That would be my interpretation of it, at all events. The managers in this case have elected, and have proceeded upon the theory that he is guilty of crimes and misdemeanors.

Now, Mr. President, it is a grave question to consider, whether the acts charged constitute a crime or a misdemeanor. Upon one of the most memorable trials before a court of impeachment that the world has ever witnessed,—because the occasion, the man, the circumstances and the result, were of that great and important character that they left their marks upon the page of the history of that people,—when the respondent was arraigned and charged with certain crimes and certain offenses his answer was, "I find nowhere in the statute or common law of England this offense defined." The great Earl of Strafford doubtless knew something of the character of the men who were acting as his judges. It was a period when political excitement ran high. But a few years elapsed before the outcome of that excitement deluged fair England's fields with the blood of its noblest and its best; but a few years elapsed when, as the outcome of that strife, the King lay with his head upon the block and perished; but a few years elapsed before the institutions of that country were entirely changed and a limited monarchy became in effect a despotism in the form of the protectorate. Party spirit at that time,—the dominant faction, the controling power,—had decreed that the Earl of Strafford should perish. They forced through the Commons articles of impeachment; they presented those articles of impeachment to the House of Lords. The Earl of Strafford was required to answer, and that was his answer. It drew from some of the Lords of England the finest exposition of the powers of the court of impeachment that the world has ever seen. It shook the confidence of the managers on behalf of the House of Commons to such a degree that they dared not trust their case before those Lords although they in common with the House of Commons were prejudiced against the Earl and would willingly (had their conscience permitted) have sacrificed him, but I say the confidence of those who represented the Commons in that tribunal was shaken.

They knew that there were, sitting upon those benches, men in whose veins ran the blood of the great feudal lords who wrested from King John the great charter of civil liberty. They dared not trust them. Even in that hour of supreme excitement, what was the result? The proceedings were practically abandoned, they introduced bills of attainder and rushed them through the House of Commons and the House of Lords, and the Earl of Starfford perished, not a victim to the court of impeachment but a victim to the law of attainder. The last trial occurring seventy-six years ago (more than three-quarters of a century,) that England has seen of this character teaches and inculcates a lesson that we of this new country may well consider, viz., that the court of impeachment is practically obsolete in the great free land of its birth.

Articles of impeachment were presented against the Earl of Melville. I won't take time to read them, but a question arose whether or not the articles contained an impeachable offense, a crime against the laws of England. They stopped; they took the opinion of the law lords, the highest judicial tribunal at hand, before they would proceed further, and upon the decision being rendered that it was not a crime the proceedings were abandoned.

Now, Mr. President, if this be a crime charged here, whence comes it? It is claimed that it is a crime at common law. Let us look at it. I said in all seriousness to the managers in this case if they would show me one single decision, by a single tribunal in England, that has held that drunkenness was a crime, I would consider this case upon the evidence alone. They could not do it. It has never been done. When the able Senator from Blue Earth, in his very instructive opinion, this afternoon cited a couple of new authorities, they seemed to bear upon the point that it was a crime, and had they so held, I am frank to say, I should not have made this argument.

Those cases were simply like this: The mayor and the common council of the city of Gloucester, were authorized by their charter to remove certain persons or any of the officers of the city for cause. They removed an alderman for cause. Among the causes, one was the lending of money to young men by the hands of his wife. Another cause was that he was a drunkard. The common council removed him. A writ of mandamus was applied for to the court of King's Bench and a writ of restitution was ordered, and the proceedings were set aside as irregular, and in referring to the matter, Lord Chief Justice Coke said that under that charter that was good ground for removal. The city of St. Paul, the city of Minneapolis, the city of Stillwater, I presume nearly all the cities of this State, have authorized their common council to remove any of their inferior officers, yet no one would say the cause for that removal must necessarily be a crime or misdemeanor, and I assume to say this: (because it has not been done in this case,) that no man can put his finger upon a single decision by an English court, or an expression by a single elementary writer of England where drunkenness is regarded as a misdemeanor or a crime. Take the books upon criminal law,—Hawkins and Hale and Chitty and Foster and Archibold and Russell,—take the reports of the criminal tribunals, prominent cases and important criminal trials,—take the reports of the common-law, of exchecquer and of the law lords, take all the authorities, and you cannot find a single instance where from the earliest dawn of her history, drunkenness was ever recognized in England as a crime. But we are told that some American courts have held that it was a crime at common-law in England. That is true. Away down among the mountains of Pennsylvania and Virginia, about some four years apart,—one before the beginning of this century, and one a couple of years afterwards,—a couple of tribunals held that drunkenness in an officer was a crime,—one case that drunkennes in a magistrate and the other that drunkenness in a juror, was a crime.

But those courts do not cite a single authority. The courts of Tennessee, by half a dozen decisions,—I should judge the Senator here [Senator Buck, D.] has quoted nearly all of them,—at different times, in various ways, have held that it is an offense at common law, but you cannot find a citation of one single scintilla of the common law in sup-

port of these decisions. It is said that Mr. Wharton says it is common law. He does; and he cites two cases in Pennsylvania and in Virginia as his authority; and that is all the authority Mr. Wharton pretends he has for making that remark. It is a well known fact that Mr. Wharton's book is a sort of general digest. Mr. Wharton, in 1846, became the prosecuting attorney for the city of Philadelphia. For his own convenience he made a digest of criminal law and evidence. Afterwards, when he went to preaching and writing works of theology, he reviewed, from year to year, and compiled various decisions with reference to criminal law. I suppose no one pretends that Mr. Wharton, as a lawyer, is very eminent, although he is a very industrious very able and indefatigable compiler of authorities. Now, I say neither Mr. Whartons nor the courts of Tennesee nor of Pennsylvania have cited us to a single common law authority. I asked one of my brother Senators to-day,—a very able lawyer,—if he and I were sitting upon the supreme bench of this State and the question came before us whether or not a certain act is an offense at common law what would govern our decision,—whether it would be governed by the decision of somebody else that *thought* it was the common law, in some other state, but did not know, evidently, —because they cited no authority,—or whether we would be bound by the great mass of the common law of England as expounded by its jurists and enunciated by its legal writers. "Why," he said, "of course there is but one conclusion and but one answer to that, and that is, what is or what is not the common law of England, which we have inherited, must be taken and determined by reference to the writers of that country themselves,—by reference to their judicial determinations,—by reference to their acts of parliament,—by reference to their elementary writers, upon the propositions involved.

And, then, Mr. President, to show conclusively not only that you cannot find any such common law, but that none such ever existed, in in 1840, (42 years ago) parliament passed an act declaring that drunkennness of certain individuals should be a misdemeanor, more than half a century after the law of England could have obtained or had a hold in this country. "By the 3 and 4 Victoria, chapter 94, it is expressly provided that if certain employes of railroads shall be guilty of common drunkenness, it shall be a misdemeanor, punishable by fine and imprisonment." Will not some lawyer tell me, if drunkenness has been a common law offense, and was such more than a hundred years ago, (for it must have been ever to obtain in this country), why it was that it became necessary to make it an offense in relation to a certain class when in fact it could be applied to all? I say, Mr. President and Senators,—and I lay it down as a proposition that cannot be contradicted,—that no English court, during all the period of England's great common law history, has ever held that drunkenness was a crime or misdemeanor. There are many authorities that have been cited here by gentlemen who have addressed the Senate—counsel for the respondent and others,—with reference to certain things being regarded by the laws of England misbehaviors in office. We have been referred notably, to the trial of Judge Barnard in New York. We have been referred to many of the elementary writers in Englnnd as to what constitutes a misbehavior in office. It is laid down by one of the oldest and one of the ablest, if not the ablest writer on criminal law,—Mr. Hawkins,—that

offenses by officers are reducible to the following heads: Breach of duty, bribery, extortion.

From the oldest time, in England, by the common law, as determined by its highest judicial tribunals, as recognized everywhere, certain acts were recognized as misconduct in office, corruption in office, misdemeanors in office, crimes in office. Of those, was tyranny in office—the exercise of arbitrary power—the disposition to divert, wrongfully, the course of justice—partially in favor of one citizen against another—in other words, an "unjust judge"—in other words, injustice upon the part of the court. That has, and properly, has been recognized for all time, in England, as a misdemeanor and a malfeasance in office. And all of the authorities that have been cited here, (the case of Judge Barnard included, one of the most striking and notable in this country,) are all of that character. Judge Barnard was charged with the grossest of misconduct in office, of perverting the whole fountain of justice, making his court an instrument for the accomplishment of corrupt purposes. He was impeached under the common law for misconduct in office. And where did they come to find what constituted that misconduct in office? They went to the common law; and there they saw it clearly defined, fully and particularly enunciated. Tell me, Senators, where in all the wide range of your judicial learning or legal lore, you have ever found, in this or any other country, an instance where a judge has been impeached or removed for drunkenness. It is true that in the Pickering case, one of the four charges preferred against the respondent was drunkenness. It is also true that Judge Pickering never appeared. He was said to be insane. The charges were preferred by a partisan court in the lower house. The trial was conducted by a partisan senate, in the upper house, (and I am sorry to say they belonged to the party I have the honor of belonging to,) without a hearing, without a defense, without a consideration of the case, unheard, Judge Pickering was found guilty, generally, on all the charges.

And there we have an illustration of the terrible harm, the terrible evil, that may follow from an unjust decision by a tribunal such as is ours. It may be quoted, and is quoted, as a precedent to sustain the exercise of arbitrary powers by courts of impeachment throughout the world; and yet, Mr. President, I have no fear of being contradicted when I say that the trial and conviction of Judge Pickering is a lasting stigma and a burning shame upon the fair escutcheon of this country. It was stated on this floor and it is true that the great names of the Senators who sat in that court,—those men whose names are household words,—refused to participate in the unholy thing, but retired and left the shame where it belonged,—with a partizan majority. I believe, Mr. President, that no man who has studied that case, who believes in the purity of government or in the justice of the administration of the law, will ever recognize it as a precedent.

One other case is cited, the case of Judge Edwards,—and Judge Edwards was found "not guilty,"—the debates do not show upon what ground. He was found not guilty, I say, by an overwhelming vote. With these exceptions, not even in America is there a precedent for holding that drunkenness in a judge has *ever* been regarded as a crime.

Mr. President, to bring this matter home to us, is there a lawyer upon the floor of this Senate, is there a lawyer among the managers, is there a lawyer of prominence in this commonwealth of ours, that would stake

his reputation as a lawyer upon drawing an indictment against a man for drunkenness? Not one. And yet this Senate, this court of last resort,—with its enormous powers,—is asked to establish a precedent in this State which no law and no court has ever recognized or created at all! Take down your Minnesota reports, and show me, if you can, where the supreme court of this State has ever held that drunkenness was a crime or a misdemeanor; then I will waive this point. You cannot do it, yet here you are asked to do what? You are here asked to determine that a certain act is a crime which was not a crime at common law and which has never been made a crime by statute. That is what you are asked to do, and that is what I understand Senators are proposing to do.

Mr. President, if anything was wanted to demonstrate the utter absurdity of this prosecution, it is the various reasons which are given for sustaining the action of a judgment against the respondent. They are as various as the men who have expressed themselves upon the floor of this Senate. One idea has been expressed that we must convict on general principles. Why? Why, because drunkenness muddles a man's brain, and drunkenness creates crime; because drunkenness debases and degrades a man; because, on general principles, it is wrong. Consequently, we are told, we must find him guilty, because he has done something that is morally wrong. That is one theory. Another theory is that it is not what is charged in the articles of impeachment of which he is guilty; that is, it is not a crime and a misdemeanor (that seems to be conceded, impliedly only, and I do the able gentleman justice to believe that he does not rest his argument upon that), that it is not that charge, but there is something else and more—it is corrupt conduct in office; it is not crimes or misdemeanors at all, not as charged, but corrupt conduct in office; in other words, that we shall charge the respondent with one offense and convict him of another. That would seem to be the logic of that proposition. Another reason given is, that he should be convicted upon grounds of high morality, whatever that may be—that the thing is morally wrong. Again, that he is guilty, not as charged, but of a violation of his oath of office—of perjury, I suppose; anything for an excuse. That is reason number four. Then, reason number five would seem to be, judging from the argument of the Senator from Blue Earth (Senator Buck, D.)—I believe the thing is reasoned out about like this: That the statute of 1852 provides that a misbehavior in office is a misdemeanor. Now let us read that statute and see what there is to it. It is really the statute of 1849.

> Where any duty is enjoined by law upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to perform such duty, and every misbehavior in office, where no special provision is made for the punishment for such delinquency or malfeasance, is a misdmeanor punishable by fine and imprisonment.

Now, perhaps I might say here, emphatically that that statute is simply declaratory of what the common law has ever been, from the time that we have any account of it; misbehavior in office and wilful neglect of duty have always been offenses at common law. This statute neither adds to nor detracts from the common law; no one denies this. Hence we must still look to the common law for authority and precedent in this case. "But," says my friend, "I hold that by drunkenness

a man incapacitates his mind from acting with its wonted strength and force and consequently, to a certain extent, deprives himself of the full and complete exercise of his faculties in that particular office." Well, that is very good reasoning; it is probably true. But what is the position thus assumed? Let us look back; the position that you assume, gentlemen, when you say that, is simply this: That *you* determine what is misconduct in office, that *you* determine what is a crime and a misdemeanor in office. That is what it means, and it does not mean anything else.

With prophetic foresight the great men of the world have predicted that if the liberty of the people of the country was ever forfeited and wrested from them, it would be when in the name and form of law the spirit of our institutions is subverted in that direction is the covert theory,—that the tribunal, the court can create the offense and then proceed to punish the offender. Let us see. We have a Senate composed of forty-one members. To-day it may be comprised of a class of men who do not believe that drunkenness amounts to a misbehavior in office. They are the sole judges, according to this theory; they are bound by no law, either statute or common law, by nothing but the sweet will of the members of the court. They so decide. To-morrow we have another Senate; they are comprised of temperance men. They have a different theory; to drink a glass of liquor is to be condemned morally. So thinking, they decide that drunkenness is a misdemeanor in office.

Then, again, if that is to be a precedent, if you may go outside of the statute law of the land, if you may go outside of the recognized law of the land and determine for yourselves what constitutes a misbehavior in office, you can construe anything to be a misbehavior in office. Deny it who can? I said to my friend the Senator,—and many writers on hygiene have laid it down as a rule,—that the intellect of more men is enfeebled, the judgment of more men is impaired by gluttony, by the inordinate use of food, than by the inordinate use of intoxicating liquors. Do you hold that to be a misbehavior? "Why, yes," he said, "he would hold that to be so." Then again, I inquired, there is no doubt but that tobacco, to a certain extent enfeebles a man's intellect. According to your theory then, a man who uses tobacco is guilty of a misbehavior in office. He replied, he guessed he would have to hold that to be so too. Let us push this theory further. Dr. Hall, in his Journal of Health, has held that the use of ice impairs more human systems, destroys more lives, during the season in which it is used, than the use of intoxicating liquors. Hence, to use ice, according to this theory, would be a misbehavior in office and misconduct in office! Why? Because you use something that, in some degree, impairs your mental and physical powers and faculties.

Let us pursue the illustration a little farther. There are certain kinds of food that are utterly indigestible, which some physician would tell us are of no kind of good, that they tend to damage the system. I believe butter is one. Now, then, if a man use any of that kind of food, thus to a certain extent impairing the vigor of his system and to a certain extent enfeebling his mental faculties, he is thereby guilty of misconduct in office. It is a rule of health and a rule of nature that anything taken into the system has an effect, either good or bad. Not being beneficial, it must be bad. Again, it is a principle well established and thoroughly recognized that if any man obey all the laws of his

nature, (except where his system may be impaired by hereditary taint(, he would live to attain a good old age. Now, then, according to the theory enunciated here, any man in office who does not, to the very letter, obey all the laws of health, is guilty of misconduct in office! That is the logical result, and the logical sequence of the position which is assumed here to-day.

In other words, if it occurs to me that drunkenness is misconduct in office,—though the books are silent, though the legislators, who were created under our institutions for the purpose of prohibiting what is wrong and protecting what is right, are silent,—though the great body of the common-law, that has come down to us as the wisdom of the ages, and has become the foundation of our civil liberty, our government our institutions and our civilization is silent; though that, which during the ages has grown up until it has become the brightest monument the world has ever seen, is silent; though common-law courts have not found it necessary to hold that drunkenness is a crime; though our legislature has not found it necessary to make drunkenness a crime,—yet because I am greater than the common-law, because I am wiser than the legislative tribunals, I, in my wisdom shall hold, because I have the power, and because from my judgment there is no appeal, that drunkenness is a crime. Such, gentlemen, is the position you occupy when you undertake to sustain these charges. It is of the very elements of despotism; it is of the very essence of tyrany. The doctrine has been, in all ages, the convenient sophism of tyrants that the *will* is the law. It has never obtained except in countries where law has been ignored. It is only the men who are seeking to usurp power and who have sought to sap the very foundations of the institutions that have made the nations great that have invoked the theory that *will* is law. Why, Mr. President, Tacitus, standing upon the mount of his intellect, foresaw in the first century of this era where *might* made right and he wrote this sentence, so great, so grand and so pathetic: "The liberties of Rome became forever impaired and her doom was sealed when men were condemned without the sanctien of law!"

Why, Mr. President, one of those meteoric conquerors, that from time to time has swept out over the great plains of Central Asia, a few centuries ago from the banks of the Hoang Ho, overran nearly the entire civilized world and ruled over a mightier empire than did Babylonian or Assyrian, Macedonian or Roman, but he was a ruthless conqueror. He burned the Bible, he destroyed the Koran, he ridiculed the religion of Zoroaster, of Brahma and of Buddha; he littered his horses with the finest libraries of the world. It is asserted by some writers that more than fourteen millions of people perished in the wars he waged, and yet with all his ferocity he had many qualities that entitled him to respect. And why? Because over all his mighty realm from where the gentle breezes of the spice islands lave with the waters of the great southern ocean the shores of China, to where the fierce Arctic blasts roll with ceaseless thunders the icy waters of the northern seas upon the rock-bound coasts of Scandinavia, over all kindreds, nationalities and races, over Parsee and Pagan, Buddhist, Brahmin, Hebrew, Christian and Mohammedan, over all law, and it alone reigned supreme. It was his boast that over all his vast dominion the meanest citizen had naught to fear save from the violation of a known law. It might not be unprofitable

for this court to consider the lesson taught in this respect by the great Mongolian conqueror.

Why, Mr. President, we are asked to do what? We are asked to adopt a principle of government that has never been adopted save by tyrants and despots, and in the dark ages of barbarism or despotism.

We are asked to adopt a rule that the intelligent and noble statesmen in all ages have pointed out as the fore-runner, as the very indicia of the presence of a power to usurp government and to overthrow and sap its foundations at a time when we are boasting of our goodly unitage of the freedom and liberality of our institutions, of our respect for liberty and law.

When we are standing upon the platform of civil liberty never yet attained by men in the long roll of the ages we are asked to go backward and to recognize a principle that never obtained except under the sanction of despotic power.

Those who are in favor of adopting that principle, may ; for my part I most respectfully decline.

Senator PILLSBURY. Mr. President, I move that the Senate take a recess until eight o'clock this evening.

The motion was seconded.

Senator ADAMS. I move an amendment. I move that we adjourn until nine o clock to-morrow morning.

VOICES. Regular order.

Senator HINDS. The regular order is eight o'clock this evening.

The PRESIDENT *pro tem.* Does the gentleman insist upon his amendment?

Senator ADAMS. Yes, sir; I move to amend the motion for a recess. My motion is to adjourn until nine o'clock to-morrow morning.

Senator PILLSBURY. I raise the point of order,—that he has not moved a suspension of the rules.

The PRESIDENT *pro tem.* As many as favor the motion to adjourn—

Senator CROOKS. I move that the Senate do now adjourn.

The motion was seconded and the yeas and nays called for.

Senator HINDS. If the Senate now adjourns it is until eight o'clock this evening.

VOICES. "No sir;" "Yes sir."

Senator HINDS. It is past six now.

Senator GILFILLAN, J. B. Mr. President, I submit that our regular order is three sessions a day; and we cannot vary that order except by a two-thirds vote.

The PRESIDENT, *pro tem.* The point is well taken. The Secretary will call the roll upon the motion to adjourn until to-morrow morning at nine o'clock.

Senator BUCK, C. F. Is this [order] a permanent rule of the Senate?

Senator GILFILLAN, J. B. Yes, sir.

The PRESIDENT, *pro tem.* The Secretary will call the roll upon the motion to adjourn. That is the motion before the court.

Senator BUCK, D. That will carry it over until to-morrow at nine o'clock- Let's vote it down!

VOICES. No, no.

Senator RICE. What is the motion?

The PRESIDENT *pro tem.* The motion before the court is to adjourn

until to-morrow at nine o'clock. A majority vote will carry this motion to adjourn.

On the motion to adjourn there were yeas 16 and nays 20, so the motion did not prevail. Court then took a recess until eight o'clock P. M.

EVENING SESSION.

The Senate, sitting as a court of impeachment, met at eight o'clock P. M., in secret session, a quorum being present, and was called to order by the President *pro tem.*

Senator CASTLE. I had a few other remarks which I might submit, but as I have already taken up considerable time, I do not desire to trespass further.

Senator HINDS. I hope the gentleman will finish all he has to say upon the subject.

Senator CASTLE. I would say that with the exception of two or three questions, the question of *res adjudicata*, and one or two immaterial points, I had about concluded what I had to say.

The PRESIDENT *pro tem.* If anybody else has anything to say, he can say it. [After a short interval of silence.] What is the pleasure of the Senate?

Senator CAMPBELL. I move that we proceed to vote, if there is nothing further.

Senator BONNIWELL. There are too many absent chairs.

Senator MACDONALD. The chairs are all here. [Laughter.]

Senator BONNIWELL. I move a call of the Senate.

The PRESIDENT *pro tem.* I don't hear a second to that motion.

Senator CAMPBELL. Mr. President, I apprehend we are here for business; the business is to settle this case. If there is anybody to be heard from, why, of course, I shall not press my motion. If there is no other business before the Senate, I move that we proceed to a vote upon the first article.

(The motion was seconded.)

Senator HINDS. We would like to hear from the Senator from Meeker, [Senator Campbell.]

Senator CAMPBELL. I haven't a word to say on this subject. If I were going to say anything I would say just this,—since the Senator has asked for it; that the very able arguments I have listened to this afternoon upon the question of this not being an impeachable offense I would like to have heard on the 16th of last December. I think that would have been the proper time for them. I, with others, at that time, considered this question settled, and I do now consider it settled.

On many of the articles of impeacement I think the testimony has been overwhelming, that they have not only been proved by a preponderance of testimony but beyond any reasonable doubt; and when my name is called on those articles, I shall vote guilty.

The PRESIDENT *pro tem.* It is moved and seconded that the Senate do new proceed to vote on the first article. Are you ready for the question?

Senator ADAMS. Mr. President, I hope that that will not be done. As I said this afternoon, I want to talk a little, and I can't do it to-day; my throat is sore and I I cannot do it. I don't like this crowding down business. A great many of the Senators are absent on other engage-

ments; they will be here to-morrow morning if the vote is to be taken. I don't believe in one-half of this Senate or one more than one-half of it pretending to decide this question, and I could state my reasons, if my voice would permit me, why I don't want it done. I shall not make one of the court, if that crowding business is to be done,—I shall walk out of the Senate.

Senator CAMPBELL. Mr. President, I don't desire to crowd anybody or to crowd anything; but I apprehend when the Senate voted to come back here to-night to do business, that they *meant* business. If there is any other business to be done, I certainly don't desire to vote, but it seems to be the only business we have got here. I shall insist upon my motion if there is no other business. If Senator Adams or any other Senator will suggest any other business that brought us here to-night, I shall not insist.

Senator ADAMS. I supposed we came back to hear the gentlemen make their arguments.

Senator GILFILLAN J. B. Mr. President, the court took action this morning to proceed to a consideration of the articles and to a vote. We are proceeding under a regular order of three sessions a day; we have now convened for a further session. All the Senators knew of the motion that was taken; they have every reason to believe that this vote will be taken and directed by the President as soon as reached. In other words, as soon as debate ceases, it is the duty of the presiding officer of this court, to proceed to put the several articles to a vote, commencing with the first, under the order adopted this morning. There is no other motion necessary; it is the regular order. I suggest that the motion is out of order and it is the duty of the presiding officer, if there are no further arguments to be made, to call and read article one and let the vote proceed.

The PRESIDENT *pro tem.* I have sent for the secretary and as soon as he comes, if the court insist upon voting, we will proceed to take a vote.

Senator MEALEY. Mr. President, as there seems to be nothing before the court just at present, I have a very few remarks to submit.

This court had not proceeded very far in the consideration of this case, when to my mind, and I think to the minds of other Senators, it became apparent that there were factors outside of those of law and evidence; and this has become the more apparent as we neared the close. On more than one occasion reference has been made to the great expense of this trial and to the dissatisfaction of the people in consequence of this expenditure of their money. Many holding this Senate responsible, forgetting, seemingly, that the Senate had nothing to do with the instigation of this trial, that it was precipitated upon the body by the other branch of the Legislature; and that we are simply carrying out their wishes, or, in other words, the wishes of the people as expressed by their agents, in the only way known to the law. So much has been said upon this subject that the community in which I reside, (and I have sufficient evidence to convince me that other communities entertain similar ideas,) that as a compensation for this expenditure, the respondent in this case must be impeached: In fact, so far has this sentiment obtained, that men have given utterance to sentiments that to my mind are really alarming, going so far as to say that Senators' political weal or woe depended upon their vote of guilty or not guilty on this trial.

Now, Mr. President, it is with regard to such sentiments that I desire to enter my protest, and in doing so, would say, during the many years I have been honored by the votes of the 32nd Senatorial district with a seat in this honorable body, up to the day this trial commenced I have ever considered myself simply the servant of the people, and have on all occassions endeavored to legislate for their best interests, striving always to be in accord with their desires. If, however, on any occasion I have not done so, it has been an error of judgment and not of the heart. But, Mr. President, the hour, yes the moment I was sworn, with other Senators, to try this respondent according to law and the evidence, at that hour, at that moment, my *legislative duties ceased*, and I became a part of this court, and in a two-fold capacity—to wit, an integral part of a judge, as well as a full grown juror.

Holding these views, I desire to say that I do not in any way hold myself responsible to the people of this State, to my constituents, or to any party, clique or creed. That I am alone *responsible* to *my conscience* and *my God*; beyond this I have no explanations to make nor apologies to offer for the votes I shall give touching the guilt or innocence of the respondent in this case.

The PRESIDENT *pro tem.* What is the further pleasure of the Senate?

Senator BUCK, D. Mr. President, it seems to me if there are any other Senators who desire or intend to express themselves in regard to the law questions or to discuss the matter generally, that they ought to do it now, and not wait until to-morrow. I should be very glad myself to hear from any member of the court that will do so or that intends to do so; there will not be another time when they can so well occupy it in giving expression to their views as now.

Senator ADAMS. Mr. President, I see it is the manifest disposition to force members of the court, whether sick or not, to say that which they had intended to have said when physically in better condition than now. If the idea manifested at this time is carried out. I desire, however painful it may be to me physically, to say a few words.

Senator BUCK, D. Mr. President, I would say that I had no reference to the Senator from Dakota. If he feels disabled, on account of sore throat or anything, I should be perfectly willing that he withhold his remarks until to-morrow.

Senator ADAMS. There were other gentlemen that I came here on purpose, to-night, to hear on law points, not to be compelled to make the effort required upon my part to say what I would desire to say; but, if there are no other remarks to be made in relation to the law and the facts, then I shall, in justice to myself and my convictions, be compelled to explain myself in relation to the votes which I shall cast upon the various articles of impeachment.

There has been such a wide discrepancy of legal opinion in this court, from the day of its organization down to the present hour, over what was the law and what was not, that it is a difficult matter for a non-professional man, a layman in the law, even to arrive at an intelligent conclusion. When doctors disagree, who are to know? So with lawyers; when lawyers disagree over an interpretation of either the constitution, (which is the fundamental law of the State,) or of a statutory provision enacted under it, the non-legal mind must of necessity be in doubt. That doubt, then, being apparent to every candid man who desires by his vote to answer the ends of justice, the only thing left to a

member of the court is to exercise that judgment, that candid discrimination, upon the various propositions laid down,—without the light that I had hoped would be shed upon them by the legal acumen of members of this court,—viewing the proposition in that light, I shall be compelled, in the absence of that degree of legal unity that I think the gravity of this trial demands, to fall back entirely upon my own resources, upon my own knowledge, as far as that goes, (and it is but limited upod legal propositions), and exercise the judgment that God and nature have endowed me with, in disposing of this question.

As to the evidence, I have observed it carefully. It is conflicting in many of the essential points which give the force and power of convincing truth in my mind; and, as we are told, in the law, where there is a doubt, the accused shall have the benefit of that doubt.

Now, as to drunkenness, gentlemen of this court, there is a question connected with the assumed inebriety of the respondent upon the various occasions that has not been proven against this respondent in any case.

If I were only able I would desire to confine and make some remarks upon the medico-legal feature of the evidence offered on this trial. The law laid down in medical jurisprudence is very indefinite, very uncertain; it is susceptible of a variety of construction,—almost as much so as the law that has been so ably and learnedly discussed by these legal gentlemen. Physicians differ very often, but I think there is one plain proposition,—that no non-professional man is capable or competent to decide the question as to when a man is drunk. That I lay down as a proposition upon the subject of drunkenness. I am not going to discuss the question physiologically and pathologically. If it were possible for me to do it, I think I could show this court the difference between intoxication even and drunkenness; I could show this court that some of the brightest minds this country has ever produced were accorded their brilliancy under the exhilarating effects of alcoholic stimulants; I could show you beyond a question of doubt that, from Æsculapius, all the way down to the present day, the profession has deemed it expedient and necessary, in many conditions of the human system, to recommend the use of ardent spirits in some form; I think I could show you that the ablest analysis ever made of the blood of a child, fresh from its mother's womb, has discovered alcoholic principles; I could show you that alcohol, although denounced as a curse, is one of the essential elements to the full and perfect development of brain and muscle in man as well as it is in inferior animals,—the very constituent elements of your food, received into the stomach, undergoing digestion, under assimilation, developing that principle.

I think, outside of that I could show you that drunkenness, in the sense in which we as medical men understand it, does not consist in taking a single glass of beer or whisky, it is not composed of the elements and ingredients testified to before this court, it is something far beyond that. The direct effect of alcoholic stimulation upon the human system is first, that of stimulation as far as the action of the heart is concerned; by its absorption, increased activity of the circulation; it then becomes a nervous stimulant; and under the phase of its physiological action upon the system, some of the grandest productions the world has ever seen have emanated from the human brain; some of the most magnificent efforts your statesmen have ever made have been made while under its influence; the finest surgical operations which have distin-

guished my profession throughout the world, have been made by surgeons who never undertake a case without more or less stimulation.

What I desire to controvert particularly is, this idea that the moment you have taken alcohol into the system it destroys the normal condition of the brain and the functions of the nervous system. This I deny. Instead of destroying it, it increases the range and power and grasp of the mind, until over-stimulation, by its reacting power has destroyed the capability of the brain. Now, there has been no such condition proven before this court as against the respondent in this action. I have examined the whole evidence upon this point, gentlemen; nothing of that kind has been proven. Neither has the proof itself been competent to establish a fact of that kind had it existed; the most that any of the witnesses for the State have said was that "in their opinion." A good many of them said they never drank any whisky or beer. Are they, then, competent to testify as to the effect of over-stimulation? I don't think my friend, Dr. Wheat, has ever drank any. I question his competency, from personal experience, to prescribe precisely the individual, physiological, and pathological effects that a glass of whisky would have upon him. Now, you take a man who is in the habit of drinking more or less—what would intoxicate a non-drinker would not affect him at all. What to-day will affect a man, to-morrow will have no influence at all upon him. That is owing to the condition of the digestive organs, the peculiar susceptibility of the nervous system, by virtue of rapid absorption.

Now, in order to testify as to the fact of drunkenness, the witness should be sufficiently learned and informed upon the effects of ardent spirits upon the human system to give an intelligent reason why the man is drunk. Your law does not say for intoxication; it says for drunkenness. Now, as we understand the term drunkenness in our profession, a man has got to be in such a state as to be deprived, not only of his mental power but of the power of locomotion. Co-ordination between the brain and the limbs must be partially or wholly suspended; if partially, the man's gait is irregular,—the side-walk is not wide enough for him; if complete, he loses all self-control, and lies down in the gutter. That is what we understand by drunkenness,—physiological and pathological drunkenness,—not imaginary. They are the effects that any man of observation whatever, whether professional or non-professional is capable of judging of; but for a man to come into court and testify that because one of the members of this court leaned to one side in his chair, cocked his feet upon the table, (as I have done, and all of you have done many a day, since this trial commenced), that forsooth we were all drunk,—the theory is erroneous, the man is not qualified to decide the question as to whether we are druuk or not. I believe Shakespeare, somewhere, has said that the tendency of drink was to redness of eyes, to sleep and to women. Now, redness of eyes has not been proven against the respondent in this case; sleep has not been proven against him. The reverse of these propositions has been proven; it has been shown that when he was, as they say, in a state of intoxication, his eyes were wide open, and they were not red. As to the third proposition laid down by Shakespeare, that, this court knowingly and intelligently shut out; I cannot speak on the woman part of the question. These were the symptoms of that great writer Shakespeare,—the man who drank seven goblets himself,—as most all great men have. So much for this part of the subject.

Now, some of the witnesses who testify, particularly on article number two, I believe, (that is the charge laid in Waseca,) are witnesses whose credibility cannot be questioned in any court. You take the testimony of Father Hermann, if you please, from my county, who testifies positively, unequivocally and directly to the point, that Judge Cox was not drunk,—a man who has seen probably as many drunken men as any other man, he being a priest, a man capable of deciding the question as to a man's drunkenness,—place his testimony by the side of that of the witnesses who have testified that Judge Cox was drunk at that time, and I would not give a snap of my finger for their testimony. So I could follow the argument right through, gentlemen; but, as I announced in the commencement of my remarks, they shall be brief because I have not got the voice to speak at length.

I would like to discuss the question at greater length, but I can say to you, under my oath, conscientiously, that I do not believe the law or the evidence or justice demands Judge Cox's conviction, and when my name is called, I shall certainly vote not to convict. That is my duty.

Senator GILFILLAN, C. D. Mr. President, I have thought it my duty to present my ideas upon this matter to this court, and I shall endeavor to do so in a very brief space of time.

The authority for my action in the premises must be found in the constitution of the State. The office of Distsict Judge is created by the constitution, and the sole authority for the removal of an incumbent is found in that instrument, and the process is by impeachment, upon the grounds specifically laid down therein. Those grounds are, "corrupt conduct in office, crimes and misdemeanors." These offenses must be those known at the time of the formation of the constitution to the common or statute law to be of such a character as to constitute the charges then known by such designations. To the list of these offenses the legislature has no power to add to nor diminish, neither to modify nor to change in the least particular. To admit the existence of any such power in the legislature is to consider that the tenure of office of any of the officials in article thirteen of the constitution depends upon the caprice of the legislature, moved by partisan passion or a desire for unlimited or undue power, and that the constitution of the State is not a shield to protect one branch of the government from the encroachments of another branch, and to prevent the consolidation of power wisely distributed in these branches.

If the legislature can enact that certain acts of omission and commission should be "corrupt conduct in office, crimes and misdemeanors," and impeachable offenses, they have the power to make the judicial and executive departments of the State their servile instruments, to do the bidding of a temporary majority in the legislature.

To ascertain what act constitutes one of the offenses within the meaning of the constitution we must have recourse to the intention of the framers of the constitution at the time of its formation. They sought to provide a remedy for the removal from office of persons who should abuse the trusts confided to them, in some official conduct or misconduct. They provided that such persons should be offenders as officials and not as individuals, so far as an impeachment court could act.

To my mind it is clear that the constitution never contemplated the arraignment of any of the officials mentioned in article 13, before a

High Court of Impeachment, for any acts except those that were performed or neglected to be performed by them as officials. Whatever crimes and misdemeanors were committed by them as individuals should be answered for in the ordinary courts of justice.

Now let us enquire whether the respondent has been charged with acts committed as a judge which are official misdemeanors within the meaning of the constitution. The answer is simple and easily found in the Revised Statutes of Minnesota, of 1851, on page 25, and was cited by the learned counsel on the part of the respondent in the opening of his case.

This is but a reiteration of the common law of the United States and was in force at the time of the adoption of the constitution. It is as follows: "When 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 malfeasance is "a *misdemeanor* punishable by fine and imprisonment." Here is a description of a misdemeanor, an *official* misdemeanor within the meaning of the constitution and for the commission of which an offender of the official sort, designated in article 13, is subject not only to removal from office but punishment as an individual either in his liberty or property or both. See the words of the constitution: "The party convicted shall "nevertheless be liable and subject to indictment, trial, judgment and "punishment according to law."

In a civilized society no one can deny the assertion that it is the duty of a judge to perform the functions of his office to the best of his ability, with his mind unclouded, his judgment unaffected and his discretion not disturbed by voluntary personal excesses. The proposition appears even to me that a judge who enters upon the discharge of an official act or who is called upon to discharge an official act while in a state of intoxication is not only guilty of misbehavior in office but of a wilful neglect of public duty; nor do I know any difference in the acts of positive and present intoxication and the effects following intoxication when they are such as to produce a degree of bodily and mental relaxation so as to disable the officer from performing his official duties in accordance with his natural ability and his education.

Under the constitution and this law I find ample authority for this court to decide affirmatively upon such of the articles as relate to the official acts of the respondent as the State has fully proven.

I desire to make a short reply to a statement made by the Senator from Washington county, [Senator Castle.] As I understood him, his position was this: that where the term official misconduct is used we cannot act upon it without we find some court decision or something in the common law defining what is willful neglect of duty.

Senator CASTLE. Defined in law.

Senator GILFILLAN, C. D. In other words, we must find some description of the act.

Senator CASTLE. Of the offense—not of the act.

Senator GILFILLAN, C. D. The offense is the willful neglect of duty. Now, under the laws of the United States any citizen has the right to go from one State to another, or to leave the country. If a man occupying the position of a judge should leave his State and go abroad, or into another State for two or three weeks, he probably would not be chargeable

with willful neglect of duty; but if he should go from his own State into another, or go abroad and remain absent for a year or more, he certainly could, in my mind, be chargeable with a willful neglect of duty. Now, I venture to say that you cannot find, in the common law, or anywhere, any authority describing an act of that kind.

Senator CASTLE. There are many of them.

Senator GILFILLAN, C. D. I know that according to the law of England, an officer of the government has not the right to leave the realm without the permission of his Majesty, but in this country he has that right. So then the authorities you find there in relation to the matter of impeachment, would not apply in this country, because the rights involved are entirely different. Now who will say that this court would not undertake to decide, if a judge should absent himself from the jurisdiction of his district for a period of several years that it would not be a willful neglect of duty? I have no doubt that the court would undertake to decide that to be a willful neglect of duty, because that would be the only way in which the people could get rid of the incumbent of the office. But we could find no authority for it in the common law or in the statutes.

Senator CASTLE. Pardon me. The statute of Wisconsin particularly provides for such a case.

Senator GILFILLAN, C. D. How long must he be absent?

Senator CASTLE. A man who absents himself from his seat vacates his office.

Senator GILFILLAN, C. D. Is it so that every man who goes across the line vacates his office?

Senator CASTLE. That is temporary.

Senator GILFILLAN, C. D. Does it say temporarily or permanently?

[Senator Castle did not reply.]

It is for this court to say whether the offense charged becomes a willful neglect of duty.

Senator CASTLE. I think the statute would help you some.

Senator HINDS. Mr. President, perhaps it would be better if I should remain entirely silent upon the questions of law presented in this impeachment. It was asserted by one of the counsel for the respondent that there was one Senator (naming myself) who had formed opinions in regard to the questions of law involved in this impeachment; that I was committed to a certain theory which involved the respondent in this case, stating that the case he referred to was the impeachment of Sherman Page,—one of the judges of this State,—and that he referred to the expression of opinion I had made upon the trial of that case while acting in the capacity of one of the managers.

I notice that there are two of the theories that were advanced in that case by myself that are involved in this case, and I believe only two. However, the expression of opinion in regard to those two matters does not differ very materially from the expression of opinion made by other Senators upon this floor. The first of those opinions was in relation to the position this body occupied in the trial of impeachments,—whether we were sitting as a court or as a Senate. The other opinion was as to what, under the constitution, were impeachable offenses.

Now in regard to those two features of this case (for there are only two), after I have heard the arguments of the counsel for the respondent, of the managers and of the Senators upon this floor, I have not

come to any different opinion than that which I expressed at that time. I am aware that there is a chance and an abundance of opportunity for a difference of opinion upon one branch of that subject. It has been pointe l out by the Senator from Ramsey [Senator Gilfillan, C. D.] who last addressed the Senate.

It is claimed by him that the only acts impeachable under our constitution are those that have been committed or neglected *officially*; that the "crimes," and the "misdemeanors," and the "corrupt conduct in office" under the constitution, will not warrant an impeachment for any act or omission on the part of a judge that was not performed within the line of official duty. In other words, if I understood the Senator correctly, however criminal the Judge may be in his private capacity, that it does not warrant an impeachment. He may commit murder in the streets, theft, or any other crime, but if it does not relate to the discharge of his official duties, the court of impeachment has no jurisdiction. This theory can be upheld only upon the supposition that the words in our constitution,—"crimes and misdemeanors,"—are qualified by the other words, "in office." But they certainly are not thus qualified. The term "corrupt conduct,"—for which a judge may be impeached,—is qualified by the term "in office;" but the term "crimes and misdemeanors,"—for which he may be impeached,—has no qualification whatever,—neither a great crime nor a small one, a misdemeanor, a high misdemeanor, or a little misdemeanor, in office or out of office, in the State or out of the State; it is simply and purely "crimes and misdemeanors."

Now, I think that when we take the words of our constitution as our guide and our only guide in that regard, there can be no doubt whatever that any crime, any misdemeanor, may be impeachable, but the question does not arise in this impeachment, for the respondent is not charged by either one of these numerous articles, excepting article 18, for any acts except such as are done or attempted to be performed in *his* official capacity; so I think it is wholly immaterial. The question as to whether other acts than crimes may be impeached is the one to which I alluded when I said that there was a chance for a difference of opinion.

My own opinion is (and I formed it deliberately when acting as a manager in the Page impeachment trial and have not heard anything since to convince me to the contrary,) that our constitution renders impeachable, acts that are done out of the sphere of official duties, and which are in no relation whatever to the office, and are neither crimes nor misdemeanors, in the criminal sense of those terms. Perhaps I had better refer, in this connection, and repeat what I have previously uttered, (merely by way of argument) as my deliberate judgment upon those two matters,—as to the capacity in which this Senate sits here, whether judicially or politically, as a court, or as some other sort of a tribunal,—and as to what is the meaning of the terms in our constitution in relation to impeachable offenses. In the third volume of the Page impeachment, on page 260, when this question was up, the position that I assumed in regard to the nature and attributes of this tribunal was stated in this language:

The question was raised in the commencement of these proceedings and which has been frequently adverted to since, as to the nature and attributes of this tribunal, whether you are sitting here as a court or a Senate; whether you are now en-

gaged in a criminal trial or in an inquest of office, or merely in the exercise of a political power conferred on you by the constitution. If this is a court, then it is a court without possessing any judicial powers. If it is a Senate, then it is a Senate without possessing legislative powers. You sit here under the solemnity of an oath never administered to a judge, or to a Senator as such. Your oath of office is peculiar to this tribunal, that you will do "justice according to law and evidence." But the law by which you are to mete out justice is not the civil law, the common law, nor the criminal law of the State, but all of these, and also the law of the constitution, and parliamentary law, each within its own jurisdiction.

If crimes or public offenses are charged as the impeachable acts, you will look to the statutes and the common-law for the constituent elements of such crimes and offenses, but nevertheless you do not administer justice under your oaths according to the criminal code. If the impeachable act charged is the official violation of a private right, you will look to the common-law and the statutes for the constituent elements of the violated right, but nevertheless you need not conduct your proceedings according to either. But the law that determines your jurisdiction is the constitution. The law that regulates the mode of your proceedings and bounds your field of action is the parliamentary law of impeachment.

But the question remains unanswered, is this tribunal a court. Your committee that reported rules for the goverment of your proceedings, calls this tribunal the "High Court of Impeachment." The constitution provides, section 14, article 4, that "All impeachments shall be tried by the Senate;" and on the trial of the impeachment of the governor, the lieutennant governor shall not act as a member of the court." By the constitution, then, you are called a Senate and you are called a court. Yet as a court you possess no judicial power.

Section 1, article 6 of the constitution provides that "All judicial power is vested in a supreme court, district court, courts of probate, justices of the peace, and such other inferior courts as the legislature may establish." While you are a court in the restricted sense of a deliberative tribunal, with sole power to try all impeachments, yet you possess no judicial power whatever.

For the reason that all judicial power under the constitution of the State is conferred upon the ordinary courts of the State; and as an inference whatever this tribunal may be, the court or tribunal can possess no judicial power whatever,—all judicial power being conferred by the constitution itself upon the ordinary courts of the State.

You are therefore not a court in the judicial sense of the term; but still a court within the parliamentary sense and usage of the word. You are a court in a restricted sense, possessing no judicial power whatever. Yet you are a court for the trial of impeachments, possessing unlimited power within that jurisdiction. But the trial of impeachments is not the exercise of judicial power.

The inference from that is clear and positive that this cannot be a criminal trial, because the court before whom this trial is progessing possesses no judicial power; but judicial power is essential to the trial of an individual for crime.

The duties in which you are now engaged is a trial, a trial by an extraordinary court, a court from whose decision there is no appeal. Not a criminal court, for the trial of persons charged with the commission of crime; nor yet a civil court for the trial of causes of a civil nature; but a court for the trial of public officers, not for the purpose of punishment, but to determine whether they are the proper persons to hold their offices. Possessing no judicial power you can exercise none. Possessing the sole power to try impeachments, your decision within your jurisdiction is the supreme law of the State. No other power under heaven can question your judgments. You have no power to punish for past official misdeeds, but you have full power to protect from their commission in the future.

I confidently conclude that you are sitting here as a political court, governed by parliamentary law, engaged in a political trial, for political offenses, and to be followed only by political judgment. Judicial in none of its features, political in all. Political in the high sense of state policy. But here party spirit and political

schemes have no part. The power of impeachment under our constitution is exercised for the protection of the public, not for the punishment of the offender. The rule that gives a defendant the benefit of any reasonable doubt has no place in an impeachment trial, because that rule belongs only to criminal law, and can be invoked only in a criminal trial. The exercise of the power of impeachment is not a criminal trial, but only a political trial for political causes and for political purposes.

While engaged in the trial you are in an exalted sense the High Court of Impeachment. Though limited in the extent of your powers, you are supreme within your jurisdiction. You exercise the functions of a jury, and will determine the facts and truth from conflicting evidence. You possess the prerogatives of the court, and will determine the law and apply the law to the facts, and you will decree the judgment upon the facts and the law of the case. And there can be no appeal from your judgment, no suspension of the execution of your decree, no commutation of sentence, and no pardon of the offender, because you can inflict no punishment. Your decision will be final in all matters of fact and of law pending before you; final as it may affect the political rights of the respondent, and final as it may affect the welfare of the people. This court may well be denominated the High Court of Impeachment, for within its sphere of action it is over and above all courts, all officers, and all powers within the State. It orders its own organization, sits upon its own motion, determines its own rules of action, determines the facts and the law of the case, and is necessarily the sole judge of what acts are impeachable under the constitution. By your decree you may remove the highest executive and judicial officer of the State. This tribunal, then, be it court or Senate, is august and supreme in all questions of impeachments sent here for trial by the House of Representatives. Before your judgment-seat the people, in their political capacity, may send their judges, their governors, and officers of State to be arraigned, not for trial for crimes or for the punishment of crimes, but merely to determine their fitness to continue in office.

Now I might further enforce this proposition, and also answer the arguments that have been made to the contrary, by an illustration: Suppose the charge in these articles of impeachment had been that the respondent had stolen his neighbor's horse. It is a crime; it is impeachable as such, under the constitution. Now, if he is to be punished for that crime it can be done only by indictment. It would be the exercise of the judicial power of the State to try him upon that indictment. At the same time the owner of the horse may bring his civil action to recover damages and allege the same state of facts that the indictment contains,—that the defendant broke and entered his premises and took and carried away his horse, of the value of a hundred dollars. The trial progresses and it progresses under and by virtue of the judicial power of the State that is conferred by the constitution upon the ordinary courts of the State. Now will it be urged here that when the trial in the civil action progresses for the recovery of the value of that horse that the defendant is being tried for a crime? Most certainly not.

All the elements that go to make up that crime are revealed by the evidence and come into the case upon the trial of the civil action, but he is not being tried for a crime at all. So the House of Representatives may report articles of impeachment to the Senate against the individual who then, as we suppose was a Judge. For what? Most certainly not for the purpose of trying him for the crime, for that is done by indictment, in the judicial tribunal of the State; not for the purpose of recovering or making him respond for the value of the property of which he deprived his neighbor, for that is done in the judicial tribunals of the State in a civil action; but merely and solely for the purpose of getting him out office. Now while we are trying him merely for the purpose of ejecting him from the office he is dishonoring, and while we necessa-

rily have to prove all the elements that go to make up a crime, (for which also he may be indicted and again sued for the value of the property), yet in no sense are we trying him here in a civil action or in a criminal action. Neither for the purpose of punishing him for the crime that he has committed nor to make him respond for the injured right that he has inflicted upon his neighbor, but merely a political trial, political in the sense that I have defined it, and in the sense in which of course Senators will understand it,—as relating to the public, the interests of the public. It is a political trial because he is put upon his defense here merely for his political offense. Not for an offense against the criminal law, not for an offense against the individual, but for an offense against the public, the office that he holds.

Senator GILFILLAN, J. B. Now, Mr. President, if the Senator will allow me, I would like to have him illustrate his view in the same connection as to the degree of proof requisite in a civil action, in a trial upon an indictment, and in an impeachment proceeding, respectively.

Senator HINDS. I will do so.

It will be noticed that in the position assumed by the managers and also by Senators here, and in the position which I have read,—which was assumed in the trial of the Page matter,—that it was maintained that the question, or the doctrine, or the principle, of proof beyond a reasonable doubt had no place in a trial of this kind. That degree of proof relates wholly and solely to the criminal law. Where the respondent is to be punished, as in the supposed case, criminally, for horse stealing, the evidence must show his guilt beyond a reasonable doubt. That is, the jury that tries him must come to the conclusion that he is guilty beyond a reasonable doubt. When the same state of facts by the same witnesses, in the same language we might say, go to the jury in the civil action that we have supposed, brought for the recovery of the value of the property, that rule does not apply. In the civil action the jury are warranted in finding a verdict against the defendant if the preponderance is in favor of the plaintiff; that is, if the weight of evidence tends more strongly to convince that the defendant took the horse than to the contrary they are warranted in returning a verdict for the plaintiff for the value of the horse. Now, it is that principle that applies in the case that we have before us, the impeachment. The respondent is being tried merely and solely for the purpose of ousting him from the position which he holds, and it requires merely a preponderance of evidence.

The other question to which the counsel for the respondent alluded in which it was stated that they had formed opinions adversely to their theory, is in relation to the meaning of the words used in our constitution. Suppose that we had no law and no decisions upon these questions at all as to what acts are impeachable,—nothing but the bare words of our constitution before us,—what do they mean? Take these words by themselves, as they stand in our constitution, what do they mean? It might be that a constitution was formed for the first time using those words (and as a matter of fact I believe those words, in the manner they are grouped in our constitution do not appear in any statute law of the land or in any other constitution of the land in precisely the same words) the question is what do they mean? The words themselves have been repeated, and the first branch of these words reads that

the respondent may be impeached for "corrupt conduct in office." Now what do the words "corrupt conduct in office" mean?

But our constitution gives no definition of "corrupt conduct in office." Neither are these terms defined in our statutory law. In fact these words do not appear in our statutes at all, though the term "misbehavior in office" does appear in our statute.

But "corrupt conduct" and "misbehavior" do not mean the same things. Neither of these terms have any technical meaning at common law. Our State constitution differs materially and essentially, as to what are impeachable acts, from the national constitution.

Under the constitution of the United States impeachments, if indeed there is any limitation, are for treason, bribery, or other high crimes and misdemeanors. There the crimes and misdemeanors to be impeachable must not only be of a high nature, but must be such as, when compared with treason and bribery, can be called "other" high crimes and misdemeanors. The impeachable misdemeanors under the express terms of the constitution of the United States, must be of a like nature in enormity to treason and bribery. There is no such limitation or qualifying words in our constitution. With us no deep turpitude in an act is necessary to make it impeachable. But what is corrupt conduct? These words have no technical common law meaning. They are not known as law terms. Their meaning must be sought for in the common usage of the English language. When applied to official acts, "corrupt conduct" may mean bribery; but as bribery is a well-known common law term, that word would have been used in the constitution instead of corrupt conduct if only bribery was intended by corrupt conduct. "Corrupt conduct," then, must mean more than bribery. Corrupt conduct means depraved conduct; tainted with wickedness, debased, impure conduct, vicious, infected with errors and mistakes, perverted, as we speak of "corrupt language," "corrupt judge." "Corrupt," then, means in our constitution, debased and perverted. Perverted means turned from proper purpose or use—misinterpreted, from evil motives or bias. A corrupt judge, then, is one who perverts his office to improper uses, or is debased in conduct. Therefore, any acts and any conduct of the respondent affected by any of these qualities are impeachable.

All that a judge does in or out of court ought to be consistent with the honor and dignity of this high office. The term, "corrupt conduct in office," would cover every judicial act done through vicious motives, or in an arbitrary manner; every willful ommission to perform a judicial duty, and all acts done in or out of court, so depraved, debased, impure and vicious in their tendencies as to bring reproach upon the judicial office.

The second class of impeachable acts under our constitution is crime. "Crime" in its legal sense covers every unlawful act done, whether in or out of office. There is no limitation of the class of crimes that are impeachable, no qualifying words as to the degree of turpitude to be impeachable. High crime in a judge may be a high crime, as bribery in his official capacity, when it would be corrupt conduct in office in its criminal sense, or it may be a petty crime in or out of office, when it would also be a misdemeanor in the criminal sense of that term. Since the term "crimes" includes all criminally corrupt conduct in office, and all criminal misdemeanors, the constitution, in using all these terms—corrupt conduct, crimes and misdemeanors—must have intended to make acts impeachable that were not crimes. If only crimes are impeachable, then there is no force or effect given to the words corrupt conduct and misdemeanors.

Now, it is a well-known rule of the law of interpretation that every word used in a legislative act or in a constitution must be so construed as to give it force by itself. Our constitution uses the three words, "corrupt conduct," "crimes" and "misdemeanors." If it merely meant that only "crimes and misdemeanors" were to be impeachable why use the words "corrupt conduct in office?" Any criminally corrupt conduct is a crime; any criminal misdemeanor is a crime. Then, if our constitution, by the use of the terms only meant to render "crimes" impeachable, it would have been only necessary to use the word crimes, for all

criminal misdemeanors is a crime. It seems to me clear that by the use of all three of these terms in our constitution it must be intended to mean something different from merely crimes and criminal misdemeanors and criminal, corrupt conduct.

The third clause of impeachable acts under our constitution is misdemeanors. It is not merely misdemeanors in office that are impeachable, but any and all misdemeanors, whether in or out of office. The term "crimes" includes misdemeanors in its legal or technical sense, and all criminal misdemeanors would be impeachable as crimes. As force and effect must be given to every word used in the constitution, something more and different from crimes must be intended by the use of the term misdemeanors. Misdemeanor in its restricting legal sense is merely a class of small crimes; in its ordinary sense it means misconduct. All crimes are misdemeanors; but all misdemeanors are not crimes.

Under our statute, already cited, every willful neglect to perform an official duty, and any misbehavior in office, is a misdemeanor and punishable as such, and of course a crime. Under our statute many criminal misdemeanors are not indictable, though punishable by fine and imprisonment. But under our constitution all crimes and all criminal misdemeanors are impeachable, whether indictable or not. Hence it follows, that the argument of the learned counsel for respondent, that no act, no crime, no corrupt conduct, no misdemeanor is impeachable, unless of such deep turpitude as to be indictable, has no foundation in our constitution.

And it will not be difficult, as has already been determined, to show that it is not necessary to render an act impeachable that it should be indictable at all: Among the cases that were referred to in the argument of the managers of this impeachment, the case of Judge Barnard of New York was cited. I believe that while he was convicted upon over thirty different articles of impeachment not one solitary one of those articles charged the commission of a crime; under not one of them could he have been arrested and punished for any criminal offense that he had committed. They were all for misconduct either while performing his judicial duties or in society, in reference to his judicial acts.

Now, Mr. President, in regard to the matters that are involved in this impeachment I think that the respondent himself struck the key-note when he undertook to refute the argument made by the managers,—very briefly,—that he had violated his official oath. The respondent most certainly saw the terrible import of that brief argument. I believe that this whole case, when we reduce it down to its legal elements, is involved in the violation of his official oath; and I presume that no Senator will claim that the violation of an oath is not impeachable. Believing that it will not be so claimed I shall take up no time in this court to establish that hypothesis. I will assume that the violation of an official oath is both indictable and impeachable when committed by a Judge of the district court. The respondent criticised—that by changing just one word in these articles of impeachment—the assertion that is there made that these acts were done in violation of his official oath. He stated that he did take the oath that the law prescribed, and that the managers had perverted it by interpolating the word *and*, and he did not claim that it had been perverted in any other manner or by any other means. Whether that word *and* is placed in these articles of impeachment, as it appears, or is omitted, in my opinion it makes no difference; being there it leaves it just exactly with the same idea that it would have possessed if it had been omitted.

Now it is conceded that the respondent is acting in all that he does, in all that he says, in all that he ought to do, under an oath officially

administered to him, that he will discharge his duties faithfully and impartially. I believe it is not claimed in this prosecution that he has not discharged those duties impartially; but has he discharged them faithfully? Now, I insist that the gist of each one of these articles of impeachment, excepting article eighteen, is the violation of that oath,—that he would discharge these official duties faithfully, according to his best learning, judgment and discretion. Has he done so? It does not matter, if he has not done so, whether the reason for his mal-performance of that duty arises by reason of his intoxication or by reason of any other act; the substance of the charge is that he has violated his official duty; that he has committed official perjury. That is the charge. Whether it has been proven or not depends upon the evidence. But the gist of each one of these articles of impeachment is that he has violated his official oath by not performing his official duties faithfully, according to his best learning, judgment and discretion. It is manifest to my mind that it does not make any difference for what reason he did not discharge his official duties,—whether it was by reason of his having left the State,—if he left the State for any considerable time he would not be performing those duties faithfully,—if he shut himself up in his house, (and there is no law in this State or any other that prohibits a man from closing the doors upon himself within his own house), whether he got drunk and thus could not perform the duties of his office,—it all turns back upon the commission of official perjury, —a failure to carry out the oath he has taken.

Now, ordinarily, in the commission of a crime by a public officer, we lose sight of the official oath under which he has acted. When a county treasurer is indicted and tried for an embezzlement, the question of the violation of his official oath is not referred to and is not included in the charge; but nevertheless, the treasurer that embezzles the public funds has committed official perjury. We are now trying a judge of the district court; under this impeachment we are apt to lose sight of the real fundamental violation of law that is involved in the charge, and I think it has been by far too much overlooked in the prosecution. If the drunkenness of a judge did not in any manner interfere with the discharge of his official duty, then the questions that the Senator from Winona [Senator Buck, C. F.] and other Senators have referred to might arise, whether public drunkenness was a crime, and whether a judge who was merely guilty of public drunkenness might be impeached. I think under our constitution that he might, because it would be corrupt conduct in office. It would be misbehavior of a public officer; and believing, as I do, that the judges of our courts must, in their daily walk and conversation, be gentlemen as well as when they are upon the bench, that any such conduct as that which may be denominated misconduct, misdemeanor, or corrupt conduct, (I use the word corrupt not in its criminal sense but in its ordinary sense, of perverted conduct,) that he would be guilty of an impeachable act. But that is not the question we are trying. We are not considering a question of that nature, for every one of these articles that we are now considering, excepting article eighteen, charges the impeachable act as having been done officially.

The question, I state again, is whether he has committed official perjury by a failure faithfully to perform his judicial acts. Take the case at Waseca. Suppose that it had been proven, (for we are not now co-

sidering the question as to whether these articles have been sustained by the proof or not, but merely the question as to whether they charge impeachable offenses), did he faithfully perform the duties of his office the day that he was obliged to suspend the functions of the judicial office? Most certainly no Senator can tell me that he did then, on that day, on that occasion, faithfully discharge the duties of his office. If he did not, then he was guilty of official perjury. Take the case of the mandamus. This respondent has sworn that he will perform his judicial duties according to his best learning. Assuming that the evidence proves the charge,—the fourth charge, I believe, in relation to the mandamus,—did he then, in regard to that matter, perform those duties according to his best learning? If he did not, it makes no difference for what reason he did not do so. Suppose he had merely taken that mandamus, or whatever paper had been submitted to him for his official signature, passed it over to his wife and asked her to tell him whether he ought to sign it. We have no law that says a judge shall not submit the questions that are brought before him to his wife for her consideration, but suppose he had done it; is he performing that duty according to *his* best learning or according to the best learning of his wife? Most certainly, if he did an act of that kind and signed it because she said it was right, he would be committing official perjury. Under the fourth article it appears, if we are to rely upon the evidence, that the mandate of the supreme court, when taken to him, found him in such a state that he was unable to exercise any judgment,—scarcely able to hold the pen, —and did not act upon his judgment; he did not exercise his best learning in regard to that matter, but the paper was passed over to a neighbor, his friend, to determine whether he ought to perform that official duty or not,—exercising, upon his own part, no learning whatever, neither his best nor his poorest. It is true (and there is not a word of evidence to refute the evidence on the part of the prosecution in that regard) I say, Senators, if it is true that he passed that document over to a friend to determine whether he ought to affix his official signature to it or not, he did not perform his judicial duties according to his best learning: and if he did not, he committed official perjury. It was a violation of his oath, for he was bound, in executing that duty, to use his best learning, just as much as he is in performing any other duty.

Suppose some attorney had there presented a commitment of some one to the penitentiary and told him it was a mandamus from the Supreme Court, and it had been passed over to somebody to tell him what it was, in the interest of the party that wanted to get the commitment, and he had signed it. It would be manifest then that there was no exercise of his judicial mind at all. And, as a matter of fact, it is just as clear, under the proof, that he in this instance did not exercise his judicial mind in any degree, either according to his best learning or in any other degree.

Well, so it is in regard to any of these acts charged in any one of these several articles of impeachment, where he performed a judicial duty in a greater or less degree under the influence of intoxicating liquor. It is his *best* learning that he is required to bring to bear upon all of his judicial acts; and it is conceded, I believe, that a man that is under the influence of liquor, even to a small extent,—if he is only slightly intoxicated,—his best learning is not brought into requisition.

Much of the evidence in relation to these several articles of impeach-

ment does show that he was in a greater or less degree under the influence of intoxication while he was performing judicial acts—some he was so grossly intoxicated that he was unable to perform at all. Did he perform, then, those duties, according to his best learning, his best judgment, his best discretion? If he did not, he was guilty of official perjury.

A violation of the official oath, I say, is the very matter that is charged in these articles as the gist of the impeachment. It is true that it is alleged that this violation of the official oath arose because he was intoxicated, but that adds no force or strength to the allegation at all; it might just as well have stated that it arose by reason of his leaving the State, by reason of his undertaking to perform the duty at all, at a time or under circumstances when it was his duty to act.

I can but conclude, as a matter of law, that these articles, excepting article eighteen, each and every one of them, do charge the commission of official perjury, and I doubt seriously whether there is *any* Senator who will undertake to argue that the commission of official perjury is not an indictable offense.

The PRESIDENT *pro tem.* It is within ten minutes now of the usual time of adjournment. Has any one——

Senator MACDONALD. Mr. President, I have an order here. I don't know that it will be in order until the order that was adopted this morning be recinded. I ask that it be read though.

The Secretary then read the order, as follows:

Ordered, That the high court of impeachment proceed at 10:30 o'clock to-morrow, in open session, to vote upon the several articles of impeachment *seriatim*, and that the vote be taken without debate. That the board of managers, respondent and counsel and reporters of the city papers be admitted.

Senator MACDONALD. I would move that so much of the order adopted this morning as is in conflict with this order be recinded. I think this discussion here in secret session has all been in accordance with our rules, but for one, when the vote upon these articles is taken, I would like to have it public. I am willing that the whole world should come in and see how I vote.

The PRESIDENT *pro tem.* The Senate has heard the order as offered, and the motion. Is the motion seconded?

Senator BONNIWELL. I second the motion.

The PRESIDENT *pro tem.* Is the Senate ready for the question?

Senator JOHNSON, A. M. Mr. President, am I to understand by this order that we cannot explain our votes on the several articles?

The PRESIDENT *pro tem.* The Senator has just heard the remark of Senator MacDonald. There would be an hour and a half in the morning before the vote would be reached, under the rule.

Senator JOHNSON, A. M. I mean on the different articles to explain the vote, as we vote.

Senator MACDONALD. Well, I don't know but that the Senator would have a right to explain his vote if he should insist upon it; still, it would cut off general debate at that hour. We meet at 9 o'clock, and debate would be in order until 10:30.

Senator POWERS. Mr. President, I was originally a little inclined to lean toward an open session, but we have been getting along here so very quietly that I am now quite in favor of continuing our delibera-

tions in this way. I think we shall do better than we should to throw the door open and make a sort of show of it. Probably the most of our debating has already been done, and for one, I hope that the order that we adopted this morning will not be rescinded. I think we shall do better, get along more quietly and successfully, to go on as we are now doing; and after to-night I think we shall progress a good deal more rapidly.

Senator GILFILLAN, J. B. Mr. President, I concur in the remarks of the last speaker. It seems to me we have got along to-day admirably; and let's continue in well doing. I presume the general discussion is pretty much over; but there will be more or less discussion of the several articles as they are reached, or at least Senators will desire to explain their votes as they are called upon to vote upon the articles. In these two ways, then, we are liable to have considerable discussion. Yes, we *may* have so far as the facts are concerned. Now, I apprehend, Mr. President, we are not here to discuss this matter for the benefit of a few that may gather in here from the City of St. Paul, or a few, perhaps from Minneapolis. We are not talking to them; we are not voting to satisfy or to disappoint them; we want to proceed here with our business in a decorous, orderly manner, without interruption, free from annoyance.

Senator RICE. What about the St. Paul *Dispatch?*

Senator GILFILLAN, J. B. I don't care anything about the St. Paul *Dispatch.* With reference to the newspapers, so far as I care, they might come in, if they desired to; I would just as soon the reporters would come in and quietly occupy their places at the reporters' table as to be crouching down outside of the door as they have been doing all day to-day.

Senator MACDONALD. The Senator was present at the voting in the Page case. Did he discover anything indecorous or out of the way?

Senator GILFILLAN, J. B. No, but we did what I do not think was the right thing to do,—we proceeded to a vote without any debate,—giving a Senator the right, within a certain length of time, thirty or sixty days to file his written opinion. Now, I think the remarks of the chief justice in the Barnard trial were eminently proper; they were fraught with wisdom. If any remarks are to be made, it is due to the Senators here that the person who makes them should make those remarks in the presence and hearing of his associates. Why so? That we may have the benefit of what he has to say, the benefit of his thought and study and consideration of the matter. We don't care to give anybody the privilege of making up a speech such as was properly styled in the Barnard trial as a post mortem address, merely to go to the world. We don't care anything about that; we ought not to permit it. Let any Senator who desires to address the Senate here give the court the benefit of his reflections now, before the vote is taken or when it is taken. In the Page trial there was no deliberation, simply voting; and still, upon that occasion, there was a good deal of noise in the lobby, a good deal of crowding, pressing and disturbance.

Senator MCDONALD. My recollection is it was very quiet in the court.

Senator GILFILLAN, J. B. It was, so far as the court was concerned, but there was a large pressure in the lobbies. Now, then, if it is desired, I have no objection to the newspaper reporters coming in, and the attorneys upon both sides; and the respondent, too, if he desires; but as to having

a gaping crowd standing around here with a morbid curiosity, to see what each one is going to say or how he is going to vote,—I have no desire for any such exhibition as that. Not that I would screen anything I have to say, or any vote I have to give from any body, not that I fear the light of day, but it is simply because I have courage enough to stand up here and say that I, for one, am ready to discharge my duty in the best way that it could possibly be done, without fear or favor of the gaping crowd or any body else. Now, that is the way I feel about this matter; and I think we had better go on just as we are. Or, if it is desired that the counsel and the respondent come in, I have no objection to that. They will make no disturbance; the reporters will not. But as for having a promiscuous assembly, I don't think it is judicious.

Senator MACDONALD. My object in making the order was as much as anything for the purpose of allowing the lawyers and respondent to come in.

Senator GILFILLAN, J. B. If it would include the respondent, counsel and managers, I think it would be just as proper to let them in as the reporters.

Senator MEALEY. I have no objection to letting the reporters in.

Senator ADAMS. Mr. President, I give notice of debate upon those resolutions. The only objection I have to letting the doors be thrown open is the annoyance we shall have by the crowd rushing in.

The PRESIDENT *pro tem.* Notice of debate having been given, the resolution goes over, under the rule.

Senator GILFILLAN, J. B. Mr. President, I don't know how that rule can operate in a proceeding of this kind. Is the chair going to hold that it is within the power of any one member of this court to block the proceedings upon any step we are about to take? Suppose an order should be offered here to-morrow when we are ready to vote that we proceed to take the vote, is it going to be within the power of any Senator to throw that over to the next day by simply giving notice of debate?

The PRESIDENT *pro tem.* Are we not proceeding under the rules?

Senator GILFILLAN, J. B. I insist that this is not a resolution such as is referred to by the rules of the Senate. This is in no sense a resolution.

Senator CASTLE. It has been so held.

Senator GILFILLAN, J. B. Then it is not too late to correct a ruling of that kind. The rule certainly has no application to a proceeding of this kind.

The PRESIDENT *pro tem.* I must hold so, under the rules, unless the Senate determine otherwise.

Senator BUCK, D. Suppose to-morrow we get through voting and an order is offered for the entry of judgment, does that go over if anybody gives notice of debate?

The PRESIDENT *pro tem.* An order is not a resolution, within the meaning of any parliamentary rule I ever heard of.

Senator HINDS. The entry of judgment would be the regular order of business.

The PRESIDENT *pro tem.* The time having arrived, the Senate stands adjourned until to-morrow morning at nine o'clock.

FIFTY-FOURTH DAY.

ST. PAUL, MINN., Wednesday March 22,1882.

The Senate sitting in secret session met at 9 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, Bonniwell, Buck, C. F., Buck, D., Case, Castle, Clement, Gilfillan, C. D., Gilfillan, J. B., Hinds, Johnson, A. M., Johnson, F. I., Johnson R. B., McCormick, MacDonald, McLaughlin, Manley, Miller, Morrison, Officer, Perkins, Pillsbury, Rice, Shaller, Tiffany, Wheat, 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.

The Sergeant-at-arms having made proclamation,

Senator RICE. Mr. President, I have a resolution to offer.

The resolution was read by the Secretary as follows:

Resolved, That the Senate, sitting as a court of impeachment, adjourn at 12 o'clock, M., March 23rd, subject to convene at the call of the President.

Senator BUCK, C. F. Well, you are taking it for granted that you will get through.

Senator RICE. I take it for granted that we will get through to-day.

Senator BUCK, C. F. Very well; I don't know how long we may be be here.

Senator HINDS. I move to amend the resolution by striking out the word "resolved" and inserting the word "ordered."

Senator BUCK, D. Why not just as well adjourn when we get through without any order?

Senator RICE. My idea is that we shall get through to-day, if this resolution passes. If we adjourn to-morrow, it will not be necessary that the members of the Senate should be here to-morrow; the President *pro tem.* can come here and adjourn the Senate; the Secretary will make out the certificates for the members and we can have them to-day, and by right the Senators ought to receive pay for to-morrow, because they will all be on their way home.

Senator GILFILLAN, J. B. Now, we may not be able to get through before to-morrow. Would it not be just as well to let this order lie over until we get through? Or, if we see that we shall get through we can take it up then.

Senator RICE. I have no objection to that. My only object was that the Secretary might expedite the work he has to do, if he knew we were to adjourn at a certain time.

Senator WHITE. Mr. President, we probably never will get through unless we have a time fixed. I don't propose to stay here any longer

than until to-morrow morning. I am in favor of taking a vote on the order.

Senator MEALEY. Mr. President, I desire to offer a resolution.

The PRESIDENT *pro tem.* What is the pleasure of the Senate in relation to this resolution?

Are you ready for the question? As many as favor the adoption of the resolution will say aye.

Senator MILLER. Mr. President.—

The PRESIDENT *pro tem.* Contrary, no. The motion is adopted. Senator Miller now has the floor.

Senator MILLER. I have no desire to speak on the motion if it has been adopted.

Senator ADAMS. The chair was right.

The PRESIDENT *pro tem.* The resolution was adopted.

The order of Senator Mealey was then read by the secretary as follows:

Ordered, that the doors of this court be so far opened as to admit reporters of the press, the managers and the respondent with his counsel in this case, together with ex-Senators and Representatives and that all orders in conflict with this order be repealed.

Senator MEALEY. Mr. President, I desire in connection with that to state that ex-Lieutenant Governor Armstrong and one or two other Senators in the State would like to be present. In deference to their wishes I have offered that order.

Senator PILLSBURY. Mr. President, why wouldn't it be proper to admit all members privileged to the floor of the Senate?

Senator ADAMS. Mr. President, I don't see the object of this order at this stage of our proceedings; we have urged strenuously, for several days, that the proceedings of this court should be had in public, and now, after remarks have been made by the members on yesterday and last night, it is proposed, for the accommodation of certain other gentlemen who probably will speak to-day, that what they say can be published to-morrow in the papers and go to the people of this State. Is that just? There is no right in it; the whole principle is wrong. After your speeches are all in, then if you want to open your doors, I will vote with you; but I won't become a party to an injustice of this character to be performed in a court calling itself a court of justice, for the accommodation of any member of the court.

Senator MEALEY. Mr. President, I desire to say that I think the Senator was not in his seat when this matter was talked of last evening.

Senator ADAMS. I was in my seat all the evening.

Senator MEALEY. It was tacitly understood that the speech-making was about over and that we were now going to proceed to vote; and it is not for the purpose of allowing persons to come in to hear any speeches made to-day that this resolution was offered; it was offered in accordance with a tacit understanding last night that the speeches were about through.

Senator ADAMS. The understanding was, last night, that an hour and a half or two hours would be given to the gentlemen this morning to enable them to express themselves.

Senator RICE. Mr. President, my respect for this court's consistency is not as great as it might be; in fact it has been consistent to be inconsistent. We have adopted orders to do so and so several times and we

have gone to work and set them aside before twenty-four hours have passed. We have made decisions which we have overruled the next day, if not before. I should like to see at this time that the Senate would show some degree of consistence. Now, we adopted this order yesterday almost by a unanimous vote, you may say. It worked well, we were not disturbed; members that had their speeches to make made them; and now it is absurd that we should open the doors for the purpose of letting in the reporters and some one else. If I had voted against this order yesterday I certainly should feel like standing by and adhering to it to-day. The idea of shutting doors yesterday and opening them to-day it seems to me is preposterous; I can see no reason why it should be done. And I hope the Senator who introduced the resolution will withdraw it.

Senator BUCK, D. Mr. President, I give notice of debate.

The PRESIDENT *pro tem.* Notice of debate having been given the resolution goes over under the rules. What is the further pleasure of the Senate?

VOICES. Regular order.

The PRESIDENT *pro tem.* If anyone has any speech to make this morning it will be in order.

[After a short interval of silence.]

Senator CAMPBELL. Mr. President, what is the business before the Senate?

The PRESIDENT *pro tem.* There is nothing that I am aware of.

Senator CAMPBELL. If I have any recollection upon the subject, it is that we are considering article one of the impeachment. That is the question before the Senate.

The PRESIDENT *pro tem.* The chair is ready for any motion.

Senator CASTLE. Mr. President, I hope this matter wont be pressed; there are several Senators who have not yet come in.

Senator PILLSBURY. Mr. President, I move a call of the Senate.

The PRESIDENT *pro tem.* As many as favor that motion will say aye; contrary, no. The roll will be called.

The secretary then called the roll, whereupon, upon motion of Senator Buck, D., further proceedings under the call were dispensed with.

Senator CASTLE. Mr. President, I am frank to say I certainly should not take up one moment in the further discussion of this case but for the fact that there are several Senators who, I know, desire to be here and participate in the *finale* of this trial. As I stated yesterday, there was one or two points with regard to which I desired to express myself briefly; not with reference to any point that has been gone over, nor with reference to any argument that has been made. That new point was the question of *res judicata*. It has been claimed here by some Senators, and it has been urged as a sort of matter of reproach, that certain members of this court did not make the same speeches on the 16th day of December that they made yesterday. Well, Mr. President, my recollection is that every point that has been made in this case against the power of this court, and against the allegations that this charge constitutes a crime was made—and I may safely say, so far as I am concerned—made with a great deal more ability then than on yesterday. Those points were urged and reiterated again and again, in arguments running through and extending over several days; and you

might say that if those would not convince, the members of this court would not be convinced "though one rose from the dead."

Now, it is not an uncommon thing for courts to reverse their own decisions. The Supreme Court of the United States has done it repeatedly. I believe my friend, the able Senator from Blue Earth, called my attention to a very humorous mistake that occurred in that court upon one occasion.

Senator BUCK, D. If you will allow me to correct you,—*you* called *my* attention yesterday to one I never had heard of before.

Senator CASTLE. Well, he, (Senator Buck,) called my attention to a decision where the court held, for instance, in one part of the report a certain way, and in the same report changed their decision and held precisely the other way,—upon a question squarely before the court. Every one is familiar with the cases where the Supreme Court went on at one term and established one doctrine, and at the next term turned around and held entirely another. With reference to our own Supreme Court, I have a very distinct recollection that in a case in which I had the honor of being counsel, that tribunal rendered a decision sending my client out of court, after the fullest of argument and discussion, after counsel upon both sides had been heard. I recollect that I made application for a re-argument. The re-argument was granted, and the Supreme Court, at the same term, reversed its own decision.

I have but little respect for a man, or for a body of men, who have not the courage to act according to their convictions of right, simply because, at some time or other, they have expressed a different opinion. I said yesterday, (and I say to-day,) that if authorities had been produced even then, to show me that ever, at any time, it had been clearly determined that drunkenness was a crime at common law, I would have withdrawn and retracted from my position upon the floor of the Senate in that regard, and I would do it now. I have no respect for a man who has not courage enough to act up to his conviction because at some time or other he has expressed an opinion from a different stand point. I believe the ablest jurist that the United States ever knew, the ablest judge that ever occupied a seat upon the Supreme bench of the United States, was a man who changed his opinion more than once.

Now, Mr. President, there is a standpoint from which it has occurred to me that this case is *res judicata*, and that is this: The evidence discloses the fact that for long years prior to his election to the bench, the respondent in this case was addicted to the same habits, and to a greater extent, if anything, than since that time. When he presented himself for election before the voters of the Ninth Judicial District, he presented himself with all his infirmities, with all his habits, and with all his characteristics. They *knew* him. They went to the polls and voted with their eyes open. They decided, by an overwhelming majority, unprecedented in the history of this State when you come to take into consideration the question of partisan politics and that it was a bitter fight; they decided that question, and they determined to take Judge Cox, with all his infirmities, and to elect him Judge of the Ninth Judicial District. I say that from that standpoint this question is *res judicata*. Those who are interested, those who are especially affected, those who, of all others (if any one has a right to complain), are the parties to complain, have passed upon his manhood, have passed upon all these questions.

Senator MacDonald. [Interrupting.] I would like to ask the Senator what people he was serving when he held court at Waseca.

Senator Castle. He was outside of his district at that time working for somebody else; he was exchanging work with the judge of another district. I say, Mr. President, that that is begging the question and raising a very thin point. The respondent was not elected to serve the people of the whole State of Minnesota any more than the gentleman from Stearns was elected for that purpose.

Senator MacDonald. I serve the people of the whole state.

Senator Castle. It would be a very wide misnomer to say that the gentleman from Stearns was a Senator for the whole of the great State of Minnesota.

Now, Mr. President, that is neither here nor there. The people of that district were certainly, (and my learned friend will concede it,) the only people who voted upon the question. They are the only people whose immediate representative he is. They have passed upon the question. And, as I was proceeding to say, we are asked here to do what? We are asked to reverse the decision of the people of the Ninth Judicial District. Certain opponents of Judge Cox come before the Legislature of this State and say "Gentlemen, it is true that we have had a square-toed fight in the Ninth Judicial District and we have got licked, and now we come sneaking down here and ask you, at enormous cost and expense, at the expense of the good name and the fair fame of the people of the State at large, to reverse the verdict of the people of that district. We appeal from the decision of the people to the legislature. The people were not servile enough to adopt our theory of the case. They refused to defeat Judge Cox at the polls and now we come before the legislature and propose to defeat him here."

I submit, Mr. President, as I did yesterday, referring to another point, that that too is the essence of despotism; that that too is striking a blow at the foundation of our institutions. Let a man, when defeated before the tribunal of the people, go to a partizan legislature for redress and we shall Mexicanize this government and commonwealth. Now what is the excuse that is offered for this high-handed proceeding, (as it seems to me, from my standpoint,) with all respect for the opinions of other gentlemen—what is the excuse? Is it claimed here, has it been suggested, has it been urged, that this respondent is wanting in either of the three great qualifications that one of the ablest jurists of the world has said should pertain to the judiciary? The great Lindhurst, the greatest of England's chancellors, after reviewing the history of the judiciary of the world, laid down the assertion that three qualifications in the judiciary would be the means of preserving the law and liberty in all their integrity. What were they? Honesty, ability and courage. I ask you, Mr. President, if there has been an intimation here, from the beginning of this lengthy trial to this present moment, that this respondent is not an honest man in all the relations of life? Has there been a suggestion here, that in his high office, he has been guilty in the slightest degree of personal corruption? That the slightest taint of corruption has ever soiled his judicial robes? No! Singularly pure, so far as his integrity is concerned, as judge and man, is the verdict of the testimony on both sides. Does he lack ability? I believe it was settled upon the floor of this Senate, that he has held in his district forty-seven terms a year, and never yet has had a term of court with unfinished business, which I am

bound to say, Mr. President, is a record that does not obtain with reference to any other judge in this State. He has had fewer reversals than any other judge in this State. Honest and able, and I believe there is no intimation that he in not fearless. I believe there is nothing in the history of this case, from the beginning to the end of it, which shows that this respondent lacks in any of the higher qualities which make him a desirable and a valuable servant to the people of this State. I say this, Mr President, (and I say it in all solemn seriousness,) that the man who possesses in his composition one atom, even, of susceptibility to personal corruption, would be a worse man for the people of the district and the commonwealth, as a judge, than the one whom we laid under the snow a few weeks since, who had hardly seen a sober day for the previous twelve months. I say that a man who views matters in the light of prejudice instead of the light of reason; in the light of passion instead of a high sense of right and justice, is a man ten thousand times more dangerous, occupying the high position of a judge, than a man *can* be by reason of any personal habit.

Why, Mr. President, it is a well known fact that from the earliest days of history down to the present time, judges and lawyers have possessed the infirmity of attaining the bad habit of getting under the influence of intoxicating liquors. The life of the jurist is one of excitement. Almost without exception the life of the active counsellor is spent in one long struggle for the maintenance of the rights and the punishment of the wrongs of men. It is not remarkable that the brightest legal lights that have ever been known have been affected by the unfortunate vice of drunkenness. And who is affected by it? Whose soul is wrung? Why, some gentleman stands outside and says, "I feel that it is a public disgrace! I feel that it brings the judiciary into contempt!" Who is the man that suffers most and who alone the one that sustains the irreparable injury of the habit? The man himself, his family and his immediate friends. Since the commencement of this proceeding no one has come before you to say that anybody has been wronged or injured in person, property, character or estate.

But we are met with the remarkable statement that we must proceed to revolutionize the world, that we must take higher ground and set ourselves up as a landmark for the people of the ages, and that we strike down an honest, an able and a fearless man in the meridian of his manhood who has done no harm, who has injured nobody, who has defrauded nobody, and why? Because he is a victim of a bad habit! A habit that hurts himself and nobody else. "He is a victim to a bad habit."

Mr. President, is the spirit of charity, or its opposite, to rule the world to-day? Perhaps my sympathies with men, (knowing my own weaknesses and the infirmities of humanity,) are stronger than those of most men; perhaps my ardent temperament sometimes leads me too far, but I say, Mr. President, as if standing in the presence of my God, that I cannot see the justice of proposing to strike down, in the meridian of his manhood,—saying nothing about the law, (although the law, from my standpoint is all against it, as the righteous laws of all people should be,)—I cannot see the justice of proposing to strike down an honest, fearless and impartial judge, a judge who has to all intents and purposes faithfully discharged the duties of his office. I say I cannot see the justice of striking down that man in the meridian of his manhood, and

in bringing shame and disgrace upon him and his. I should not be proud of the act if I should see his little children going along the street and some jealous, malicious child point to the little wanderers and say, "Your father was dismissed the bench, dismissed the profession," (for that is what it is,) "and disgraced." I am frank to say, Mr. President, however, it might seem to other men, I should not be proud of my work.

Senator GILFILLAN, C. D. I would like to ask the Senator one question. If you were sitting on a jury and a man was charged with a crime, would you allow such considerations to enter your thoughts?

Senator CASTLE. I will answer the gentlemen, and I am very glad he has asked the question. If the gentleman will recollect the thread of my argument,—I asked what was the motive that was invoked to punish this man,—to over-ride the decisions of the ages to create an offense that has never been recognized in this commonwealth, to create an offense that has never been recognized by the common law; and I was answering it,—that because he was a fearless man, because he was a brave man, an honest man, and a wise man, that that was the excuse—

Senator CAMPBELL. That is an assumption, is it not?

Senator CASTLE. That was the excuse in substance that has been offered here; and that he was possessed of an unfortunate infirmity that recoiled upon his own head.

I was proceeding to say, Mr. President, that under these circumstances, and taking into consideration these facts that are palpably before the Senate—that cannot be denied before the Senate—I should not feel proud of my work. We have been told here (I have no doubt in good faith, but with a degree of flippancy that to me is remarkable), that this is only an inquest to know whether or not we shall have a little office vacated, and that that is all there is about it; that it is no punishment; that that is not the purpose, scope or intent of this proceeding at all. Why, Mr. President, the man that believes that, the little child helpless in the street would never get a penny from; the man that believes that, never opened his heart, and there never was a door to his heart for the broad current of humanity that moves through the world. No punishment! After long years of study, of ardent labor in his profession, one attains the highest position, the goal to that profession—to which we all aspire—for the able and honest and intelligent lawyer would prefer by all odds to stand high in his profession as a jurist and a judge than accept any political office that might be given him. I say, a man having attained that position, here is an "inquest of office" which says what? It says you shall be taken from the high pedestal you have gained after long years of toil; in the very hour of triumph you shall be taken from thence and hurled down, down, down below, away below the position from which you started—away below the ordinary level of humanity. You shall be disgraced, and disgraced forever; and no matter what the success of your children and childrens' children may be; no matter what position they may be entitled to attain by their abilities and their integrity, and their high sense of honor, there shall be placed upon the brow of their ancestor, whom the Senate of Minnesota in its wisdom saw fit to strike down from his high office. No punishment! Why, Mr. President, it amounts to blotting out from the heavens the star of hope in utter darkness, leaving the world to him and his an aching void, a blackened chasm of buried hopes! No punishment! But

"an inquest of office!" Not only that, but this punishment contemplates political death. Why, Mr. President, the man who has served the best years of his life in our penitentiary at Stillwater, who has served for a quarter of a century or longer, who has served out his time, returns to his fellow men rehabilitated and reinstated to all his political and civil rights. But here, without having committed a crime, without having been guilty of the slightest dereliction of the moral law, without having injured any, without having wronged any in his high office, you propose to politically and civilly kill the respondent in this case.

I suppose there are men, Mr. President, who would view this with a good deal of complacency, but who would shudder at the ax of the guillotine, but they must be a course-fibred race of men. I wouldn't give much for the soul that is in them. I say, Mr. President, that to the man who has an aspiration worthy of a man, there is no punishment like disgrace; there is no canker so deep and lasting as that which attaches to the disgraceless soul. It is more than a continuous oblivion, it is an everlasting punishment,—like Promethius, chained to the rocks, —there is a constant feasting of the vulture, but the victim can never die. No punishment!

More than that. It is hardly worth speaking about, in consideration of the other high matters that obtain here, but it deprives forever the respondent in this case in *any* event, from the means of gaining a livelihood. It proposes to drive him into beggary and disgrace from the ranks of his profession, of which he was once the honor. And that is no punishment! No, "It is a mere inquest of office on the part of the public to know whether or not a man is fit and proper to hold office. It is no punishment at all." When we vote for it we don't vote to punish him, —we vote on exceedingly high moral grounds. I don't want to say any mean thing on that point.

It is a provision of the statute of this State that any lawyer convicted of any crime, involving moral turpitude, upon an application to the Supreme Court, he may be *forever* disqualified, and no power can save him. He is *forever* barred from the gaining of a livelihood in his profession, and yet it is no punishment.

Mr. President, I ought to apologize to the Senators and to the President for having taken up so much time. My apology is that, perhaps wrongly, I feel so keenly from my stand-point,—which may be all wrong,—I don't claim infallible wisdom or judgment,—from my stand-point I feel that a terrible wrong is about being perpetrated upon the respondent in this case. While I have charity for all who differ from me, yet I feel it so keenly, that I believe, Mr. President, if I were to vote against my convictions in this matter, my soul would be blackened with a dishonor and disgrace as deep as the stain which dyes the soul of Lucifer.

Senator CAMPBELL. Mr. President, as I stated yesterday I did not desire to say one word in this case, and I do not now desire to say a word by way of endeavoring to influence any vote in this Senate but my own, and if it had not been that the Senator from Washington had referred to remarks of other Senators on this question of the law of this case, I should not rise now; but I presume I am one of the Senators to whom he refers as objecting that his very able speech on the law of this question had not been made in December.

It will hardly do for the gentleman to say, as he has repeatedly, that

he knew then as well as he knows now that this proceeding had no precedent and was unwarranted in law It was known on the 19th of November last when we adjourned, that we would meet here in December to settle that question and undoubtedly every Senator who had any desire to look the matter up had ample time between that time and the time we met in December to become familiar with the law. Now, sir, I undertake to say that Senator Castle taking the position that he does here on this floor was derelict in his duty, if he held the opinions then that he holds now that he did not by intimation at least, give his brother Senators on this floor to understand that there was a question. By reference to the journal it will be seen that there is not a word uttered by any Senator on this floor but what the first sixteen articles charged him with impeachable offenses. I came here and I listened patiently and with as much attention as I am capable of giving to the very able arguments on both sides of that question, and when I cast my vote on the overruling of that demurrer I did it with an understanding that that was my opinion of the law of this case. Senator Castle it appears called for a division. He asked for a separate vote on articles 18 and 19, and he voted to sustain the demurrer as to those two articles. He did not even call for the yeas and nays on the other articles, as was his privilege and right to do; he did not even ask afterwards that the journal might be corrected when it shows that the demurrer as to the first sixteen articles was overruled unanimously; so that I say I was willing to let my vote as recorded in the journal on the question of sustaining that demurrer stand as my explanation of my position on the law.

I have patiently listened to the testimony on the part of the State and on the part of the respondent, and I was willing that my vote of guilty or not guilty should be my reason and all the reasons that I might feel required to give, whether or not the facts had been proven in this case. For, as I say, when I came here in January, I came to hear the facts. considering that the law of this question was settled; and I say that Senator Castle in holding the opinions he does now, was derelict to the members of this Senate, derelict to the people of this State, and derelict in his duty to himself, if he sat quietly here as dumb as an oyster, when those questions were being settled, and permitted us to sit here all winter at an enormous expense to the people of the State to ascertain what he says he knew then; and I do hold him responsible if he knew then as he now asserts he did that the articles charged no impeachable offense.

I apprehend, also, that the respondent in this case made a great mistake in 1878, if the gentleman's position is correct, for he came before the Legislature of the State of Minnesota and asked that the charges—these very same charges—might be investigated by the Legislature. And for what purpose, may I ask? Did he at that time understand that the Legislature had no business to interfere with him, as is argued here? or did he then understand, as was decided in December, that these were impeachable offenses, and that the State of Minnesota had jurisdiction through their Legislature of just such cases as his? I apprehend that that question was well settled then in the mind of the respondent when he came and asked the member from his own county to introduce a resolution in the House of Representatives demanding an investigation of those charges. There could be no object in investigating them if that was not his understanding of the law at that time.

I am not a lawyer, but it always has seemed to me as a monstrous position to take that you could elect a judge for seven years and for that period of time he might go tottering through the streets or staggering up to his seat upon the bench and that there was no remedy for the people of the State of Minnesota but to permit him to discharge the duties of judge in his drunken and besotted condition. I think it is a monstrous position, I say. I am not a lawyer and will not attempt to draw any fine-spun theories of the law but I say where doctors disagree laymen have a right to exercise their own judgment; and certainly the same difference of opinion may exist about this that does about any other well established principle of law. And I have noticed with some regret that the lawyers are about as apt to disagree upon these questions as other mortals. Judges sometimes disagree. Of course I am aware that it is the Senator's business, it is his profession to make those eloquent and pathetic appeals; I confess, however, that I am a little at a loss to understand the application of a great portion of his appeal this morning. I cannot believe that he believes that any number of his fellow Senators would stand here and strike down "a fearless, an honest, and capable man." I do not believe that he believes it, and I will not do him that injustice to say that he does believe it; but he had worked himself up in his eloquent plea until he had forgotten he was talking to men that are exactly as capable of taking as impartial, as honest and as conscientious a view of this case as he himself. I say he assumes altogether too much when he assumes of this Senate that we will strike a man down for partisan purposes, from improper motives, or on account of our extreme ignorance, if you please; for while we may not be lawyers, we certainly have that intelligence that will enable us as ordinary business men to come to a correct and just conclusion in this matter just as much as if we had been bred to the profession to which he himself has been educated.

I have now said more than I intended to say when I arose in this case, but I have heard so much about this matter being a foregone conclusion, that we had met here not to consider the facts, but to render a pre-determined judgment to disregard all law, "to strike down this able and fearless man,"—I say I have heard so much of it, that I have become utterly disgusted, and I cannot understand how any Senator can rise and accuse his brother Senators of any such motives. It won't do to say, when about through his remarks that he don't intend any such thing, because that is the assumption. We must assume that the other house, when it presented these articles of impeachment, meant to strike down "this fearless" and "honest man" without cause, and that we must be a party to the plan, or else he will not be stricken down. I think it is fair to assume that we have met here, each one of us, with proper motives to investigate this case, and to render our decision according to the law and the facts. And as I understand, the gentleman from Washington does not consider the facts, because he bases his position upon a question of law. I can understand how my friend from Dakota (Senator Adams) can cast his conscientious vote upon the facts of this case. He voted as I did on the question of the law, but he comes and takes the manly stand that from his standpoint the charges have not been proven and he will vote not guilty, and I accord him that same conscientious discharge of his duty that I ask for myself. But, as I said, Mr. President, what I have objected to is assuming here that having

met here under the solemnity of our oaths, we will willfully disregard them and "strike down this honorable, fearless and just Judge."

And another monstrous proposition, as it seems to me, is that the people of the ninth judicial district took the respondent "with the understanding that they were taking a drunken judge." I apprehend that the people of the ninth judicial district took him with the understanding that he would make a sober judge; that if he had been a sober judge this inquisition or impeachment never would have been had. I take it that it is improper to charge that the people of the ninth judicial district would have instituted this "monstrous injustice" that has been perpetrated upon their judge. I apprehend if it had not been for the people and the very unanimous expression of the people of the ninth judicial district, that this inquisition would never have been had. I take it that such men as A. J. Lamberton would not be here and testify as he did on the stand if there were a wrong attempted to be perpetrated, or if this were an unjustifiable proceeding.

Now, Mr. President, I have said a great deal more than I intended to say in this case, and I have only done so from the fact that I felt somewhat impelled to make this statement for the very reason that I am one of the Senators who regretted that my learned friend from Washington had not made his very able argument on the 16th day of December, when it was the proper time to consider and determine the law of this case; when, if it were the fact that this was an unwarranted and unheard of proceeding we might have then disposed of it, returned to our homes and saved the people of the State thirty-five or forty thousand dollars.

Senator BUCK, C. F. Mr. President—

Senator CASTLE. One moment Mr. Buck.

The PRESIDENT *pro tem.* The Senator from Winona has the floor.

Senator BUCK, C. F. I will yield to the Senator from Washington.

Senator CASTLE. Mr. President, I think my kind friend from Meeker said truly when he sat down, that he had said more than he intended. I don't think that he would deliberately make a personal attack upon a Senator upon the floor of this Senate; it has never been done during this trial, and I kindly hoped it never would be done; that we could express our honest opinions and our honest convictions without being charged with improper performance of duty. I do not care to reply, Mr. President, I am not going to, I care very little about things of that kind. If a man reaches the time of life which I have reached he has lived in vain if any personal attack would particularly affect his feelings. I desire to say one thing which perhaps would call for a personal explanation; as to the rest I care nothing for it. An unworthy motive was imputed to me because I did not make a speech on the 16th of December last,—*the* speech, I believe, which I have made to-day,—or did not call for a division on the final vote. Well, Mr. President, whatever my courteous opponents may say, I hardly think that they will charge that I am in the habit of running my head against a stone wall. We did call for a division of the question, selecting the most objectionable articles (to me at least) among all of the articles of impeachment. We took a separate vote on them and the Senator from Ramsey and myself voted solitarily and alone. I did not care to insult the managers at that time or the respondent's counsel by re-hashing, as I should have been compelled to do, the arguments which they made upon the demurrer and probably made better than I could.

As I said before, if their arguments would not convince, I could have had no hopes of my own convincing any one. What I have said on this occasion I have said in a court of last resort, in the nature of what I presume will be considered as a dissenting opinion,—which I always supposed was the right of the minority without the motives of the judges being called in question. I did not do so then for the reason that I have stated; it would have been so much waste of time and waste of labor, because I could not have hoped to put in any better shape the arguments that I have feebly attempted to put than they were, and with my views of the duties of a judge sitting in a responsible position, especially if that judge's opinions are different from that well known by the majority it is to express fully and entirely the reasons that prompted to such dissenting opinion from the majority of those with whom he has the honor to associate. That was the reason, Mr. President, and that alone that I have taken the time of the Senate for one moment. I would much have preferred that the rule or order I asked for should have been adopted, contenting myself with placing myself upon record that those who cared might see the grounds upon which I gave my vote. I do not think, Mr. President, that the Senator from Meeker intended to impugn my motives. He, like myself, is not a cold-blooded man. I can excuse anything in a brave man who has a warm heart. I don't excuse a great deal from a cold, calculating, and vindictive man, but the brave man who speaks out what he thinks I rather like, and hence I believe I like the Senator from Meeker better than I did before. [Laughter.]

Senator POWERS. Mr. President, I believe I made a quasi promise not to occupy any more time of the Senate upon this question; but there is one simple conundrum or feeling of regret that has been expressed that I can scarcely sit still without responding to, and that is a regret, a feeling of sorrow that the Senator from Washington had not expressed the views so eloquently presented last night and this morning on the 16th day of last December.

Why is it to be regretted that the honorable Senator did not express those views in December last? Does that mean because if he had we should have voted differently to what we do now? Does that mean that having failed to sustain that demurrer and having spent twenty thousand dollars more or less since, that we are now morally bound to convict this respondent to get the worth of our money? Is that the meaning of it? Is it that we are bound to offer up a sacrifice or we shall lose our time and the expenses that have been incurred by the State? That we are bound to indulge in some kind of vicarious atonement because we did not know as much on the 16th day of December as we know to-day? Is that the meaning of that question? I can conceive of no other. It surely does not mean that we have no right to know more to-day than we knew then. Man is a progressive being. We have a right to know more to-day than we knew yesterday; we are morally bound to know more to-morrow than we know to-day; if that were not so, men would be born six feet high; if that were not so, camels and elephants would weigh a ton or two at birth.

Now, I am not going to take up any time in speaking upon a question of whether or not drunkenness is an impeachable offense. I believe that we all agree that tyrannical conduct in office is an impeachable offense. I think that we all feel that corruption on the bench is an im-

peachable offense. I think we all recognize the fact that wilful neglect or refusal to perform the duties of office is an impeachable offense. Now, sir, I do not care if a man is guilty of any one or all of these offenses, whether it arises from drunkenness or intoxication or in gorging his stomach with poisons and indigestible food or from sexual excesses or abuses, or from improper clothing and exposure of his person or from atmospheric poison or from natural cussedness or hereditary taint. Prove him guilty of these impeachable offenses and I will *vote* him guilty.

A man may dethrone his reason, he may poison his body by the excessive use of alcoholic liquors;—and I have known men whose systems were poisoned from the crown of their head to the sole of their feet by God's atmosphere and worse poisoned than I ever knew any man from the use of intoxicating liquor. I have known men in Indiana who from inhaling a malarious atmosphere became so poisoned, the system so totally demoralized that educated men as they were they would spell God with a small 'g' because they hadn't energy enough to make a capital. [Laughter.] I have known other men whose systems were so poisoned from improper diet and otherwise that they were incapable of performing *any* duty, domestic, or social, or passional, or any other. It was claimed by Napoleon Bonaparte that he lost the battle of Leipsic in consequence of a bad dinner which he ate immediately preceding the encounter. I have been told that total depravity was located in the liver, and I think there is an element of truth in it.

"Immense control for ill or good,
The mind exerts o'er flesh and blood,
And in return the body binds
In heavy chains the immortal mind."

Intoxicating liquors! They are evil when abused,—so is everything else in the line of food or the like. I have known men who had to resort to quinine and whisky to get up energy enough to propagate the race. [Laughter.] I have known men that had not energy enough, from some pathological, or chemical, or psyco-chemical condition of their body to make an earnest and fervent appeal to the throne of Heavenly grace without stimulating on alcohol, Morphine or something of the kind. I have got sick of hearing "whisky," "*whisky*," "WHISKY," "WHISKY," for the last two or three months as if there was nothing in all the regions of the earth or the damned that was bad but "whisky," "whisky!" It is an evil, an unmitigated evil if it is abused,—and not without.

Now, the question comes right here, I think, has this man, from whatever cause, been guilty of corrupt conduct in office? Has he been guilty of corruption on the bench? Has he been guilty of a wilful neglect or refusal to perform the duties of his office? If so, remove him without reference to his feelings, without reference to the results upon him or his offspring, or "his children's children to the tenth generation." "Do justice though the heavens fall." Offer no human sacrifice here to your prejudices. Discard all outside influences. If a man in any district in Minnesota who has not attended this high trial undertake to censure me for my vote (and I shall vote on the law and evidence if I live to see the end of this trial and my wind holds out—(Laughter); if any man undertake to censure me for my vote, I don't care if he is

twenty-five feet high and has a brain that measures a thousand cubic inches,—if he be as big a man as the manager told us Richard Jones was (and he says whatever *he* says is law and gospel to this Senate,) if he be as big a man as he is, and hasn't heard the trial and yet questions my vote, I will tell him "you don't know as much about this trial as I do." That is all.

Now I say it is *not* "matter of regret" that the Senator from Washington had not said on the 16th day of December what he did say yesterday and to-day. He *did* say it then; he said it over and over and over and over again, and I heard him, and so did others. He has always claimed it was not impeachable. As for myself I am going to vote on the law and the evidence independent of his or any man's action and I am not going to stop to inquire particularly, only as I am whipped into it, whether the respondent was drunk on a given day or not. If the evidence under the articles of impeachment shows that he was drunk I shall so say, and if the evidence shows that he was not drunk I shall say that he was not drunk and use my judgment in saying it.

Senator BUCK, C. F. Mr. President, on this question of what the lawyers call *Res adjudicata* I had intended to have said what I have to say on yesterday but it escaped my mind at that time.

When the counsel for the respondent interposed their demurrer and it was argued, and argued thoroughly, I confess to you sir that I was not certain as to the law. I did not believe at that time that drunkenness was a misdemeanor, and yet, not being a lawyer, and authority having been cited and read, I felt that I might be mistaken on that subject and I voted against sustaining the demurrer. If that had been the only question I should have voted to sustain the demurrer; but there was a charge in article 19 and 20 that to my mind was conclusively a misdemeanor, and as it would not end the trial, I thought it was due to the managers and due to the State that I vote against sustaining the demurrer. But I did not vote in that way expecting that it would be a finality or thinking that it would be a finality on the law question at all. Since then, Mr. President, I have thoroughly investigated that subject; I have considered it thoroughly, I have reflected upon it, and I am just as sure as that the sun shines that there is no such law.

Now, Mr. President, I want this Senate to understand that my interest here is to be right rather than consistent and I would suggest to the distinguished Senator from Meeker [Senator Campbell] that he take this idea under careful consideration; I would suggest to the Senator from Meeker and other Senators that because they swore the horse was sixteen feet high on the 16th day of December last but afterwards found out their mistake ought not to still adhere to it and perpetrate a great injustice upon a fellow citizen, when they might make an honorable amend by giving an acknowledgement of the fact and the truth. I would say to the honorable Senator from Meeker that it is unbecoming here for him to stand up and say "because the Senator from Washington did not expound the law to us on the 16th day of Deeember, therefore I won't hear you now." That is all I have to say upon the subject.

Senator CAMPBELL. If the Senator will excuse me,—I didn't say that.

Senator BUCK, C. F. Well, you came so close to it I thought you did.

The PRESIDENT *pro tem.* Is the Senate ready now for a vote? If so, the secretary will call the roll on the first article.

Senator GILFILLAN, J. B. Mr. President, it has been my fixed purpose all along not to say anything before reaching a final vote upon this question, and I do not now purpose to do so except a word or two. I think perhaps it is due to my brother Senators as well as to myself to do so.

Now, I differ from some of the learned Senators who have spoken: that there is no such thing in this case as *res adjudicata* in a technical sense; but I do say that where a court has deliberately come to a conclusion during the couse of a trial and has ruled accordingly, or has made a decision in the court of review deliberately and promulgated as the decision of the court, such rulings and such decisions ought not to be reversed or changed except in cases where error seems clear, unless there is good cause for such reversal. Now, Mr. President, I desire simply to say this: That I have examined the law of this case to the best of my ability and have come to this conclusion, and I have attempted to do it dispassionately and with a single motive, to arrive at a correct conclusion as to the law of the case. And I desire to say, briefly, that in my opinion, there is stated in each and every one of the articles of impeachment exhibited before this court sufficient grounds for impeachment under the constitution of this State and the statutes and common law existing in this State. The first article charges that the respondent, by a voluntary act of his own, has disqualified himself from the exercise of his understanding in the discharge of his duties. Now, I venture this assertion, that any officer, especially a judicial officer, who by a voluntary act renders himself disqualified to exercise his understanding with reference to his official duties, cannot faithfully discharge the duties of a judge of the District Court according to his best learning and discretion. I understand that to be an impeachable offense in this State.

The first seventeen articles, or all the articles preceeding the eighteenth, are substantially the same, so far as they go to establish or constitute grounds for impeachment in this State. Now, article eighteen varies somewhat, and the point of that is, as I gather, this: that for a period of time commencing on the 30th of March, 1878, and ever since, the respondent has been guilty of habitual drunkenness. I will venture this assertion also, without any fear of contradiction from any one; that any judge of any court, who is for that length of time, guilty of habitual drunkenness, cannot discharge the duties of that office faithfully and according to his best learning and discretion. You may quarrel about terms as much as you please, whether this thing is an offense at common law or not, whether it is a misdemeanor at common law or not, whether an offense is impeachable that is not indictable,—the more you discuss those details the farther you are drifting away from the very point at issue here. I think with the Senator from Scott, [Senator Hinds] that the real point in this case is as to whether the respondent (and he himself raised the issue here) has faithfully discharged the duties of his office, according to his best learning and discretion. That is the gravamen of the charge in every one of these articles. I care not whether the failure result from the voluntary absence of the officer from the State, from his voluntary disregard and indifference to the duties of his office he fails to faithfully discharge his duties, or whether by his voluntary act he disables himself, disqualifies himself in mind to discharge those duties according to his best learning and discretion, he is guilty of an impeachable offense in either event.

Now it is alleged in these articles that the immediate cause of all this was the voluntary use of intoxicating drinks. The question then arises whether this has been shown. Now, I shall not review the evidence but simply wish to refer to the rule which furnishes to us the degree of proof required in such cases, and last evening, when the Senator from Scott [Senator Hinds] had the floor, and he had supposed a case of the larceny of property, where the party guilty of the act might be prosecuted in different ways, criminally, and, if a public officer, by impeachment, I asked him to illustrate by means of that case, the rule of evidence in the various phases of his proposition, and it was because I had confidence in his learning as a lawyer that I desired to have it stated publicly here for the benefit of the court, what his view was as to the rule of evidence; and I was not disappointed in his enunciation of that rule. The rule of evidence is generally that a fair preponderance of proof is sufficient to justify a finding. The exception is in criminal cases, where the law in its humanity, giving the defendant the benefit of every reasonable doubt does provide the exception to the general rule, that the guilt of the party accused shall be established beyond a reasonable doubt.

Now this case, in none of its features, is a criminal trial; so that the exception does not apply; it comes under the general rule where if this court be satisfied, by a fair preponderance of evidence as to the facts charged, it is justified in so finding.

Why, the respondent himself and his counsel have admitted that this is not a criminal trial by their very act of coming into court here and asking for the issuance of a commission to take the deposition of a witness in another State. The application was granted; the deposition, we are told, has been taken, and is upon our files, although not introduced in evidence. We do not know what its contents are; it is immaterial; the point is this, that no lawyer ever heard of a commission issuing in a criminal trial in this State. Now, I say the respondent and his counsel, by that very act, have stultified and denied the proposition that this is a criminal trial. They do not so regard it; it cannot be seriously regarded as a criminal trial, it seems to me, in any sense of the term. So much, then, for the law of this case, and so much for the rule of evidence by which we should be governed in coming to our conclusions.

Now then, Mr. President, another reason why I have refrained from discussing this question is that it has been my desire that acrimonious debate or any debate which should excite feeling or prejudice as partizianship might be avoided in our deliberations. I think perhaps we have had a little of that,—not intentionally but incidentally,—and I trust that no Senator will, that no Senator desires to be actuated by any such consideration in the final vote that he is to give here upon this trial. We are not to be controlled in the least in our vote here by what we may imagine. Another Senator has said that which had better not have been said; we are not to be actuated here by any appeals of counsel that go merely to the excitement of partizanship or personal feeling. We want to come to our vote deliberately, calmly, without prejudice, without any feelings of acrimony, without any personal feelings of any kind. The respondent himself has said that we have no right to extend mercy. An appeal for sympathy is entirely out of place here. We are sworn upon our oaths to deal justly, upon the law and the evidence. If it were a matter of sympathy, there is no one that would go

farther than myself in extending sympathy to the wife and family of the respondent; but this is no place to discuss that. We are not here placing a brand of disgrace upon the respondent; what he is to-day he is by virtue of his own voluntary act. We cannot change his condition one way or the other. We cannot make his character one whit blacker or whiter. So far as the respondent is concerned himself I cannot say that I have that sympathy for him that I would have for his wife and family. I look upon him rather with pity, and until we shall have some manifestation of a desire for reformation I shall continue to look upon him simply with pity. When he shall not only admit his error but seek to reform himself then I shall be as ready as any to extend sympathy to him and to stretch forth the right hand of fellowship and bid him God speed in such good work.

But the simple question here is, whether we shall save the good and fair name of our young commonwealth from the disgrace which has been brought upon the respondent by his own voluntary act. We all have families at home, many of us, young children, to grace and bless that home. They are growing up to be educated and live as members of society. Now I say when it comes here to an issue as to whether we will excuse alleged offenses on the bench, acts which, if found by this court to be true, are a disgrace to any bench, or whether we should transmit that tribunal down to our children, honored and respected, is a very important question. I, for one, if I can be satisfied that these charges are true, shall never consent that any vote of mine shall hand down to posterity a disgraced and dishonored judiciary. We may sometimes lose confidence in our institutions, we may lack faith in the value of our political liberties and our political rights, we may at times feel that almost the greatest of all political rights, the right of a free and untrammeled ballot, were being too much tampered with; but have we ever yet lost faith in our judiciary? Shall the time ever come when we shall lose faith in our judiciary? If that time ever does come, where shall we find any hope left for the perpetuity of our institutions? This is the last anchor to which we may cling.

Now let us see to it, in this spring-time of our young commonwealth, that we establish a precedent here which shall not be transmitted a curse to posterity but rather a blessing, and if we find that here is an impeachable offense in these several articles of impeachment, and the respondent is found guilty of them, let us stand up like courageous men and discharge our duty in that manner that we shall wish we had done when we step down from our public offices to leave it to our successors.

Senator MACDONALD. Mr. President, before voting upon the articles of impeachment presented by the House of Representatives, I desire to make an explanation in reference to my absence from a few of the sessions of this court. I deem this proper and due to myself, in view of the fact that eminent counsel have seen fit to advert, on several occasions, to the absence of Senators, and have intimated in strong terms that such members could not conscientously vote upon the question of the guilt or innocence of the respondent.

Up to the period when the evidence for the defense was closed, I was quite regular in my attendance upon the sittings of the Senate. During the many days occupied by the defense in the examination of witnesses I was absent only upon two daily sessions; and for these days, as well, in fact, as for those of the entire trial, I have carefully read the journals

of the court and compared the testimony *pro and con*. Yet, if I was to accept the opinion of counsel as correctly founded, I would, in conscience, be debarred from voting. Why, sir, as a matter of fact, there is not a Senator upon this floor who would be entitled to pass judgment here, if the theories advanced were sound and logical, for there is not one single member who has attended every session, and listened to every particle of testimony. In the very nature of things, all impeachments would fail if founded upon the premises laid down by counsel.

Mr. President, it has been well said by one of the able gentlemen engaged in this case, that "every Senator sits here responsible to God and his own conscience for his action!" For one *I accept that responsibility!* Were it not that I feel a solemn sense of the weighty importance of this occasion, I should not have been here to-day, at a time when another and equally strong feeling of duty claims my presence elsewhere. In this connection I may state that my absence since the close of the testimony for the defense, has been occasioned by sickness in my family,—a reason, the sufficiency of which no one will deny.

I entered upon my duties as a member of this court free from prejudice or bias for or against the respondent. I was not personally acquainted with him. I only knew that he occupied a high judicial position in the State, and that he was a member of the political party with which I have affiliated since the day I cast my first vote. The latter fact naturally led me to hope that the charges might not be sustained, and I have listened, day after day, to the evidence; I have weighed it as carefully as my humble ability and poor judgment would allow, and I have come to a conclusion, both as to the law and fact, which to my mind is beyond all semblance of a doubt.

As to the law, I fully concurred in the decision of the Senate, overruling the demurrer, and from that time forward I understood the issue to be a simple question of fact—whether or not the respondent was guilty of the allegations contained in the several articles. In view of the vote of the eloquent and able Senator from Winona, in favor of overruling the demurrer, after days of exhaustive and searching argument, and the citation of almost all the known legal authorities, by the counsel for and against the accused, I am surprised that he should now argue against the vote he then cast upon what was a most vital preliminary question. If the offenses with which the respondent is charged were impeachable, on the sixteenth of last December, are they *not so now?* The same remarks will apply to the eloquent Senator from Washington. And now let me ask these two gentlemen if they hold that it is not a crime, not a misdemeanor, not misbehavior, for a judge to strike and assault a petitioner for justice in his court, as it has been clearly proven the respondent did.

So far as the material facts are concerned, it seems to me that a large preponderance of credible testimony fully sustains a majority of the articles. Upon others, I think a case has not been made out by the State. My vote will indicate wherein I make the distinction.

Mr. President, I regard the judiciary of a State or a nation as the great bulwark of the liberties, the rights and the best interests of its people. Upon its mandates often rest the lives and property of individuals and the prosperity of communities. Is it not proper then that we should expect, nay, demand, of men elevated to these high positions of trust and responsibility, that they shall be not only learned in law, but pure

in character, circumspect in behavior and clear-headed at all times? In a word, that they shall be men whom we can point out as ornaments, not only to the bench which they adorn, but also to the society in which they move. Can an individual who voluntarily indulges in excesses which cause his mind to become uncertain and his brain to become clouded still remain a safe judge? And if his acts are such as to bring him within the pale of lawful removal from office, should he not be hurled from a place he has dishonored?

In view of these considerations, Mr. President, and a firm belief that the offenses charged against the respondent come within the purview of the constitution, I experience a keen sense of the solmenity of the present occasion. I feel that we are here to-day to determine a question which is fraught with most momentous consequences to the judiciary and to the people of Minnesota. It is possible that I may err in my judgment, but, if I do, it is in behalf of a pure, unsullied judiciary—the great palladium of personal and property rights in every land where liberty finds an abiding place.

Senator GILFILLAN, C. D. Mr. President, I ought to make a remark in justice to the Senator from Winona [Senator Buck, C. F.], and perhaps in justice to myself. When the court had under consideration the demurrer, it sustained it as to some of the articles. As to eighteen of the articles the court overruled the demurrer. Of the eighteen articles there were two that the Senator from Winona thought clearly indicated impeachable offenses and he argued that they did. My own opinion was that those two did not contain or charge an impeachable offense. The vote came up upon the eighteenth article as a unit. The Senator from Winona, from his standpoint and his line of argument, could not vote to sustain the demurrer. I voted against the motion to overrule the demurrer.

The PRESIDENT *pro tem.* Is the Senate ready for a vote upon the first article?

Senator MILLER. Mr. President, when I came into the court this morning, I did not intend to make any remarks because I doubted the propriety that I as a townsman of the respondent should take any part in the discussion of this trial. But when Senators upon this floor undertake to place the voters of the ninth judicial district in a false position (and I will state right here that I have reference to the statements made by the Senator from Washington,) I cannot refrain from correcting at least a few statements.

It has been said that the respondent presented himself with all his infirmities, and his characteristics, and the people of the ninth judicial district accepted him with all his faults and refused to defeat him at the polls. Is that a fact? Perhaps most of the Senators are aware of the peculiar circumstances under which the respondent was elected. Under these circumstances and before his election he pledged his word of honor that if the people of the ninth judicial district would elevate him to the high and honorable position of a judge, they *never* should regret it. I may state here that this pledge was given most emphatically. Whether he has kept his promise I leave for this Senate to decide.

It also has been claimed that the people of his district protest against his removal. I say that if the people of the ninth judicial district could be heard, they would protest in thundering tones against such a statement. If the charges against the respondent are proven, the people of

that district expect and ask his removal, regardless of any technical points that may be raised, and regardless of any statements that have been made here or anywhere else.

Senator McCORMICK. Mr. President, I did not intend to say anything, but this discussion seems to take a pretty wide range and it seems to be in order for every one to make some explanation of his vote; I only wish to say one word in reference to my vote on this question, and I wish to say it in order that there may not be any mistake about the motives which induce me to vote as I shall.

There was at one time here an intimation that the men who were connected or affiliated with the temperance movement, would vote to convict the respondent, without reference to the testimony, on account of their sentiments upon this particular question. The district which I have the honor to represent in this Senate, as the Senators are aware, sent my predecessor here, elected squarely on the temperance prohibition ticket; but I wish to say here, in justice to myself, that I have no sympathy with any mockish sentimentality on this subject, and the vote I shall give here will not be based on any reasons of that character.

As far as the law upon this question is concerned, I think it is a universally admitted fact among men of reason and intelligence, that the fact of a man drinking, the fact of a man getting drunk, is not of itself a thing of which the law will take cognizance, but it is the results which flow from his drinking. If a man, while under the influence of liquor, commit theft, murder, or any other crime, he is found guilty—not of being drunk, but of these results which flow from his drunkenness, it may be. And upon that principle, the vote that I shall give to convict this respondent of the charges and specifications on which I shall vote guilty will be on the basis that the results flowing from his drunkenness are crimes of which it is proper for us to take cognizance.

As regards the facts in this case no Senator on this floor is more thoroughly conversant with them than I myself; I shall vote intelligently.

Senator BUCK, C. F. Mr. President, I don't wish to occupy any further time of the Senate, but I desire to call attention of the Senate to the statements made by the honorable Senator from Hennepin, [Senator Gilfillan, J. B.] I have no idea that he intended to deceive Senators in any way, but he made the statement that the respondent has assented or consented to the proposition that this was not a criminal trial from the fact that he asked that a commission be allowed to take the testimony of a witness outside of the State, and that that was unknown in a criminal trial. I desire to read a section of the statute of the State of Minnesota on that subject, upon page 881.

That upon cause shown to the court wherein any criminal action is pending, the Judge thereof may, by order, allow depositions of witnesses on behalf of the prisoner to be taken in the same manner and in the like cases where depositions may be taken in civil actions; and the depositions so taken may be used upon the trial of such prisoner, in his behalf, as depositions are now allowed and used in civil actions: *Provided*, that the expense attending the taking and return of such depositions shall be paid by the defendant in such action, except the court shall otherwise direct, by order duly entered upon the minutes of the court.

Now, I have no doubt that the gentleman had overlooked that section

of the statute and that he did not intend in any way to mislead or deceive Senators upon that subject.

The PRESIDENT *pro tem.* Is there any other gentleman that wishes to be heard? If not, the Secretary will call the roll on the first article.

Senator MACDONALD. Mr. President, I move a call of the Senate.

Senator GILFILLAN, J. B. Mr. President, I thank the Senator from Winona for calling my attention to this provision of the Statute. I see it had escaped my attention; I thank the Senator for calling my attention to it.

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

Messrs. Aaker, Adams, Bonniwell, Buck, C. F., Buck, D., Campbell, Case, Castle, Clement, Crooks, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., MacDonald, McCormick, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, White, Wilkins and Wilson.

On motion of Senator Crooks further proceedings under the call were dispensed with.

Senator CROOKS. Mr. President, I now move that the doors of the Senate be opened to the public, and that the vote upon each article of impeachment be had in public.

The PRESIDENT, *pro tem.* The Senate have heard the motion. Does it meet with a second?

Senator RICE. Mr. President, I move to lay that motion on the table.

Senator JOHNSON, A. M. I second that motion.

The PRESIDENT *pro tem.* The Senator from Kandiyohi moves to lay the motion on the table. Are you ready for the question?

Senator CASTLE. I call for the yeas and nays.

The PRESIDENT *pro tem.* The yeas and nays are called for upon the question to lie upon the table; it is not debatable.

Senator POWERS. Mr. President, I would like to have the Senator from Ramsey [Senator Crooks] explain the meaning of his motion, or, in other words, to make his motion state whether it means simply now while the vote is taken or throughout the whole session, and whether that interferes with our right to discuss the question.

Senator CROOKS. Not at all; that the vote upon each and every article of impeachment should be taken in public.

Senator POWERS. And all our proceedings?

Senator CROOKS. Yes, sir. My object was that the vote be taken in public, and then, if any debate is to be had, we can go into secret session.

Senator HOWARD. Mr. President, I would like to ask for information in regard to the voting upon each article, if each member explains his vote upon each article. In case there is to be a discussion here, or talking, I suppose most of you are aware that this hall will be crammed full as quick as people find this question comes up and you won't be able to hear much discussion in case the hall is full. We had some experience of that here the other day.

The PRESIDENT *pro tem*, [to the secretary.] Call the roll.

The roll being called there were yeas 23 and nays 15 as follows:

Those who voted in the affirmative were—

Messrs. Buck, D., Case Clement, Gilfillan, J. B., Hinds, Howard,

Johnson, A. M., Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Miller, Morrison, Officer, Perkins, Pillsbury, Rice, Shalleen, Tiffany, White, Wilkins, Wilson.

Those who voted in the negative were: Messrs. Aaker, Adams, Bonniwell, Buck, C. F., Campbell, Castle, Crooks, Gilfillan, C. D., MacDonald, Mealey, Peterson, Powers, Shaller, Simmons, Wheat.

So the motion was laid on the table.

Senator MACDONALD. Mr. President, I desire to call up an order offered by myself last evening.

The secretary read the order as follows:

Ordered, That the high court of impeachment proceed at 10:30 o'clock to-morrow to vote upon the several articles of impeachment *seriatim*; and that the vote be taken without debate. That the board of managers, respondent and counsel and reporters of city papers be admitted.

Senator GILFILLAN, J. B I would suggest to the Senator from Stearns that the order now in force is that we proceed now with the vote.

By consent, Senator MacDonald amended his order by striking out the words "at 10:30 o'clock to-morrow" and inserted the word "now."

Senator HINDS. Mr. President, I think that better lie on the table, and I so move.

The PRESIDENT, *pro tem.* It is moved that the order lie on the table. Are you ready for the question?

The yeas and nays were demanded and the secretary proceeded to call the roll.

Senator POWERS. Mr. President, if I understand that order it means that all discussion, all remarks in the way of refreshing our memory in reference to the testimony, and everything of that kind, is cut off.

Senator WILSON. I understand that it does not include the right to explain a vote when it is taken.

Senator MACDONALD. I don't understand it in that way.

Senator POWERS. Well, I would ask for an expression from the Senators. I don't know but I may be wrong. In case a member should step outside the traces in the least particle one way or the other in explaining the reasons that influence his vote, will it not be claimed that he is discussing the question?

Senator BUCK, D. That is a fair construction of the language.

Senator POWERS. I was just going to say that I could not explain the ratiocinations of my own mind, my reasons for voting upon an article without seeming to discuss the question. Now, if the spirit of broad liberality were extended in interpreting that clause, or if that would not be permitted, I would like to strike that part out, although I think we are through with the heavy part of our deliberations.

The PRESIDENT *pro tem.* It is out of order to allow discussion upon a motion to lie upon the table.

Senator POWERS. I will ask the Senator if he will have any objection to striking that clause out.

Senator MACDONALD. We are voting now upon laying upon the table.

Senator POWERS. Well, I ask you if you have any objection?

Senator MACDONALD. *I* have no objection to its being stricken out.

Senator POWERS. I am willing to support that order if that clause is stricken out. With that understanding I am ready to vote.

The SECRETARY, (to Senator MacDonald.) Is that clause to be stricken out?

Senator MACDONALD. Yes.

Sanator BUCK, D. If we are going to change that order entirely I am going to give notice of debate.

Senator MACDONALD. Notice of debate will not lie now, as that was given yesterday.

Senator BUCK, D. If you are going to make an entirely new order of it I think I have the right.

Senator MACDONALD. We have a right to amend it now.

Senator CROOKS. I would suggest, Mr. President, that the motion to lay upon the table be withdrawn so as to enable the Senator to perfect his resolution.

Senator HINDS. I will withdraw it and be very glad to have it amended, for when amended it will be just like the one we voted down and then we can raise the point that the question has already been determined.

Senator POWERS. I beg your pardon; it is not like the same we voted down. The one we voted down was to open the doors and allow everybody to come in.

The SECRETARY. The amendment is to strike out the words "and that the vote be taken without debate."

Senator RICE. It seems to me we could get along much better to proceed as we have been doing.

Senator HINDS. If there is objection to the amendment, I insist upon the motion to lay upon the table.

Senator PILLSBURY. Mr. President, I am glad to have this question settled in any way if we can go on. I think we are fooling along too much; let's get on with this thing and get it out of the way. Any way to keep this thing going.

The PRESIDENT *pro tem.* The question is upon the motion to lay upon the table.

The yeas and nays were demanded, and the roll being called, there were yeas 22 and nays 15, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Buck, D., Case, Hinds, Howard, Johnson, A. M., Johnson F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Miller, Morrison, Officer, Perkins, Pillsbury, Rice, Shalleen, Tiffany, White, Wilkins, Wilson.

Those who voted in the negative were—

Messrs Adams, Bonniwell, Buck, C. F., Campbell, Castle, Clement, Crooks, Gilfillan, C. D., Macdonald, Mealey, Peterson, Powers, Shaller, Simmons and Wheat.

So the order was laid on the table.

The PRESIDENT *pro tem.* The business before the Senate now is the vote upon the first article. The secretary will call the roll.

The SECRETARY. The first article charges an offense at the county of Martin, in the State of Minnesota, on the 22nd day of January, A. D. 1878, and on divers days between that day and the 5th day of February, A. D., 1878, while acting as and exercising the powers of judge of the district court, in and for the ninth judicial district.

VOTE ON ARTICLE I.

Each Senator as his name was called, rose in his place and the Secretary proposed to him the following question:

"Mr. Senator,—how say you, is the respondent, E. St. Julien Cox, Judge of the district Court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty, as charged in the first article of impeachment?"

The Senators who voted guilty were—none.

The Senators who voted not guilty were Messrs.:

Aaker,	Gilfillan, C. D.,	McCormick,	Powers,
Adams,	Gilfillan, J. B.,	McCrea,	Rice,
Bonniwell,	Hinds,	McLaughlin,	Shaller,
Buck, C. F.,	Howard,	Mealey,	Shalleen,
Buck, D.,	Johnson, A. M.,	Miller,	Simmons,
Campbell,	Johnson, F. I.,	Morrison,	Tiffany,
Case,	Johnson, R. B.,	Officer,	Wheat,
Castle,	Macdonald,	Perkins,	White,
Clement,		Peterson,	Wilkins,
Crooks,		Pillsbury,	Wilson.—38.

Whereupon the President announced that the respondent, E. St. Julien Cox, Judge of the Ninth Judicial District has been declared guilty upon the first article by no Senators. Thirty eight Senators have pronounced him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

The PRESIDENT *pro tem.* The second article will be read.

The secretary then read the second article, as follows:

ARTICLE II.

That E. St. Julien Cox, being a Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such Judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Waseca, in said State, to-wit: On the 24th day of March, A. D. 1879, and divers days between that day and the 7th day of April, A. D. 1879, acting as, and exercising the powers of such Judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the District Court of said Waseca county, and did there and then preside as such Judge at the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from 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 said office with decency and decorum, faithfully and impartially and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, there and then was guilty of misbehavior in office, and of crimes and misdemeanors in office.

The PRESIDENT *pro tem.* The roll will now be called upon the second article.

Senator POWERS. Mr. President, if I have a right, I would like to give a very brief review of the evidence on that article as an explanation to the way I shall vote.

Senator BUCK, D. I would suggest that the Senator wait until his name is reached upon the roll call.

Senator POWERS. This matter was spoken about yesterday. Some of the Senators thought a member would have to explain his vote before his name was reached upon the roll call. If there is objection to having the minds of the Senators refreshed on the evidence before they vote I shall not ask it. It will take no more time to do it at one time than another.

Senator CASTLE. Mr. President, I believe we have, thus far, followed the precedent in the Barnard case very closely, and in that case, as I recollect it, (I think the Senator from Blue Earth called my attention to it), the matter, as each article was reached, was discussed upon the facts.

Senator GILFILLAN, C. D. Mr. President, it seems to me it is not very good policy for us to adopt this order at this time. I am afraid if one Senator gets up and reviews the testimony and gives the reasons actuating him, that it will have a tendency to stir up other Senators to do the same thing and result in an open discussion. The idea, as I understand it, is simply this: A Senator's name is called, he gets up and explains the reasons which lead him to cast or not cast a vote of guilty. I fear if we allow it out of the regular order it will have a tendency to throw us entirely into confusion and a general discussion, which we want to avoid. We have already had our regular discussion.

Senator BUCK, D. That is undoubtedly the proper course to pursue.

Senator POWERS. I would like to ask the Senator if he considers it objectionable to "stir up" our minds on the evidence on this question. If there are any cobwebs that have gathered over the memory, is it objectionable to have them removed? Is that the point?

Senator GILFILLAN, C. D. Not at all. As I understand, the only proper thing for us to do now is to explain the reasons which actuate the several members of this court in casting their votes,—not an argument pointing out to other Senators as to how they should vote,—but simply the reasons which impel the Senator to cast his vote as he does. —that alone,—as an explanation and a justification of his vote, alone.

Senator POWERS. Mr. President, I am not aware that I have expressed a desire to influence the vote of any other Senator, but I thought if we looked over this matter a little, and refreshed our memory before we voted, that it would be fully better than to do it afterwards. I do not desire to thrust anything of the kind on the Senators if they from any motive don't wish to hear it.

Senator BUCK, C. F. I think the gentleman is in order without any motion. The gentleman has the floor if he would like to be heard.

Senator POWERS. It is something that would affect my course hereafter.

Senator GILFILLAN, J. B. I only desire, as far as I am concerned, to get through this business as expeditiously as may be. It was my understanding yesterday morning, when the order was adopted, that opportunity would first be offered for all the general discussion, in regard to

all the articles. Then that when the vote was reached there was the right still reserved to each Senator to explain his vote under each article. Now, I don't want to be considered as objecting to the Senator's speaking now, but I don't want this court again to resolve itself into a general discussion of all these matters.

[Senator Gilfillan, J. B., here took the chair to act as president *pro tem.*]

Senator CASTLE. Just one word, Mr. President. I suppose those of us who vote upon this question purely with reference to the law will have nothing whatever to say; so far as I am concerned, at least, I shall not say one word with reference to this testimony. There was a good deal of wisdom, it strikes me, in the suggestion made by the present presiding officer that we should adopt the course pursued in the Barnard case.

The PRESIDENT *pro tem.* I would say to the Senator from Washington that there is no motion before the court; if there is a motion then the Senator will be in order.

Senator AAKER. Mr. President, I move that they be allowed to go on now.

Senator CASTLE. I will make a motion, if the Senator will permit me, that when an article is reached, each member who cares to do so may refer to the evidence which in his judgment will prove or disprove the allegations therein contained. I believe no Senator would be more anxious to get through with this trial and get home than myself. But having said all that I care to say, I am not disposed to shut others off who may desire to discuss the evidence. I hardly think, Mr. President, that it will be becoming in us at this time, at this stage of proceedings, to make haste in entering a final judgment without understanding and having our minds refreshed upon the testimony. I have tried to keep as good a track of the evidence as I could, but I believe that there is not a Senator on this floor whose recollection might not be strengthened and aided and assisted by references to the testimony by those who have kept a careful analysis of it as we went along; and it seems to me it is eminently proper, eminently desirable.

If I were expected to vote upon this matter of hearing the evidence I should certainly, in justice to myself, desire that every question of evidence that any Senator thought bore upon the matter at issue should be suggested and called out in these eighteen articles by these two hundred witnesses. I certainly hope that we shall not apply the gag rule at this stage of the proceedings and therefore move the adoption of the motion.

Senator WILSON. Mr. President, while I am not in favor of cutting off any debate or any reasons that may be given, I fear that if this is to be the order that is to obtain,—that if every time the roll is called on each of the fifteen articles and the six or seven specifications, Senator Powers or any other Senator is to give a synopsis of the testimony of all the witnesses who have testified under each article, it will open the door for another Senator upon this floor, who, I presume, will avail himself of the privilege of answering or commenting upon that testimony and we will remain here until the fourth of July before we get through. I did hope, yesterday, after we had spent a day and a half in the discussion of these articles and given each Senator ample time and opportunity to explain his vote, that when we came to voting we would vote right through. I did not intend to say one word, and do not now in-

tend to say one word on the articles as they may be presented; I am ready to vote; and I presume everybody will know by my vote that my mind has been enlightened sufficiently upon the testimony to indicate what I believe about it.

Now, I hope the doors won't be opened in this way to keep us here all the week; and it will,—it most certainly looks to me that we cannot finish this week if this thing is to run on in this way. I am not opposed to shutting off any light; I don't believe now, with all due deference to my friend from Fillmore, that if he comments upon the evidence until Saturday night that it will change one vote or make one hair white or black with anybody, and it is to save time that I make these remarks.

Senator MACDONALD. Mr. President, I offer the following orderas a substitute for the motion of the Senator from Washington.

Ordered, That when the roll is called upon each article, any Senator, when his name is reached, shall have the privilege of explaining his vote.

. Senator POWERS. Mr. President, my desire is not so much to comment upon the evidence as to get the evidence before the Senate in a short and concise form, so that we may have it on each separate article as we vote, and vote, not on the general evidence, spread out over 1,500 or 2,000 pages of printed matter.

Senator HINDS. Mr. President, for my part I have no objections to hearing any Senator explain his reasons, or even to argue upon the evidence, but I certainly do not wish to sit here and hear a digest, even, of the evidence repeated. There are volumes of evidence here, and if one Senator may make a digest of it and repeat it here, another can do the same thing, or he can take up our journal and read it here. What I think might be proper is the motion, strictly construed, of the Senator from Washington, that the reasons may be given. For my own part, unless there is something said, or some evidence read on the part of other Senators, the only explanation that I wish to give to my vote is "guilty" or "not guilty." Those two words express all there is in either article, and it is all the explanation that I deem neceessary on my part, unless there is something called out which may seem to me to require some remark upon my part.

Senator PILLSBURY. Mr. President, I think the most improper thing we could have before proceeding to take a vote, would be a digest of the evidence given by any Senator. I think if any Senator wishes to comment upon the evidence or anything of that kind, that that may be perfectly proper, but any digest of the evidence simply shows how that Senator looks at it. I think we either ought to have the whole evidence read, word for word, or else not have any of it read. I think if one Senator has the right to get up and make a digest, as he calls it, "boiled down," another has a right to get up and read the whole of the evidence on that subject.

Senator POWERS. I would like to ask the Senator then if it is considered objectionable to have this evidence read before we commence to vote, whether when we come to my name on the roll call I have then no right to refer to the evidence that guides my vote. I want to know if that is the intention of the Senator from Hennepin and of this honorable body,—if somebody else must tell me how to explain my vote or if I have a right to use my own judgment when you come down to tne p's and q's, of then explaining in my own way why I vote as I do.

The PRESIDENT *pro tem.* The roll will be called on the adoption of the substitute; those in favor of its adoption will say aye as their names are called.

Senator CASTLE. Mr. President just one word: This is the course which must necessarily always be pursued by jurors before coming to the final determination of the questions of fact. I submit what would be the opinion of this body, or of any body of intelligent men of a jury that would go into a jury room and take a vote without exchanging an idea with reference to the evidence or discussing it in any way whatever.

Senator MACDONALD. I would like to ask the Senator from Wash ington if we have not been two days engaged in that very thing. Every man has had an opportunity, and the Senator from Fillmore [Senator Powers] has not availed himself of it.

Senator CASTLE. I am not aware that any man has availed himself of that privilege.

Senator MACDONALD. It was his privilege to do it and he hasn't done it.

Senator CASTLE. I would say, Mr. President, that it would undoubtedly be an economy of time,—as that seems to be a great desideratim here,—to permit a short interchange of ideas with reference to what the evidence is. It certainly could not operate against a more intelligent verdict.

Senator POWERS. Mr. President, I am speaking of the evidence but not very lengthily. In any remarks that I made yesterday I did not say one word with reference to article two, and, as I understand it, I could not have said it without stretching the rule. If I am allowed the right that the constitution gives me to explain my vote and do it in my own way on article two, I shall not say anything at all about article three; and I could not do it without breaking the law which governs parliamentary debate. If I say anything in explanation of my vote here; (and I withdraw all request to say it before roll-call), if I say anything at all on the reasons which influence my vote on article two, I shall not touch article three at all; and I could not do it constitutionally. And I might as well serve notice right here, that I claim it as matter of right before this Senate, when my name is reached on the roll-call, to give my reasons, in my own way,—if I do it constitutionally and properly, for the vote that I give.

Senator MACDONALD. That is just the effect of my order.

The PRESIDENT *pro tem.* The question is upon the adoption of the substitute of the Senator from Stearns.

Senator POWERS. I would like to hear it again.

The SECRETARY. Senator MacDonald's substitute is:

Ordered, That when the roll is called upon each article any Senator, when his name is reached, shall have the privilege of explaining his vote.

The PRESIDENT *pro tem.* The question will be upon the adoption or rejection of the substitute. The secretary will call the roll.

Senator MEALEY (when his name was called). Mr. President, I want to just say one word right here. I think it is the undoubted right of the Senate to grant to Senator Powers the right to explain his vote here; I don't think the right will be abused, hence I vote for the adoption of the substitute.

The roll being called there were yeas 25 and nays 13, as follows:

Those who voted in the affirmative were—

Messrs: Buck, D., Campbell, Case, Clement, Gilfillan, C. D., Gilfillan, J. B., Howard, Johnson, A. M. Johnson, F. I., Johnson, R. B., MacDonald, McCrea, McLaughlin, Mealey, Miller, Officer, Perkins, Pillsbury, Powers, Rice, Shaller, Shalleen, Tiffany, White, Wilson.

Those who voted in the negative were—

Messrs. Aaker, Adams, Bonniwell, Buck, C. F., Castle, Crooks, Hinds, McCormick, Morrison, Peterson, Simmons, Wheat, Wilkins.

So the substitute was adopted.

The PRESIDENT *pro tem.* The roll will now be called upon the second article.

Each Senator, as his name was called, rose in his place, and the secretary proposed to him the following question: "Mr. Senator, how say you, is the respondent, E. St. Julien Cox, Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty, as charged in the second article of impeachment?"

Senator JOHNSON, A. M. (When his name was called.) Mr. President, to my mind, the theory advanced on this floor, that because any Senator voted to sustain the demurrer, he should convict this respondent, whether he believes him guilty or not guilty, on any article, in consequence of such a vote, is nonsense. Our oath permits no such a conclusion—two wrongs do not make a right. If any Senator feels that he has made a mistake, it is his sworn duty to correct it at the earliest moment. Therefore, I shall vote on all the articles, when reached, according to the law, the evidence, and the constitution, as I understand them, regardless of my former vote. Without fear or favor I vote not guilty.

Senator MCCORMICK (when his name was called). Mr. President, the offense charged in article two, occurred in the district which I represent. It occurred in Waseca county, when I was a resident there, as I am at present; it occurred in the village of Waseca, at the time I was president of the council and had official knowledge of everything that was occurring in the city in the way of disturbances and brawls on the streets. It occurred at the time when court was in session, and it occurred at the particular time when the Powers-Herman case was up before the court, and I was foreman of the petit jury at the time.

Senator BUCK, C. F. Are you giving testimony?

Senator MCCORMICK. I am explaining the reason why I give my vote, on facts—none of the facts but what have been testified to. If I am out of order I will take my seat; if not, I will continue.

The PRESIDENT *pro tem.* Continue.

Senator MCCORMICK. I know the evidence that has been sworn to upon the part of the prosecution in this case to be a fact because I was present at the time; and I know that the gentlemen who have sworn for the respondent (to put it mildly) have been mistaken. It is unnecessary to contrast the character of the men who have given evidence here—you, gentlemen, can do that as well as I can; but when I vote on this particular case I *know* that the facts are as stated by the evidence of the prosecution, and it will be impossible for me to do otherwise than to vote guilty.

Senator POWERS (when his name was called). If I am allowed to explain my vote on this article—

The PRESIDENT *pro tem.* You have the right under the order of Senator MacDonald.

Senator POWERS—in a way which to me may seem proper, before giving my vote, I want to give the reasons why I vote as I do. I have no pettifogging to do; I have no disposition to change the will or vote or opinion of any man, and they need not risk having their opinions changed, because they can walk around the Senate chamber and talk and converse or read newspapers while I give my reasons, and they will be short, too.

The evidence in this case is made up of six witnesses—*seven* witnesses *now*—on the part of the prosecution, and eight on the part of the defense. The first witness whose testimony occurs to my mind, says he saw him drinking several times; he says he was in a state of intoxication. The name of the witness is Blowers. Once or twice he saw him in a state of intoxication; it was late at night or early in the morning. He did not attend court at all. The principle reason that he thought he was intoxicated (and the first time he saw him when he thought he was intoxicated), was because the night watchman had to take him to the hotel; he was so drunk he couldn't go himself.

M. D. Collester, an attorney, thought that on one occasion the Judge was a little off his base. Only on one occasion during the term when I thought Judge Cox was a little the worse for liquor.

It was during the trial of the case of Powers vs. Herman. The Judge acted strange, I thought; seemed to sit uneasily. A sham recess was held to give the Judge a chance to sober off.

(Cross examined.) Court had then been running ten or fifteen days. It was a general remark that Judge Cox expedited business of the court more than judges generally do. The witness did not know that Judge Cox had a boil on the center of his body, so that he could hardly sit down. If it had been Judge Lord that had moved about and acted as Judge Cox had, the witness would not have thought he was drunk. If it had been a stranger he would not have thought so. Thought so partly because Judge Cox had the reputation of a drinking man. He had heard others say that the Judge was under the influence of liquor.

J. B. Haydon, clerk of the court, was present every day of the term. The Judge showed no signs of liquor during the first 8 or 10 days. The third of April, during the trial of Powers vs Herman I thought he was under the influence of liquor. We had to adjourn court on account of his intoxication, and I took him home and put him to bed.

(Cross examined.) I did not lock arms with him going home—did not touch him nor assist him in any way. Did not help him up stairs at the hotel—did not aid him in undressing nor help him into the bed nor onto the bed. There was no other time that I thought the Judge was not able to attend to business.

B. S. Lewis, an attorney, Waseca. *Thought* the Judge was considerably under the influence of liquor during the trial of the case of Powers vs Herman. That was on Tuesday. He was of the opinion that he was under the influence of liquor again on Friday, though not so much as on Thursday.

Frank A. Newell, a banker, Waseca, or cashier in the bank. Seemed very positive, and a very intelligent man. Was "impressed" that the Judge was under the influence of liquor.

(Cross examined.) Yes sir, if it had been Judge Lord I should have thought the same.

Robert Taylor, attorney, Waseca. Thought the respondent was hardly in a condition to act as judge. There was nothing wrong in his appearance that witness could describe, but one of the principle reasons why he thought the Judge was drunk was because he did not seem to know, at one time, which side he (the witness) was arguing on, and stopped him and asked the question.

Now, that is the testimony of the six witnesses. They are all that testified until Senator McCormick did, a few minutes ago,—that makes up all the witnesses on the case for the prosecution,—*seven*. One of them, I find in refreshing my memory, testified that the Judge was drunk because the night watchman took him home. Another witness said he wouldn't have thought he was drunk, if it had been Judge Lord or any one else. Another testified that he put him to bed; another that he was under the influence of liquor; another that he was impressed that he was under the influence of liquor; and another thought he must have been drunk because he did not seem to know which side of the case the witness was on.

Now, on the other side there are eight witnesses. Daniel Murphy, deputy sheriff and court bailiff, was in constant attendance during the whole term of court. Present at every session—morning, noon and evening. The Judge was sober all through the entire term of court. There was no difference in his conduct and deportment during the first and last week of the term. The Judge had a boil on the back part of his body so that he could hardly sit down, and complained of being in constant pain, and was moving his legs and feet considerably on that account. There was nothing unusual in the appearance of his face, hair, clothes, or actions or manner during the term. In the evening he was as sober as I ever saw him. It is not true that the night watchman had to take him to the hotel. The Judge took the night watchman to the hotel simply because it was late and the watchman had a night key, and the Judge had not.

I wasn't there, *I* can't get up and give testimony in the case, but that is what he said.

Senator Adams asked him a question and the witness said: "Judge Cox was not drunk at any time during that term." Senator Gilfillan, J. B., asked a question and the witness says: "I do not think he was *in the least* excited, or showed any signs whatever of intoxication." That was during the Herman-Powers case. That is the testimony of witness No. 1.

Senator McCormick. Senator, was that gentleman present at the time of this adjournment?

Senator Powers. He says he was not drunk at any time during the entire term.

Senator McCormick. He says he was not present at the time of this adjournment.

Senator Powers. Alexander Winston. Came there on the 3rd day of April, the day they claim the Judge was drunk. He went up to the court house with the Judge—walked up the street with him. "*The Judge was perfectly sober.*" Those are the words, and they are the words that I want to go with my vote.

Thomas Bohn, loan and insurance agent, and dealer in real estate. This young man seemed very candid and honest, and gave his testimony in a straightforward, and easy and self-possessed manner. He was

in court when the case of Powers vs. Hermann was tried and the adjournment took place. "Judge Cox at that time *was perfectly sober*.

Those are his exact words; not "I guess so," nor "I thought so," nor "it was my opinion;" I have given them just as he did. He seemed fatigued and had a boil on his body so that he could hardly sit still or remain in one position. His hair, eyes, face, actions. manner, and general deportment were the same as usual except he seemed tired and bothered with the boil. His voice was perfectly clear and he talked coherently and sensibly. Nothing different from ordinary only a look of weariness.

B. F. Murphy was one of the jurors in the case of Powers vs. Herman. *Judge Cox was perfectly sober.* At the time of adjournment he was sober; in the afternoon he was sober, though he seemed tired and complained of having a sick headache. That was the tenth or eleventh day of the term, and business had been driven night and day. In the evening the Judge was sober. I noticed no difference in him during the fore part and latter part of the term, only a look of weariness towards the last. In every other respect his hair, eyes, face, manner, conduct and general deportment were to all appearance the same.

Mr. Lansing. This man was also a juror. He testified to the perfect sobriety of the Judge. Witness spoke of the boil on the Judge's body, his apparent weariness towards the latter part of the term, and his having a sick headache on the 3d day of April. When court adjourned on the 2d, or rather took a recess, witness walked with him to the hotel. No other person walked with them. The Judge showed no signs of intoxication. He was perfectly sober. Three other men gave it as their opinion that J. B. Heydon could not have been correct when he stated that he "took" the Judge to the hotel. They did not think that he even walked with him at all.

The Rev. Father Hermann was *very* positive. The Judge *was perfectly sober*—PERFECTLY. His decisions were intelligent, and his language consecutive and clear. It was he (Father Hermann) who procured the adjournment, not on account of the intoxication of the Judge, but because he wanted a material witness that he did not before know of. This witness was kept on the stand about half a day, and subjected to the most searching cross examination. Over and over again he testified in a most positive manner that the Judge was perfectly sober.

I have got pretty near through.

Judge Lewis Brownell was the next witness. I think he wasn't a judge, but he was called "Judge." He is a lawyer. It has been said that lawyers can judge better than anybody else—well there are considerably more than twice the number of lawyers on the part of the defense than on the part of the prosecution.

Judge Lewis Brownell, attorney, Waseca. Has practiced law twenty-seven years—seven or eight years in the city of New York before he came here. Was in attendance at the term of court in Waseca during the entire term, except at the time of adjournment on the 3d. The Judge was entirely sober—as sober as I am now. Towards the latter part of the term he looked tired and sick, and complained of a sick headache. He was sober and clear-headed, and directed the business of the entire term with ability, intelligence and skill—*the whole of it*—a long and important term. When Taylor was trying to argue his case he was very obscure. His remarks seemed confused. I could not have told,

myself, which side he was on, and should have asked him as Judge Cox did—"which side are you trying to argue?" Business was not continued one minute on account of the condition of the Judge—not one minute. It was dispatched with rapidity and correctness during the entire term of court at Waseca.

Max Forbes is the next and the last witness.

Max Forbes. Clerk at the hotel, and juror on the Powers and Herman case. Judge Cox was perfectly sober during the trial of that case. The next morning he was sober. In his charge to the jury he seemed clear and intelligible. He seemed tired and half sick, and was very much bothered with a boil, which made him move about in a restless, uneasy manner. He was perfectly sober,—perfectly so. Nothing in his actions, manner, language, conduct, deportment or general appearance to indicate that he was under the influence of liquor.

There are eight men against six (and the Senator has given testimony just before I got up); eight men say positively, unconditionally, that he was sober. Six men *think* he was drunk or were "impressed" that he was drunk during one or two days. On that testimony, sir, as I feel now, I would I believe, suffer martyrdom before I would vote guilty;—

Senator GILFILLAN, J. B. Will the Senator allow me?——

Senator POWERS. And I vote not guilty under the evidence.

Senator GILFILLAN, J. B. Will the Senator allow me a question?

The PRESIDENT *pro tem.* I don't see any necessity of a question now; he has voted.

Senator GILFILLAN, J. B. Well, I know the Senator didn't intend to misstate the facts. I ask him if he included in the number of witnesses for the State the testimony of the witness Charles O. Ware,—the court stenographer. There is a little testimony by that witness on page 501 of the printed Journal, at the close of his testimony where he asks to explain an answer which he had given.

Senator POWERS. I think I haven't that. I will explain that I have gone almost exclusively by my own stenographic notes, which I took right at this desk, and that, coming in afterwards, I think I perhaps omitted it.

Senator GILFILLAN, J. B. This is the testimony of the stenographer of the court on that subject.

The PRESIDENT *pro tem.* (to the secretary.) Proceed with the roll-call.

The secretary then proceeded with the roll-call.

Senator WHITE (when his name was called.) Mr. President, Judge Cox was at one time a member of the Senate, and I was a member at the same time; he was a member of the house the winter before, and I was a member of the Senate. I have known him ever since that, and of course it is hard for us to vote guilty on a brother Senator, and while I would like to exercise mercy, as I hope for mercy every day, I am compelled, on the evidence, to vote guilty.

The secretary having concluded the calling of the roll, Senator McCORMICK rose and said:

Senator MCCORMICK. Mr. President, before the vote is announced I wish to say this: There seems to be some misunderstanding about what I said. Some of the Senators seem to have received the impression that my mind was made up, not from the evidence, but from some-

thing outside. I wish to say that my decision is reached from the evidence and not from matters outside.

VOTE ON ARTICLE II.

The Senators who voted guilty were Messrs.

Aaker,	Hinds,	McLaughlin,	Shaller,
Buck, D.,	Howard,	Miller,	Shalleen,
Campbell,	Johnson, F. I.,	Morrison,	Tiffany,
Case,	Johnson, R. B.,	Officer,	Wheat,
Clement,	Macdonald,	Perkins,	White,
Gilfillan, C. D.,	McCormick,	Pillsbury,	Wilkins,
Gilfillan, J. B.,	McCrea,	Rice,	Wilson.—28.

The Senators who voted not guilty were Messrs.

Adams,	Castle,	Mealy,	Powers,
Bonniwell,	Crooks,	Peterson,	Simmons,—10.
Buck, C. F.,	Johnson, A. M.,		

Whereupon the President announced that the respondent, E. St. Julien Cox, Judge of the Ninth Judicial District, has been declared guilty upon the second article, by twenty-eight Senators.

Ten Senators have pronounced him not guilty.

Having been pronounced guilty by more than two-thirds of the Senators present and voting, he stands convicted upon this article.

The PRESIDENT *pro tem.* The time has arrived for recess.

The Senate then took a recess till 2:30 o'clock, P. M.

AFTERNOON SESSION.

The Senate sitting as a court of impeachment met in secret session at 2:30 o'clock, p. m., and was called to order by the President *pro tem.*

Senator GILFILLAN, J. B. Mr. President, I would suggest that we have a roll-call so that we may see who is voting. What I mean to suggest is this, that before proceeding to any vote, after every recess, we ought to have a call of the roll, and let it become a matter of record.

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

Messrs. Adams, Bonniwell Buck, C. F., Buck, D., Campbell, Case, Castle, Clement, Crooks, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., MacDonald, McCormick, McCrea, McLaughlin, Miller, Morrison, Officer, Perkins, Pillsbury, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, White, Wilkins, and Wilson.

The PRESIDENT *pro tem.* The Secretary will now read article three,—that being the regular order of business.

The Secretary then read the third article as follows:

ARTICLE III.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Brown in said State, to-wit: On the 12th day of June, A. D., 1879, and on divers days between that day and the 25th day of said June, acting as and ex-

ercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and there pending in the district court of said Brown 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 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 to discharge the duties of his said office with decency and decorum, faithfully and impartially and according to his best learning, judgment and discretion to the great disgrace of the administration of public justice and to the evil example of persons in office, by reason whereof the said E. St. Julien Cox was then and there guilty of misbehavior in office and of crimes and misdemeanors in office.

The PRESIDENT *pro tem.* The roll will be called upon that article.

Senator SHALLEEN. There are some Senators not here yet.

The PRESIEENT *pro tem.* It is not the fault of the court.

Senator CROOKS. Mr. President, before the vote is taken I wish to ask, is there a full Senate?

The PRESIDENT *pro tem.* Well, I presume the names of the absent Senators can be called on this article after they come in.

Senator CROOKS. Would there be any objection to that?

The PRESIDENT *pro tem.* No; I guess not.

Senator CAMPBELL. I move that the votes of Senators Aaker, Mealey and Peterson be taken when they come in.

Senator GILFILLAN, C. D. I don't think that can be done.

Senator CASTLE. I dont see what difference it makes.

The PRESIDENT *pro tem.* The chair would decide that if they are recorded before the vote is announced it would make no difference.

Each Senator as his name was called rose in his place and the Secretary proposed to him the following question: "Mr. Senator, how say you, is the respondent, E. St. Julien Cox, Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty, as charged in the third article of impeachment?"

Senator CROOKS. (When his name was called.) Under the provisions of the constitution of this State and of its laws, he is not guilty.

Senator POWERS (when his name was called.) Mr. President, it may perhaps be a little old-fashioned and conservative, or regarded as irrelevant, in these days of progress and improvement, but I want to consider briefly the evidence that has been sworn to in this court.

There have been five witnesses on the part of the prosecution and four on the part of the defense on this article, if no others volunteer. The evidence is short, hence it will not take a great while to review it.

Mr. Goodnow, on behalf of the prosecution, swears that he thinks he was intoxicated. He sat with his back to him, it is true, and only saw him a short time at a time—five or six times through the day. That is all he saw him, but he regarded him as intoxicated.

Mr. John Lind, the man who stated that "he would like to cut his guts out," was there; not a regular trial, he says; it it was only an arrangement between counsel upon both sides to meet and take evidence. "Judge Cox was not sober at that time, nor would I say he was drunk."

He thought he had been under the influence of liquor or intoxicated the night before, and was dull and heavy; had what they call up there "katzenjammer;" he was laboring under the reaction; the liquor was dying in him.

Mr. Pierce, who is a very strong witness, swears that he got on a spree. I want to give him the full benefit of his testimony. He don't say he thought he did nor that it was his opinion, but he says he got on a spree. That he was not fit for business. He was very much under the influence of liquor. He was talking incoherently and jabbering. Judge Severance requested him to keep still. I think the stenographers in that case have "to shut up," but that is the way I took it. Others were talking to him as they would to an irresponsible person. When he was cross-examined he said he didn't know of his own knowledge that Judge Cox was on a spree the night before, didn't know anything about it. That they had to get an amanuensis to take down the evidence; he heard afterwards, however, that the Judge had a lame hand.

Judge Severance,—a very intelligent and truthful man, I think, though a man of very strong prejudices,—says he was very much under the influence of liquor. We found him in an alley leaning on a fence talking to some one; he said court had adjourned and he would not try the case. In the morning went to the court house to try the cases. He was very much under the influence of liquor, very much indeed. We were four or five hours in all in taking the testimony. His intoxication seemed to increase. He was very drunk when I found him in the afternoon; he told me he was "God damned drunk!" Judge Severance spoke of his erratic kind of talk, etc.

Well, Mr. Webber, another of these attorneys who have sworn to the intoxication there of the ninth judicial district judge, gives evidence. He says Judge Cox appeared to be intoxicated at that time. We waited until morning, but he seemed to be partially intoxicated still.

That is the evidence we have to go by on the part of the prosecution in giving our votes, and I think it is all the pith and marrow of the evidence.

Now there is not a great deal on the other side; I want to place it here in connection with my vote. Mr. Blanchard acted as a witness, he was present at the trial of the Gezike case; he had a conversation with the Judge before the trial. He was not intoxicated at that time or during any part of that trial. The Judge did not leave the court room at any time except at recess at noon. There was no difference in his actions, appearance, conduct or manner during the first and last of the trial. It is not true that the Judge was constantly talking; he was not constantly making rules and orders. Judge Severance did not tell him to keep still; he seemed perfectly responsible.

William Gezike, a farmer, the man who was plaintiff in that case and had eight thousand dollars involved, tells us that he noticed the condition of the Judge closely and that "the Judge was not drunk at all." He did not give it as his opinion or impression; those are his words. During the trial of the case he acted no different from any other judge; was not talking nor attempting to talk incessantly; did not talk incoherently. It is not true that he talked like a fool; his eyes did not look red or swollen. If he had been different than usual the witness would have noticed. There was nothing uneasy in his actions. "When he tried

my case he was as sober as ever I saw him in my life; he was perfectly sober."

Mr. Behnke, a merchant at New Ulm: Known the Judge 23 or 24 years; have seen him under the influence of liquor, intoxicated, and know when he is drunk or sober; was in court; noticed Judge Cox; in my opinion he was perfectly sober; I had no doubt of it then; I have none now; I don't think he had been drinking intoxicating liquors at all; I have seen him at other times when I knew him to be sober; he did not act any different at that time than at any other time I have seen him when I knew he was sober; there was nothing out of the way in his actions, manner or speech; did not sit and mumble things over; did not talk incoherently on the bench; his talk was sensible.

Cross-examined: I have seen Judge Cox drunk; he certainly was not drunk that day; I don't know as I have ever seen him when he was what some would call drunk.

Patrick Fitzgerald; and he is the last witness: Been acquainted with Judge Cox ten or twelve years; was in court in New Ulm during the trial of the Gezike case; I thought Judge Cox was perfectly sober; no difference in his manner, appearance, language, actions or conduct during that time and at any other time that I have seen him when I knew him to be sober; his eyes were not swollen; they were not red; his face was not flushed; there was nothing erratic in his talk; did not hear him speak but once; he was not interrupting counsel; there was nothing to indicate that he had been on a spree the night before.

Cross-examined: I was in court pretty much all the time; he looked just as sober as I ever saw him in my life; he was perfecly sober.

Mr. President, the evidence in this case does not, in my opinion, so overwhelmingly establish the innocence of the respondent on the charge contained in this article as the evidence does on article two, but it creates in my mind a very strong and formidable doubt, and I vote not guilty on the *evidence*.

At the conclusion of the roll-call the name of Senator Peterson was called but he failed to respond, not being present.

Senator CROOKS. Call all the absentees.

The SECRETARY. There is no other.

VOTE ON ARTICLE III.

The Senators who voted guilty were Messrs.

Aaker,	Hinds,	McLaughlin,	Shaller,
Buck, D.,	Howard,	Miller,	Shalleen,
Campbell,	Johnson, F. I.,	Morrison,	Tiffany,
Case,	Johnson, R. B.,	Officer,	Wheat,
Clement,	Macdonald,	Perkins,	White,
Gilfillan, C. D.,	McCormick,	Pillsbury,	Wilkins,
Gillfillan, J. B.,	McCrea,	Rice,	Wilson—28.

The Senators who voted not guilty were Messrs.

Adams,	Castle,	Johnson, A. M.,	Powers,
Bonniwell,	Crooks,	Mealy,	Simmons—9.
Buck, C. F.			

Whereupon the President announced that the respondent E. St. Julien

Cox, Judge of the Ninth Judicial District, has been declared guilty upon the third article, by twenty-eight Senators.

Nine Senators have pronounced him not guilty.

Having been pronounced guilty by more than two-thirds of the Senators present and voting, he stands convicted upon this article.

The PRESIDENT *pro tem.* The fourth article will be read by the Secretary.

The Secretary then read the fourth article as follows:

ARTICLE IV.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 15th day of August, A. D., 1879, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and there pending in the district court of said Nicollet 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, 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 learning, judgment and discretion, to the great disgrace of the administration of public justice and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, then and there was guilty of misbehavior in office and of crimes and misdemeanors in office.

The President *pro tem* directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place and the Secretary proposed to him the following question: "Mr. Senator———, how say you, is the respondent, E. St. Julien Cox, judge of the district court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty as charged in the fourth article of impeachment?"

Senator CROOKS, (when his name was called.) Under the provisions of the constitution and of the statutes of this State he is not guilty.

Senator JOHNSON, A. M., (when his name was called.) Mr. President, after hearing the law and the facts I am at a great stand to know whether it really is an impeachable offense or not: I am not really decided: but taking the evidence and everything, I shall vote guilty on that.

Senator MEALEY, (when his name was called.) Mr. President, with regard to this article the testimony has been of that character that I think the charge sustained; yet I do not feel like voting guilty, believing that the respondent is not guilty under our constitution and the laws. I believe the charge has been sustained by the testimony.

Senator POWERS, (when his name was called.) Well, Mr. President, I have grave doubts whether he is constitutionally or legally guilty of

an impeachable offense. I have heard all the arguments that have been made I think, on both sides, and it seems to me that there is very much more reason to believe that drunkenness is not an impeachable offense *per se* than that it is. There seems, however, to be a good deal of reason for considering it an impeachable offense, and although I would not allow my feelings to govern me to any great extent in this matter. I confess that I think if it is not impeachable, it ought to be certainly,—if I had to vote on the matter I should certainly make it impeachable. And in addition to that I think that the evidence proves clearly that the Judge *was* intoxicated while trying to discharge his duty; and I shall vote guilty on that article. And I do it with some considerable doubt, I confess.

When the secretary announced the names of the Senators voting not guilty, Senator Mealey rose and said:

Senator MEALEY. Mr. President, that is not the record I wish made here—"not guilty"—I vote that the charges in that article have been proven. That is, the testimony, to my mind, proves the charge; but I have a mental reservation or a doubt as to whether I can vote guilty on that charge. You understand me; I claim that the charges in that article have been proven, to my mind; still, I claim, on the other hand, that there is no law under our constitution by which the man can be impeached for the crime he is charged with. I suppose that I might have my vote recorded in this shape: That "the charges as set forth in the article have been proved." I vote aye to that, but I don't want to be recorded as voting not guilty.

Senator BUCK, D. There can be no such record of a vote. He can vote guilty or not guilty, and then his explanation can go with it.

The PRESIDENT *pro tem.* His explanation will go upon the record.

Senator MEALEY. With that explanation I allow that to go. I vote guilty.

VOTE ON ARTICLE IV.

The Senators who voted guilty were Messrs.

Aaker,	Howard,	Mealey,	Shaller,
Buck, D.,	Johnson, A. M.	Miller,	Shalleen,
Campbell,	Johnson, F. I.,	Morrison,	Tiffany,
Case,	Johnson, R, B.,	Officer,	Wheat,
Clement,	Macdonald,	Perkins,	White,
Gilfillan, C. D.,	McCormick,	Pillsbury,	Wilkins,
Gilfillan, J. B..	McCrea,	Powers,	Wilson.—31.
Hinds,	McLaughlin,	Rice,	

The Senators who voted not guilty were Messrs.

Adams,	Buck, C. F.,	Crooks,	Simmons.—7.
Bonniwell,	Castle,	Peterson,	

Whereupon the President announced that the respondent, E. St. Julien Cox, Judge of the Ninth Judicial District, has been declared guilty upon the fourth article by thirty-one Senators.

Seven Senators have pronounced him not guilty.

Having been pronounced guilty by more than two-thirds of the Senators present and voting, he stands convicted upon this article.

The PRESIDENT, *pro tem.* The fifth article will be read.

The Secretary than read the fifth article as follows:

ARTICLE V.

That E. St. Julien Cox, being a judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 13th day of October, A. D. 1879, acting as and exercising the powers of such judge, did then and there examine and disprove of matters and things then and therein 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 theretofore been tried before him as such judge, in which one Albrecht was plaintiff and one Long was defendant, while he, the said E. St. Julien Cox, 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julian Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

The President directed the Secretary to call the names of the Senators. Each Senator as his name was called rose in his place and the Secretary proposed to him the following question: Mr. Senator ———, how say you, is the respondent, E. St. Julien Cox, judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty, as charged in the fifth article of impeachment?

Senator CROOKS, (when his name was called.) Under the provisions of the constitution and the laws of Minnesota my vote is not guilty.

Senator POWERS, (when his name was called.) Mr. President, I think that the charge of intoxication in Nicollet county on October 13, 1879, has been proven. I vote guilty, under a strong mental reservation, on account of the legal and constitutional questions.

VOTE ON ARTICLE V.

The Senators who voted guilty were Messrs.

Aaker,	Howard,	Miller,	Shaller,
Buck, D.,	Johnson, A. M.,	Morrison,	Shalleen,
Campbell,	Johnson, F. I.,	Officer,	Tiffany,
Case,	Johnson, R. B.,	Perkins,	Wheat,
Clement,	Macdonald,	Pillsbury,	White,
Gilfillan, C. D.,	McCormick,	Powers,	Wilkins,
Gilfillan, J. B.,	McCrea,	Rice,	Wilson.—30.
Hinds,	McLaughlin,		

The Senators who voted not guilty were Messrs.

Adams,	Buck, C. F.,	Crooks,	Peterson,
Bonniwell,	Castle,	Mealey,	Simmons.—8.

Whereupon the President announced that the respondent, E. St. Julien Cox, Judge of the Ninth Judicial District, has been declared guilty upon the fifth Article, by thirty Senators.

Eight Senators have pronounced him not guilty.

Having been pronounced guilty by more than two-thirds of the Senators present and voting, he stands convicted upon this article.

The PRESIDENT, *pro tem.* The seventh article will be read. I believe there was no testimony offered under the sixth.

The SECRETARY. The sixth article was dismissed January 26th at the close of the testimony for the prosecution.

The Secretary then read the seventh article as follows:

ARTICLE VII.

That E. St. Julien Cox, being a Judge of the District Court of the State of Minnesota in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 10th day of December, A. D. 1879, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the district court of said Nicollet 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, 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

The President directed the secretary to call the names of the Senators. Each Senator as his name was called, rose in his place and the Secretary proposed to him the following question: "Mr. Senator ——, how say you, is the respondent, E. St. Julien Cox, Judge of the district court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty, as charged in the seventh article of impeachment?

Senator CROOKS. (When his name was called.) Under the provisions of the constitution and the laws of Minnesota, in my judgment he is not guilty.

Senator MILLER. (When his name was called.) Mr. President, knowing that some of the witnesses in this case have to my personal knowledge perjured themselves, I can place no weight upon their testimony whatever; I vote guilty.

Senator POWERS. (When his name was called.) Mr. President, this is one of the cases where I desire the indulgence of the Senate for a few moments.

Senator CASTLE. There has more than one-third of the Senate voted "no" already,

Senator POWERS. I am aware of that, and I am aware also that yesterday they decided that we should go over the testimony before a vote was given; they have chosen to go back upon that and I am not responsible; I want to walk right along the track I have laid out, regardless of results.

Senator CASTLE. I trust the Senator will pardon me.

Senator POWERS. Certainly, certainly; I am very glad that you spoke of it. I was going to say that we skipped article six.

The SECRETARY. That was abandoned.

Senator POWERS. I know it was, and so was this, practically.

The PRESIDENT *pro tem.* No, I think not.

Senator POWERS. The manager told us himself, after reviewing all this evidence on his side and skipping half on the other, that then he didn't think that the respondent was guilty.

Senator BUCK, D. Then why discuss it?

Senator POWERS. Because it is my right, that's all. I say that the manager on behalf of the State told us himself that he wouldn't say this article had been sustained, and that he thought any Senator could consistently vote not guilty.

Now, what is the evidence? I want to see it stand with my vote. Nobody need to listen to it; I am aware that it is not necessary. [Laughter.] I am perfectly aware of that, and it may be a source of great mirth and merriment—consider it a joke, if you please—but with me it is earnest, because I have sworn before God, "assuming that there *is* a God," that I will be governed by the law and the evidence.

There were twelve witnesses sworn in this case before Senator Miller gave in his evidence just now on the floor of the Senate. Eight of the witnesses swear positively that the Judge was not drunk; four of them swear that they think he was.

Mr. Downs of St. Peter, who has been the sheriff of the county, thought he was intoxicated. He was asked if he thought he was drunk, and he said "Well, if you confine it to the two words, drunk or sober, I should say he was drunk." When he was cross-examined upon that he said he had forgotten it but he was made to remember it afterwards. As late as November, 1881, he had stated that he did not remember of his being drunk at that time.

Sumner Ladd, an attorney at St. Peter, swears he was intoxicated. The case came up on a motion to set aside, in a road case,—a road that was laid out through the village of Redstone, I think. The Judge walked straight, but he had to make quite an effort to walk straight and appear sober. His mind seemed confused; he had a peculiar gleam in his eyes.

John Lind, the man who desired to "cut his guts out," says he didn't think the Judge under the influence of liquor in the afternoon, "enough to embarrass us, but we took a recess of two hours to enable the county attorney to present the points more clearly," and when they met again at six o'clock or about six o'clock, "I noticed that the Judge was intoxicated." It was a jury case. The Judge made a suggestion that had no relevancy, as the witness thought, and from that he knew that he was not sober. All his eccentricities were magnified. "He made side remarks to counsel."

B. F. Webber, an attorney on the same road case says, "in my opinion the Judge was intoxicated." Thinks it was only during the trial of that one case. "It is very difficult for me to describe his actions. Don't expect to be judge myself after Judge Cox, but would like to have it." There is the evidence which we have been voting on, and that I am going to vote on if I am able to get through the evidence.

Now, there are eight witnesses upon the part of the defense. Charles R. Davis, who has the merit of being a lawyer, says he has known Judge Cox for fifteen years; he was a former partner of the Judge; was an attorney in the Dingler case himself, and observed the Judge closely; argued the case elaborately, and would be likely, he says, to notice the Judge; there was nothing peculiar in the Judge's condition; he seemed sober; "I was county attorney in the case; I noticed nothing wrong in the Judge; I would have noticed it if there had been; he is naturally eccentric; I have seen him when I thought myself he was drunk; afterwards walked home with him and conversed with him in his room, and found that he was perfectly sober."

If this charge were for eccentricities I should vote to sustain it. His mind was harrassed. The night of the Dingler case I saw nothing wrong in his appearance, actions, conduct, manner or language; he did not interrupt counsel.

Senator ADAMS. Mr. President, I desire to call your attention to the fact that there is a great deal of disorder and confusion. To my mind it is unbecoming a court deliberating upon a question of this kind. I dislike to see it very much. I hope the presiding officer will enforce the orders of the court.

Senator POWERS (continuing.) He did not interrupt counsel; did not talk differently from what he usually did; did not make any strained or unnatural effort to appear sober or to brace up; made no rulings that night at all; seemed perplexed, as we all did, and reserved his decision until the next morning; it was then against me; the records do not show that he made any decision that night, and my memory does not.

Benjamin Rogers, the clerk of court, exhibited the records of the court showing no order was made on the first day of the trial; (the charge was that he had made an order and afterwards taken it back;) and that the case was taken under advisement and an order made the next morning.

Mr. Hatcher lives in St. Peter; knows respondent, has known him twenty-three years; lives right across the street from him in St. Peter, next neighbor; have seen him intoxicated; can tell when he is intoxicated; was bailiff of the court in Nicollet county in 1879; remember the Dingler case; was present when the case was tried; was present at the evening session; the Judge was sober, sober through the day; I had no doubt at the time, I have none now. I walked home with the Judge after the court adjourned; conversed with him; he was sober. I sat right facing him in the court. There was nothing in his manner, conduct, language or deportment different from usual. When I say a man is sober, I mean that he is not under the influence of liquor at all. On the evening I speak of I do not think Judge Cox was under the influence of liquor to any extent; he may have taken a glass or more, but he did not show it. I have acted as bailiff every term since he was elected

in 1877, except last May term; he was perfectly sober during this May term.

Upton Meyers is a retired farmer or capitalist; lives in St. Peter; has known Judge Cox fifteen years. Has seen him under the influence of liquor. Was on the jury that tried the road case; can't remember the name. There were no witnesses examined in the evening, but there was an argument made. I sat in sight of the Judge.

Senator BUCK, D. Mr. President,—will the Senator allow a word? I ask,—and I say it in all kindness,—I ask the Senator is it necessary to put that all into the case again? I am perfectly willing to listen to any argument that the Senator has to make—

Senator POWERS. I have none to make.

Senator BUCK, D. I submit in all kindness, I *do* submit whether or no it is necessary to put that into the case again.

The PRESIDENT *pro tem.* I submit to the Senator himself whether he considers it is necessary or really pertinent to go all over that evidence.

Senator BUCK, D. I will listen to the Senator to any criticisms or remarks he has to make upon the evidence, but it does seem to me that it is hardly worth while to spend the time when we are all so anxious to get away; with repeating that all over again. It may be that I am out of order myself, but I really feel that the Senator ought not to spend that time.

Senator POWERS. Now I don't feel so much in a hurry to lose sight of the evidence.

Senator BUCK, D. So I see.

Senator POWERS. I do not; I said this morning that I would not take up the time of this court with making remarks. But I desire to present this evidence.

Senator BUCK, D. I then move, Mr. President, if it is in order, that the Reporter be directed not to take down any of this evidence that is read by the Senator.

Senator POWERS. I don't blame the Senator at all.

Senator CROOKS. I move to lay the resolution on the table.

Senator POWERS. I don't blame the Senator at all. If I was voting guilty on an article like that, I would hope in heaven's name, that nobody would see the evidence.

Senator BUCK, D. I did not vote guilty.

Senator POWERS. Either way. If there is a show for hand-staffing this man I can't see the evidence; I am only responsible for myself.

The PRESIDENT *pro tem.* I think there has only one Senator voted guilty since the roll call commenced.

Senator POWERS. I supposed he would be voted guilty, of *course.*

Senator JOHNSON, A. M. Mr. President, I hope we won't gag no Senator. (Laughter.) Let him go on. We have established a rule that a Senator may explain his vote.

Senator BUCK, D. We have established a rule to that effect, but we have not established a rule that he may read the whole evidence.

Senator POWERS. I will ask the Secretary if he will please state how the vote is.

Senator CAMPBELL. I object.

Senator GILFILLAN, J. B. Mr. President, I rise to a point of order.

Senator POWERS. I think I have the floor.

Senator GILFILLAN, J. B. I rise to a point of order.

The PRESIDENT *pro tem.* State your point of order.

Senator GILFILLAN, J. B. It is this: The court has voted to allow each Senator to explain his vote. I hope I shall be the last one on this floor to try to curtail that privilege, but I submit that what is being done is not an explanation of a vote; it is reading the testimony all over,—no, it is not reading the testimony all over,—because the Senator is not reading from the record, but is reading from some copy or condensed abridgement of the evidence, taken by somebody else than the court reporter. I submit that no one has the privilege here of reading testimony at length from what is not the official records.

Senator POWERS. I am as much sworn, Mr. President, if I take notes here, as the reporter who sits at the table, and I will guarantee that I will not distort a single thing.

Senator GILFILLAN, J. B. The point of order I make is, that the Senators have not the right to read the testimony.

Senator CROOKS. I would ask the Senator if he means by his point of order that a Senator who wishes to record with his vote his reasons for voting for or against the conviction of the respondent, has not a right, under the order of the Senate, in order to appear right before the people has not the right to give the evidence which binds his mind, given in on both sides, as he has taken it himself,—carefully taken it.

Senator GILFILLAN, J. B. No, sir; the rule doesn't give him any such privilege.

Senator CROOKS. I ask now if the Senator from Blue Earth insists upon the resolution which he offers.

Senator BUCK, D. I didn't offer any.

Senator CROOKS. You made a motion.

The PRESIDENT *pro tem.* It was not seconded.

Senator GILFILLAN, J. B. I desire a ruling upon this point of order; I believe it to be well taken.

Senator POWERS. I will say that the Senator from Blue Earth asked me in a pleasant way, not to read it. I would say further, if I had not been looking over my notes, many of which are in short hand and written rapidly, and had known that the vote was going to clear the respondent in this case, that I should not have commenced at all; and when I asked the Secretary to give me the result of this vote, so as to influence me in knowing whether to continue the evidence, that was refused. I should not have read the evidence in this case. But I claim the right to read the evidence in every single article where I wish to, and I will submit to the ruling of the chair whether I have a right to do it and explain my vote, or whether I have not; and I will sit down now while the chair rules.

Senator HINDS. Mr. President, the point of order made involves two principles. One is whether what the Senator has been doing is an explanation of his vote. It certainly cannot be so construed. He is reading what *he* says the witness swore to. Now suppose it is true that he is reading *exactly* what the witness swore to, is it possible that each one of these thirty-eight Senators, in explanation of his vote, will be permitted to take the report of 250 witnesses and read it 38 times to this Senate as an explanation of a vote? Most certainly it is no explanation of a vote at all. If the Senator may be indulged in reading evidence as it was given by the witnesses, each one of the other Senators may be permitted to do

the same thing; they would have a right to take this volume of 2,000 pages and detain us here for six weeks, upon the pretense of explaining votes. But the worst feature of this is the other point of order that is made—the Senator is not reading to us the evidence of the witnesses—

Senator POWERS. I am.

Senator HINDS. He is reading to us what he has taken down as the evidence of the witnesses, which is not permissible at all in explanation of a vote, or in any other respect. Now, that is the serious point of this objection; he is reading, and he has stated that he has been reading what he has taken down himself as what the witnesses have sworn to. Now, that is not permissible upon the part of any Senator.

Senator POWERS. Mr. President—

Senator CASTLE. Mr. President—

The PRESIDENT *pro tem.* The Senator from Fillmore has the floor.

Senator POWERS. Mr. President, I expected this; I *expected* it; I am not at all surprised. Now, when the Senator from Scott tells us about thirty-eight Senators explaining their vote, or giving a reason why they vote as they do, he knows that I know that there are a good many of those thirty-eight men who were not here half the time and did not hear a good deal of the evidence. I have compared my notes (where the evidence seemed so strong on one side or the other that I doubted it), with the notes of the Stenographer, and I have not found a single point—not one—where there was a difference, unless I had not recorded where they claim that Judge Severance told Judge Cox to "shut up," to "shut his mouth," that I haven't taken down. I have not taken down a single remark that I did not take down *verbatim et literatim et seriatim*. I have omitted some remarks that I did not consider necessary. Now, I am just as much sworn here to state the testimony as the Reporter is sworn to report it. I am not using up the time of the Senate. When others talked for hours here yesterday I said nothing, only to the article under consideration; and I explained then, and it was understood, that I should have a right to refer to these notes. It was agreed to, and the question came up whether we should not canvass the evidence before we commenced voting, and that was agreed to—solemnly and earnestly agreed to—and it stands there in testimony, and I think from the lips of the very man who now calls me to order. I am not surprised at all, but I claim the right, and I admit that if I had not been looking over my notes I would have seen how the vote was going; but I supposed the vote would be given against him, and now I am told that there are two votes against him. I don't care to continue the evidence in full, but while the point is up, I want to know whether I have a right to get up here, and in explanation of my vote, and the reason which leads me to vote as I do; whether I have a right to refresh my memory and the minds of others from the testimony.

[Senator Campbell here took the chair to act as President *pro tem.*]

Senator WILSON. Mr. President. I wish to say just this: That with Senator Powers I have very generally agreed, and I have great respect for Senator Powers, but I cannot see the propriety in my friend Powers insisting on taking up the time of this Senate at this late period, when we have heard from a Senator here this morning, that he must leave to-morrow morning when it is important for us to get through, and when all the time he is occupying will not change a vote. Judge Cox in now convicted on three or four articles.

Senator GILFILLAN, J. B. Mr. President, I rise to a point of order.

The PRESIDENT, *pro tem.* What is the point of order?

Senator GILFILLAN, J. B. I have already stated my point of order. The Senator from Goodhue is going on to discuss another question.

The PRESIDENT *pro tem.* That is correct. The Senator should confine himself to the point of order under discussion.

Senator WILSON. I was simply making an appeal to Senater Powers to cease this.

Senator GILFILLAN, J. B. It is out of order.

The PRESIDENT *pro tem.* The chair holds the point of order well taken; the Senator must confine himself to the point of order under discussion, that is, whether it is proper for Senator Powers to read the testimony from his notes after objection has been made.

Senator WILSON. I don't wish to discuss that at all, but if I can by my appeal get rid of this nonsense—

The PRESIDENT *pro tem.* (Bringing the gavel down.) Order! The Chair holds that the Senator is out of order unless he confines himself to that question.

Senator WILSON. I have nothing further to say.

Senator CASTLE. Mr. President, with reference to this point of order, it is, according to my judgment, clearly not well taken, as our rules stand. If it be desirable (and it may be) to amend the rule at present in force in this body, it can be done. As the rule now is, it authorizes a party to explain his vote. Now then it is said here that because the Senator reads testimony that may or may not be correct it is not explaining a vote. I submit, Mr. President, that is just what it is doing. When a party gives his vote, it is eminently proper, if he cares to do so, to say that he understands the testimony so and so, and that because he so understands it he so votes. It may be irrelevant, it may be immaterial to us—he might read, if you please, from Isaiah, and say that, because of what he found there, his conscience and his judgment constrained him to vote guilty or not guilty; it might be immaterial, in the judgment of others, and irrelevant in the judgment of others; but that is a question not for others to decide, but for the Senator himself; and, as the rule stands, no limit and no restrictions being made, a party must select his own course in explaining his vote.

The PRESIDENT *pro tem.* Any further remarks?

Senator POWERS. I call for the decision of the Chair.

Senator GILFILLAN, J. B. I insist that even if we were in open discussion and not in the midst of the ballot, the course pursued would be entirely out of order; it would not be argumentative at all. It is simply seeking to give a complete review of the testimony in an abridged form. Now if any member of the court desires to read the testimony at length, I insist he must do it from the official record; but here we are in the midst of the ballot, and the Senator has the right simply——

Senator POWERS. (Interrupting.) Will you be kind enough to tell me how to explain each time when I get up? If you have got brains enough for you and me too, you might perhaps furnish them.

The PRESIDENT *pro tem.* The Senator from Hennepin has the floor.

Senator GILFILLAN, J. B. I would not attempt to take away if I could, from the Senator from Fillmore, any right whatever that belongs to any Senator upon this floor; but I do think it is trying our patience when it is insisted that we shall accord to him an exclusive privilege

which none of the rest have enjoyed and would not be permitted to enjoy under any parliamentary rule ever known.

Senator POWERS. Mr. President, I desire to say that the Senator misstates. All the rest enjoyed that privilege; they seem to think that it would be in bad taste to consider the evidence in this case. There is the point. Now when this Senate wants to accord me the right to get up here and ventilate my ideas and make speeches, etc., I say I don't want to, but let's to "the law and the testimony." If this man is to be crucified, let's give the reason. I await the decision of the chair.

The PRESIDENT *pro tem.* The chair is of the opinion that the Senator from Fillmore has abused his privilege; that he has not been explaining his vote but that he has been reading the testimony from notes taken by himself and not from the official record, and holds the point of order made by the Senator from Hennepin well taken; that the only testimony that can be read to this Senate is that taken by the official stenographers. The testimony shall be read by the stenographer, if objection is made.

Senator CROOKS. Rising to the point of order, Mr. President, may I ask if the Senator who has kept, with his own hand, the words that fell from the lips of witnesses here, and in giving his reasons to the country for his vote here, is not privileged to read and refresh his memory from his own written memoranda, which he took then and there, as the best means of giving to the world the reasons for the vote he is about to cast?

The PRESIDENT *pro tem.* Does the Senator raise a point of order?

Senator CROOKS. I am speaking to the point of order.

Senator BUCK, D. The point of order has been decided. I rise to the point of order that there is no question before the Senate.

The PRESIDENT *pro tem.* Correct.

Senator CROOKS. Then I appeal from the decision of the chair.

The PRESIDENT *pro tem.* I am very glad that the Senator has done so.

Senator RICE. Mr. President——

The PRESIDENT *pro tem.* The chair simply desires to state that as the stenographer took the testimony, if any question arises in regard to the testimony, it should be settled from his notes and not from the notes taken by a member of this court.

Senator CROOKS. I am on a question of privilege. I think that I am right.

The PRESIDENT *pro tem.* The Secretary will call the roll on the appeal.

Senator CROOKS. Well, can I not explain?

The PRESIDENT *pro tem.* Yes, sir; I will hear the Senator in explanation.

Senator CROOKS. That this Senator, in explanation of his vote, is reading from memoranda which he made at the time; and before he votes, in explanation of his vote—absolutely in explanation of his vote—under an order adopted by this Senate, he reads from that paper. It is not evidence, he does not introduce it in evidence as I understand it, (turning to Senator Powers).

Senator POWERS. No.

Senator CROOKS. But simply as an explanation and a reason for his vote.

The PRESIDENT *pro tem.* Are you ready for the question? The Secretary will call the roll upon the appeal from the decision of the Chair.

Senator CROOKS. I call for the yeas and nays.

Voices. What is the question?

The PRESIDENT *pro tem.* The question is, "Shall the Chair be sustained?" Those voting "aye," vote to sustain the Chair; those voting "no," vote to overrule the decision of the Chair.

Senator BONNIWELL. Mr. President, some of us quiet Senators would like to ask a question. Is it the disposition on the part of the Senate not to allow us to explain our votes? Haven't we a right to explain our votes?

The PRESIDENT *pro tem.* The chair would say to the gentleman from McCleod, that he has heard the point of order and the argument, and he is as competent, or ought to be, as the chair to judge what the motion is. The Secretary will call the roll.

The Secretary then proceeded to call the roll.

Senator CASTLE (when his name was called.) Mr. President, I dislike exceedingly to vote to overrule the chair, but it seems to me that the true question has not been considered. The question is not alone whether or not a member can read testimony. The question involved here is simply this: We have, by our rules, decided that a member may explain his vote. There is no limit to the time, no limit to the discretion of that member. Now, he sees fit, as I said before, to explain his vote by reading a verse or a chapter from the Bible. and says, "Because I find so and so in the holy scriptures, it binds my judgment and my conscience in giving this vote." Now, the Senator from Fillmore does not do that (which would be proper), but he does this: He says, "My recollection of this testimony" (that is the effect of it), "is that it was so and so; from my recollection of the testimony I feel constrained to vote as I do."

The PRESIDENT *pro tem.* I would like to ask the Senator a question, if he will permit me.

Senator CASTLE. Certainly.

The PRESIDENT *pro tem.* Suppose a Senator should undertake to read the entire Bible; or suppose he should attempt to read the entire testimony, covering nearly two thousand pages, would there be any relief for the Senate?

Senator CASTLE. But one relief, and that would be to change a rule. When unlimited time is given, when no restrictions are made, you can make none; you cannot apply one rule to one man that wont work with reference to another. Suppose another Senator saw fit to read something else than the testimony, and say, "Because of this I have read I feel constrained to vote." Can you object?

The PRESIDENT *pro tem.* Yes, sir.

Senator CASTLE. While the reasons may be frivolous to outsiders he is not deciding upon the judgment or the conscience of the other members of this court; he is deciding upon his own manhood and not that of another. While the reason, as I say, may be utterly frivolous and utterly worthless to the conscience and judgment of other men, with him they reign supreme. And it is his right, undoubtedly, if he be permitted to give his reasons without restriction, to give these reasons in full. Hence I vote no.

Senator WHEAT. (When his name was called.) Mr. President, I consider this point of order well taken but I am rather sorry that the court will not allow a little latitude to the gentleman.

Senator WHITE. (When his name was called.) Mr. President, it is a rule of the Senate that the roll-call upon the yeas and nays cannot be interrupted in any manner whatever; but it has always been a courtesy extended by the Senate to allow any member to explain his vote, although I believe there is no rule of that kind.

Senator CASTLE. Yes, sir; there was one adopted this morning.

Senator WHITE. Then the question arises how far a Senator can go in explaining his vote. That question is decided; the Chair has ruled that the Senator was going too far in explanation of his vote, and if the Chair is sustained he will stop, I suppose. I vote "Aye."

The roll being called there were, yeas 24, and nays 11, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Buck, D., Clement, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, F. I., Johnson, R. B., MacDonald, McCormick, McCrea, McLaughlin, Miller, Officer, Perkins, Rice, Shaller, Shalleen, Tiffany, Wheat, White, Wilkins and Wilson.

Those who voted in the negative were—

Messrs. Adams, Bonniwell, Case, Castle, Crooks, Johnson, A. M., Mealey, Morrison, Peterson, Pillsbury and Simmons.

So the decision of the Chair was sustained.

The PRESIDENT *pro tem.* The Secretary will now proceed with the roll-call on the articles.

The Secretary then called again the name of Senator Powers.

Senator POWERS. I suppose I am to understand then, that I can make a speech if I have a mind to, but that I musn't say anything about the evidence. Is that it?

The PRESIDENT *pro tem.* The Senator can explain his vote if he desires. If there is any objection made the chair will entertain it. Any Senator has the right to object if he thinks it is going farther than an explanation.

Senator POWERS. Or if the explanation would not seem to read well in the report? I want to understand this matter.

The PRESIDENT *pro tem.* The Senator will have to be his own judge as to what will be a proper explanation of his vote.

Senator POWERS. It had seemed to me that one of the most proper things in the world would be to place this testimony, which has been spread out over three months' time and such a large number of pages, in a condensed form, and I desired to do that, with my vote; but it seems I cannot do that. It seems that there is a majority here that don't want that kind of thing on the docket.

The PRESIDENT *pro tem.* The Chair would suggest that the Senator can call for the reading of any of the testimony if he desires it.

Senator POWERS. I had given a part of the testimony of three witnesses. Now, I don't care much about this, so far as I am concerned,—I am afraid 'ta int going to look well on the records(!) I understand that I am not to say anything more. Now I will simply say that five more persons, apparently respectable persons, testified to the sobriety of the Judge. That makes eight in all. I don't know but I am trespassing,—if I am somebody can interrupt me——

The PRESIDENT *pro tem.* I think not. I think that is all right Senator.

Senator POWERS. That makes eight in all that have testified to the sobriety of the Judge, and hence I vote not guilty.

The PRESIDENT *pro tem.* Senator Powers votes not guilty.

The Secretary then proceeded with the roll call.

Senator RICE, (when his name was called.) Mr. President, I have examined this testimony carefully, and according to my mind I have no doubt but that the Judge in this case made two decisions, one in the evening and one in the morning; and a judge that would do that, it seems to me, must be laboring under some confusion, and it is evident to me that he must have been intoxicated, or something, and hence I vote "guilty."

VOTE ON ARTICLE VII.

The Senators who voted guilty were Messrs.

Campbell,	Miller,	Rice,	Wilson.—4.

The Senators who voted not guilty were Messrs.

Aaker,	Gilfillan, J. B.,	McCrea,	Powers,
Adams,	Hinds,	McLaughlin,	Shaller,
Bonniwell,	Howard,	Mealey,	Shalleen,
Buck, C. F.,	Johnson, A. M.,	Morrison,	Simmons,
Case,	Johnson, F. I.,	Officer,	Tiffany,
Castle,	Johnson, R. B.,	Perkins,	Wheat,
Clement,	MacDonald,	Peterson,	White,
Crooks,	McCormick,	Pillsbury,	Wilkins.—33.
Gilfillan. C. D.,			

Whereupon the President announced that the respondent, E. St. Julien Cox, Judge of the Ninth Judicial District, has been declared guilty upon the Seventh Article, by four Senators.

Thirty-three Senators have pronounced him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

Senator CASTLE. Mr. President, I have an order which I desire to have adopted.

The PRESIDENT, *pro tem.* The Secretary will read the order.

The Secretary read the order as follows:

Ordered, that in the explanation of his vote no Senator shall consume to exceed ten minutes, but in making his explanation may do so in his own way, consistent with the rules of propriety and courtesy.

Senator CASTLE. Mr. President, I hope this resolution will be adopted, because I hate to see the Senate stultify itself upon its own rules; and as the matter of limitation would seem to be, or might become necessary in emergencies, it might be desirable that we act upon a rule rather than upon an arbitrary disposition.

Senator MACDONALD. Mr. President, I would move to amend that by striking out all after "ten minutes."

Senator CASTLE. I would suppose, Mr. President, that a Senator ought to be permitted to speak in his own way, use his own language, his own thoughts and his own ideas. It is certainly something marvelous if a man must speak within the rule and line prescribed by the taste of another, when he was sworn not to decide or act in pursuance of the opinion or judgment of another but of his own.

Senator BUCK, D. I give notice of debate, Mr. President.

Senator RICE. I hope the Senator will withdraw that motion; I think such an order as that is unnecessary; but if you limit the time to ten minutes I don't care.

Senator BUCK, D. I don't, if it is limited—only going to that extent.

Senator RICE. If the time is limited to ten minutes I don't care whether he reads out of the Bible, his private memorandum, or any other book.

Senator GILFILLAN, J. B. Mr. President, I would second that motion.

Senator HINDS. I offer the following as a substitute.

Senator CASTLE. I will take it for granted that the substitute will be adopted and withdraw mine.

The PRESIDENT *pro tem.* The Secretary will read the substitute.

Senator HINDS. The substitute is withdrawn.

Senator POWERS. Mr. President, perhaps I can save a little time,—I know this is probably aimed at me, and I take it for granted that the Senate don't want to hear the evidence in this case, and I pledge myself hereafter to not give them the evidence. They have not heard it, many of them, and they don't want to hear it, and as long as I have been properly "snuffed out" I will not tread on their corns again. I have done my duty that I have sworn to do; I should have followed it clear through to the very last.

Senator GILFILLAN, J. B. Mr. President, I rise to a point of order again. My point of order is that no Senator has a right to rise here when there is no motion pending, simply to throw slurs upon other members.

The PRESIDENT *pro tem.* I apprehend the Senator is through now. The Secretary will read the order offered by the Senator from Scott.

The Secretary then read the order as follows:

Ordered, That in explanation of his vote a Senator will be restricted to three minutes' time, and will not be permitted to read any abstract of evidence taken by himself, but may call for the reading of evidence from the stenographer's notes.

Senator POWERS. Mr. President, I was going to suggest that I think that comes in exceeding good taste from a man who has taken as much time as the Senator from Scott did to go all over this question yesterday, knowing, as I told him, that I was going to speak upon this matter *seriatim*. I appreciate the unselfishness of the order (!).

The PRESIDENT *pro tem.* The question is upon the adoption of the order of the Senator from Scott.

Senator GILFILLAN, J. B. Mr. President, I desire to assure the Senator from Fillmore that to deprive any Senator on this floor of any legitimate right of explanation is the farthest from my motive or desire. As I understood, yesterday, there was ample and unlimited time and opportunity given any and every Senator to review the articles, but it was to be done before the voting commenced, and it was done by all, as I supposed, that desired to do so. Now, I think the order that is offered here is strictly proper, unless it shall be considered that three minutes is not long enough; if that is not sufficient time let's extend it. But I am satisfied that the other part of the order is strictly proper and gives to every Senator here an equal right, and all that he is entitled to. Now, if the Senator from Scott did consume time yesterday in making his speech and I waived my privilege, or if the Senator from Fillmore waived his, it does not lie in my mouth now to complain.

Senator POWERS. Mr. President, I call upon the stenographer to read from his notes what was said upon that very point. I call upon him to

read his notes and tell us if the Senator who has just sat down did not himself distinctly admit that this thing might be handled and discussed in just this way.

Senator GILFILLAN, J. B. I admitted then, and admit now, the right of every Senator to explain his vote when he comes to vote; but the point is, how much privilege that gives to the Senator—what the privilege of explaining a vote consists of.

Senator CASTLE. Mr. President, it is all very well to disclaim an act and then do it. Now, if a man has no right to explain his vote in his own way, provided he be courteous, provided it be within the rules of propriety, then I have in vain learned the principles of parliamentary law. Now, this rule that is being offered as a substitute amounts to what? It amounts to saying to every Senator on this floor, "You may explain your vote just so far, and 'no farther shalt thou go.' You sha'n't refer to the evidence, for you will be treading on dangerous ground; you sha'n't give your recollection of the evidence, because, if you do, you are giving *your* idea of it and not mine." If it is desirable to gag down any man who wants to talk here, and talk in his own way—circumscribe him within limits which shall be held with an iron hand—why, that is the finest order that could be conceived of for that particular purpose; I don't know of anything that would be better adapted to accomplish it.

Now, a word has been said here with reference to this matter of discussion. My recollection, Mr. President, is this (if I am wrong I would like to have some Senator correct me), that there has been no rule established here limiting a Senator, in discussion, at any stage of the proceedings whatever. I know that in the Barnard case—for I have taken pains to examine it since we met this afternoon—that the Judges and Senators discussed the evidence upon every article and specification that came up. I know that several judges, and among them (as my recollection serves,) the able Chief Justice, changed his vote after his attention had been called to certain evidence that was in. Several other Senators changed their vote upon their memory being refreshed by the discussion of the evidence. I had supposed that the question of law being practically disposed of here (more than two-thirds of the Senate having held that these offenses each and all are impeachable,) that the only question was the question of evidence. I was not aware of any other question that we were passing upon here to-day. And now to say to Senators that they sha'n't discuss the evidence, it seems to me, Mr. President, with all deference to the Senator, that it looks a good deal like applying the gag rule.

Senator PILLSBURY. Mr. President, I move that both of the orders be laid on the table. We have already spent time enough in discussing this question to have heard all the evidence read. I don't think we shall have any more trouble now, and I move that both orders be laid on the table.

The motion was seconded.

The PRESIDENT *pro tem.* It is moved and seconded that the order and the substitute be laid on the table. Is the Senate ready for the question? As many as are in favor of the motion will say aye; opposed, no. The ayes have it.

The Secretary will proceed with the roll-call. The roll will be called upon the Eighth Article. The Secretary will first read the Article.

The Secretary then read the Eighth Article, as follows:

ARTICLE VIII.

That E. St. Julien Cox, being a Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such Judge, and in violation of the constitution and laws of the State of Minnesota, at the county of Brown, in said State, to-wit: On the 1st day of May, A. D. 1880, and on divers days between that day and the 20th day of said May, acting as and exercising the powers of such Judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the District Court of said Brown 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, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him for the exercise of his understanding on 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

The PRESIDENT *pro tem.* The Secretary will call the roll.

Each Senator as his name was called, rose in his place and the Secretary proposed to him the following question:

"Mr. Senator, how say you, is the respondent, E. St. Julien Cox, Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty, as charged in the eighth article of impeachment?"

Senator CAMPBELL. (When his name was called.) That is one of the articles on which I think the preponderance of evidence is in favor of the respondent and I vote not guilty.

Senator CROOKS. (When his name was called.) Under the provisions of the constitution and the laws of Minnesota, in my judgment he is not guilty.

Senator POWERS. (When his name was called.) I think, Mr. President, that the evidence against him in this case is stronger than in some of the other cases, but inasmuch as the Senate is voting not guilty it is not necessary for me to explain my vote, and hence I vote him not guilty without explanation.

VOTE ON ARTICLE VIII.

The Senator who voted guilty was Mr. Peterson.—1.

The Senators who voted not guilty were Messrs.

Aaker,	Gilfillan, C. D.	McCormick,	Rice,
Adams,	Gilfillan, J. B.,	McLaughlin,	Shaller,
Bonniwell,	Hinds,	Mealey,	Shalleen,
Buck, D.,	Howard,	Miller,	Simmons,

Campbell,	Johnson, A. M.,	Morrison,	Tiffany,
Case,	Johnson, F. I.,	Officer,	Wheat,
Castle,	Johnson, R. B.,	Perkins,	White,
Clement,	MacDonald,	Pillsbury,	Wilkins,
Crooks,	McCrea,	Powers,	Wilson.—36.

Whereupon the President announced that the respondent E. St. Julien Cox, Judge of the Ninth Judicial District, has been declared, guilty upon the Eighth Article, by one Senator.

Thirty-six Senators have pronounced him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

The PRESIDENT *pro tem.* The Ninth Article having been dismissed the Secretary will now read the Tenth Article.

The Secretary then read the Tenth Article as follows:

ARTICLE X.

That E. St. Julien Cox, being a judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his said oath of office, and of the constitution and laws of the State of Minnesota, at the county of Lyon, in said State, to-wit: On the 2nd day of May, A. D. 1881, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and 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, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place and the Secretary proposed to him the following question: "Mr. Senator, how say you, is the respondent, E. St. Julien Cox, Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty, as charged in the Tenth Article of impeachment?"

Senator BUCK, D., (when his name was called.) I believe, Mr. President, this is the article where the evidence shows he made an assault on Mr. Marks; I vote guilty.

Senator CROOKS, (when his name was called.) Under the provisions of the constitution and the laws of Minnesota, in my best judgment he is not guilty.

Senator POWERS, (when his name was called.) Mr. President, I will

not annoy my brother Senators with going into this evidence fully, as it will not change the result; but I will just simply say that there are five witnesses—Mr. Hunter, Mr. Marks, and his brother, Ole Skogan, and a very pert, flippant young gentleman by the name of Wilcox—who testify that they "thought the Judge was drunk," or "he was drunk," or "he seemed intoxicated." And we have Judge Weymouth, and Virgil Seward, (a very intelligent young lawyer,) and Mr. Matthews, (a very intelligent lawyer,) and Charles W. Andrews, (another very intelligent man, apparently,) who all testify to his sobriety. There are five witnesses on the part of the prosecution who think that he was guilty, and express——

Senator HOWARD. Let me correct you. I think there are six; C. A. Patterson.

Senator POWERS. Well, I don't think there are; it does not affect the matter, anyhow; it does not affect the result at all. I was going to say that those persons I have referred to testify with more or less strength, and some with a great deal of alacrity to the Judge's apparent intoxication; and the others testify to his sobriety. Some of them were not with him all day, but up to two o'clock they say that he was perfectly sober. Was there in order to attend court, (I am not reading, now, gentlemen.)

The PRESIDENT *pro tem.* There is no objection, Senator; you are in order now.

Senator POWERS (continuing.) And went around to three different offices to see if there was any business to do, and there was none. And they testify that at that time, to all appearances, he was sober. Judge Weymouth was the only one who was with him in this Wilcox's store, and he says that he was sober in there. Well, under that condition of things—with four intelligent lawyers testifying on one side, and the class of witnesses we had on the other side—I feel a doubt (I am not so certain on this as I am on some other articles); I have a doubt, and I understand that I am to go by the evidence (I don't know as that is right, but that is the impression I have, that I am to go by the evidence.) If I am to go by the evidence, and if there is a reasonable preponderence of evidence in favor of the respondent, that he should have the benefit of the doubt, and I propose to give it to him, and shall vote not guilty.

Senator WHITE (when his name was called.) Mr. President, if I recollect, the respondent's counsel said that instead of the Judge being drunk, these witnesses for this man, who wanted his citizen's papers, were drunk. Now, if that Judge admitted a man to citizenship, on the evidence of two drunken witnesses, he ought to be impeached. I vote guilty.

Senator WILSON, (when his name was called.) I think there can be no doubt in my mind about his being guilty under that article. I vote guilty.

VOTE ON ARTICLE X.

The Senators who voted guilty were Messrs.

Aaker,	Hinds,	McLaughlin,	Tiffany,
Buck, D.,	Howard,	Miller,	Wheat,
Campbell,	Johnson, F. I.,	Morrison,	White,

Case,	Johnson, R. B.,	Officer,	Wilkins,
Clement,	Macdonald,	Perkins,	Wilson,—26.
Gilfillan, C. D.,	McCormick,	Pillsbury,	
Gilfillan, J. B.,	McCrea,	Shalleen,	

The Senators who voted not guilty were Messrs.

Adams,	Crooks,	Peterson,	Shaller,
Bonniwell,	Johnson, A. M.,	Powers,	Simmons,—11.
Castle,	Mealey,	Rice,	

Whereupon the President announced that the respondent E. St. Julien Cox, judge of the Ninth Judicial District, has been declared guilty upon the Tenth Article, by twenty-six Senators.

Eleven Senators have pronounced him not guilty.

Having been pronounced guilty by more than two-thirds of the Senators present and voting, he stands convicted upon this Article.

The PRESIDENT *pro tem.* The next article will be the Eleventh Article. The Secretary will read the article.

The Secretary read the article, as follows:

ARTICLE XI.

That E. St. Julien Cox, being a Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 5th day of May, A. D. 1881, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and therein pending in the District Court of said Nicollet 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, 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place and the Secretary proposed to him the following question:

"Mr. Senator, how say you, is the respondent, E. St. Julien Cox, Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty, as charged in the Eleventh Article of impeachment?"

Senator CROOKS, (when his name was called.) Under the provisions of the constitution and the laws of Minnesota, in my best judgment he is not guilty.

VOTE ON ARTICLE XI.

The Senators who voted guilty, were none.

The Senators who voted not guilty were Messrs.

Aaker,	Gilfillan, J. B.,	McLaughlin,	Rice,
Adams,	Hinds,	Mealey,	Shaller,
Bonniwell,	Howard,	Miller,	Shalleen,
Campbell,	Johnson, A. M.,	Morrison,	Simmons,
Case,	Johnson, F. I.,	Officer,	Tiffany,
Castle,	Johnson, R. B.,	Perkins,	Wheat,
Clement,	Macdonald,	Peterson,	White,
Crooks,	McCormick,	Pillsbury,	Wilkins,
Gilfillan, C. D.,	McCrea,	Powers,	Wilson,—36.

Whereupon the President announced that the respondent E. St. Julien Cox, judge of the Ninth Judicial District, has been declared guilty upon the Eleventh Article by no Senator.

Thirty-six Senators have pronounced him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this Article.

The PRESIDENT *pro tem.* The twelfth article is the next. It will be read by the Secretary.

The Secretary then read the twelfth article as follows:

ARTICLE XII.

That E. St. Julien Cox, being a judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District of the State of Minnesota, unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Renville, in said State, to-wit: On the 24th day of May, A. D., 1881, and on diverse days between that day and the 21st day of said May, acting as, and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and there pending in the District Court of said Renville 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 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

The President directed the Secretary to call the names of the Senators.

Each Senator as his name was called, rose in his place and the Secretary proposed to him the following question:

"Mr. Senator, how say you, is the respondent, E. St. Julien Cox,

judge of the District Court of the State of Minnesota, in and for the Ninth Judicial Distrtct, guilty or not guilty, as charged in the twelfth article of impeachment?"

Senator CROOKS (when his name was called.) Under that article, and under the provisions of the Constitution and laws of Minnesota, in my judgment, he is not guilty.

Senator POWERS (when his name was called.) I wish that the Senators when voting would vote loud enough so we can hear. I am under the impression that there is not a two-thirds vote or likely to be on this article. If there is not, I don't care to take up the time of the Senate in speaking about it.

There have been five men who have testified under this article to the respondent's guilt. One of them has been impeached, leaving four; and there are several who testify very positively to his innocence. I should read the evidence unless I was choked off again, but I am under the impression that the vote is—well, the vote I think will not be carried—so without discussing the question or submitting evidence (which seems to be so annoying,) I will vote not guilty.

VOTE ON ARTICLE XII.

The Senators who voted guilty were Messrs.

Clement,	Johnson, R. B.,	McCormick,	McLaughlin,
Gilfillan, C. D.,	Macdonald,	McCrea,	Officer.—9.
Howard,			

The Senators who voted not guilty were Messrs.

Aaker,	Hinds,	Perkins,	Simmons,
Bonniwell,	Johnson, A. M.,	Pillsbury,	Tiffany,
Campbell,	Johnson, F. I.	Powers,	Wheat,
Case,	Mealey,	Rice,	White,
Castle,	Miller,	Shaller,	Wilkins,
Crooks,	Morrison,	Shalleen,	Wilson.—25.
Gilfillan, J. B.,			

Whereupon the President announced that the respondent E. St. Julien Cox, Judge of the Ninth Judicial District, has been declared guilty upon the Twelfth Article, by nine Senators.

Twenty-five Senators have pronounced him not guiltv.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

The PRESIDENT *pro tem.* The thirteenth article having been dismissed, the Secretary will now read the Fourteenth Article.

The Secretary then read the Fourteenth Article, as follows:

ARTICLE XIV.

That E. St. Julien Cox, being a Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his oath of office and the constitution and laws of the State of Minnesota, at the county of Lincoln, in said State, to-wit: On the 14th day of June, A. D. 1881, and on divers days between that day and the 21st day of said June, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters

and things then and therein pending in the District Court of said Lincoln 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, 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place, and the Secretary proposed to him the following question:

"Mr. Senator, how say you, is the respondent, E. St. Julien Cox, Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty, as charged in the fourteenth article of impeachment?"

Senator POWERS, (when his name was called.) Mr. President, I would gladly explain my vote on this question, but I have been shut out. I will just simply say, for the sake of having it go upon the record, that there have been five witnesses who testify, with more or less certainty, to this man's guilt. One of them was a very respectable (!) young gentleman; he was arrested and tried for an assault with intent to commit a rape. Another, was a man who has been impeached by seven witnesses before this honorable court—that leaves three witnesses, some of whom testified that they *considered* him drunk, or that in their judgment he was drunk, and such testimony as that. Some of them state that he was not drunk at all a certain period, and others that he was. Their testimony is exceedingly contradictory.

There were fourteen witnesses sworn for the defence. Among them there were five lawyers, one saloon keeper, one lumber dealer, the chairman of the board of county commissioners, one hotel keeper, a county auditor, a merchant, a farmer and a doctor. And two more men,—Capt. Strong, (who owns the elevators along that line of road,) Mr. Pompelly, or some such name as that (I dare not look at my notes, because it is against the rules of the Senate to refresh my recollection,) it was Pompelly, or some man who testified to some other matter. So that, there are twelve men who testify to his sobriety. Five men, including a *rape* man and an impeached man, testify to his drunkenness.

I should not have spoken, but the vote, so far as it can be heard over here, promises to convict him.

Senator AAKER. The Senator will recollect there is Mr. Allen and Mr. Sanborn.

Senator POWERS. I can't recollect *anything*,—because the Senate won't let me. I have got the evidence right there, but the ruling of the Senate says it must be shut out,—because it won't look well on the records. I vote, under this testimony not guilty.

Senator CROOKS (when his name was called.) As I stated before, Mr.

President, under the provisions of the Constitution and laws of this State, in my judgment, he is not guilty.

VOTE ON ARTICLE XIV.

The Senators who voted guilty were Messrs.

Aaker,	Howard,	McLaughlin,	Shalleen,
Campbell,	Johnson, F. I.	Morrison,	Tiffany,
Case,	Johnson, R. B.	Officer,	Wheat,
Clement,	Macdonald,	Pillsbury,	White,
Gilfillan, J. B.	McCormick,	Rice,	Wilkins,
Hinds,	McCrea,	Shaller,	Wilson.—**24.**

The Senators who voted not guilty were Messrs.

Adams,	Crooks,	Mealey,	Peterson,
Bonniwell,	Gilfillan, C. D.	Miller,	Powers,
Castle,	Johnson, A. M.	Perkins,	Simmons.—12.

Whereupon the President announced that the respondent, E. St. Julien Cox, Judge of the Ninth Judicial District, has been declared guilty upon the fourteenth article by twenty-four Senators.

Twelve Senators have pronounced him not guilty.

Having been pronounced guilty by two-thirds of the Senators present and voting, and no Senator being present who did not vote, he stands convicted upon this article.

The PRESIDENT *pro tem.* The next article is the Fifteenth Article, which the Secretary will read.

The Secretary then read the Fifteenth Article as follows:

ARTICLE XV.

That E. St. Julien Cox, being a Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Lyon, in said State, on the 21st day of June, A. D. 1881, and on divers days between that day and the 30th day of said June, acting as, and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the District Court of said Lyon county, and did and then 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, 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

The President directed the Secretary to call the names of the Senators:

Each Senator, as his name was called, rose in his place and the Secretary proposed to him the following question:

"Mr. Senator, how say you, is the respondent, E. St. Julien Cox, judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty, as charged in the Fifteenth Article of impeachment."

Senator MEALEY, (when his name was called.) Mr. President, I would here desire to say that on those articles that I have voted not guilty it has been where I thought the testimony was not sufficient. On Article Four I voted guilty with a reservation. I do the same on this. I say that on this article in my mind the evidence sustains the charge therein contained, hence I vote guilty, but with a mental reservation, that the respondent, in my judgment, is not impeachable under the constitution and laws of this State.

Senator POWERS, (when his name was called.) I am not allowed, Mr. President, to explain my vote to any great extent. I was out when they commenced calling the roll. I can only say that there are fifteen witnesses sworn on this case,—five for the prosecution, (one of whom was impeached,)—eleven for the defense, and that the evidence in my judgment, (and I think in the judgment of any jury trying any civil or criminal case,) is overwhelmingly in favor of the respondent, and I vote not guilty. I would have liked the privilege, if it had not been against the rules, to have submitted the evidence in the case and allowed it to stand right side and side with this vote

Senator ADAMS. It would not do any good, Senator.

Senator POWERS. I know it would not, but that is the very reason why I want to spread it out there. Inasmuch as I am barred I can only say, he is not, in my judgment, guilty under the evidence. That it is overwhelmingly in favor of his innocence, overwhelmingly, and I vote not guilty.

Senator CROOKS, (when his name was called.) Mr. President, as I stated before, under the constitution and the statutes of our State, in my best judgment, he is not guilty as charged in the article.

VOTE ON ARTICLE XV.

The Senators who voted guilty were Messrs.

Aaker,	Johnson, F. I.,	Miller,	Shaller,
Campbell,	Johnson, R. B.,	Morrison,	Shalleen,
Case,	Macdonald,	Officer,	Tiffany,
Clement,	McCormick,	Perkins,	Wheat,
Gilfillan, C. D.,	McCrea,	Peterson,	White,
Gilfillan, J. B.,	McLaughlin,	Pillsbury,	Wilkins,
Hinds,	Mealey,	Rice,	Wilson.—29.
Howard,			

The Senators who voted not guilty were Messrs.

Adams,	Castle,	Johnson, A. M.,	Simmons.—7.
Bonniwell,	Crooks,	Powers,	

Whereupon the President announced that the respondent E. St. Julien Cox, Judge of the Ninth Judicial District, has been declared guilty upon the Fifteenth Article, by twenty-nine Senators.

Seven Senators have pronounced him not guilty.

Having been pronounced guilty by more than two-thirds of the Senators present and voting, he stands convicted upon this Article.

The PRESIDENT *pro tem.* The sixteenth article having been dismissed the Secretary will now read specification one of Article Seventeen, or he will read the article, and afterwards the specifications.

Senator GILFILLAN, J. B. Mr. President, are we not to take a vote upon the article as an article? It seems to me our rule requires us to vote upon the article.

The PRESIDENT *pro tem.* To which rule does the Senator refer?

Senator GILFILLAN, J. B. I do not remember the number of it. I do not know of any provision for any other vote than that prescribed by the rule. It is true that in the case of Judge Barnard, there were votes taken upon certain specifications or sub-divisions under certain articles, "proven" or "not proven," but in that case the House in exhibiting the articles, had exhibited them in that form, to-wit, they would set forth the charge, and in the same article set forth the specifications, that is, they would present all the issues for the court of impeachment to pass upon.

Now in this case, the House of Representatives have exhibited nothing except the articles without any specification whatever. It is true that the Senate afterwards requested the managers—not the house—to set forth certain particulars, to which the court should be limited in their evidence. But I apprehend that the managers have had no power to frame any new articles of impeachment; and the requirement of the court that they should specify so and so was simply as a matter of convenience and to save expense, and as advisory to the managers and the respondent as to what transactions the evidence should be limited to,—to advise the respondent what he had to prepare against. It was simply by way of a limitation of evidence or witnesses. It seems to me that we have no issue here to vote upon except the one presented by the House of Representatives in the form of the original articles. In the Barnard case it was different; the articles exhibited there were subdivided into specifications by the impeaching power.

Senator ADAMS. Mr. President, I think the Senator from Hennepin is correct in the main; I think the question before this court now is, as to whether the evidence had under the specifications, directed by the court to be affixed or attached to this article, has sustained the article—not to vote upon each separate specification itself—but the question is, has the evidence taken under each of those specifications sustained article seventeen, and that we vote directly upon article seventeen. Because the evidence all refers to that, nothing more nor nothing less. I think that is the question before the court, without a doubt.

Senator POWERS. I understood the point was whether we should vote upon the specifications separately or on the article. Supposing, for instance, on specification one, where the testimony is pretty nearly balanced; Manager Dunn (so far as his judgment was good for anything,) thought it was about equal—he hardly thought it would be sustained. I thought from his manner and what he said, he hardly thought that that had been sustained. Well, now, then, here is specification two. There is a different point which might arise in the minds of some. We have done a good many things here and undone them. We undertook to require the managers to present specifications. They did not specify places, but specified times. They specified that on the

first day of July, for instance, Judge Cox was drunk at some place. The witnesses came here and swore that he was not, as far as they knew; but that at some other time, thirty-seven or thirty-eight days later, they thought he *was* drunk. Well, now, the question might arise—there is only one witness (excepting one that has been impeached by eight witnesses,) who testified to it, and one against it. That is the way it stands. The question might arise whether that is what this high and honorable court of impeachment meant when they stated that the managers must present their specifications; must make their articles specific, or failing to do so, the evidence would not be received. We voted that; you all remember it; Senator Macdonald introduced the resolution. And the question may arise whether proving that a man was drunk on the seventh day of August would hit a specification of the first day of July. Of course, I am not debating the question; I don't know as I would be allowed to anyhow, but that is a point that may come up.

Well, then, some of the specifications have been withdrawn. I suppose we will scarcely be obliged to vote guilty on them. Then here is another point which arises. There is half of these, we will say, that have been stricken out, anyhow. Supposing that of the remainder, he has been found guilty on only one specification. Here is a point that, perhaps, (if we were not in a hurry to get home to-morrow,—I understand there is one Senator who wants to go home to-morrow,) if we were not in a great hurry, the question might be discussable or debateable, whether evidence of a man being drunk on one occasion would sustain a charge of being drunk on diverse and sundry times and occasions. So that, if we are not in too much of a hurry, perhaps it would be well to take these articles *seriatim*. It will not make any difference, but then it looks a little better, I think, on the record.

Senator WILSON. Mr. President, I have had some grave doubts all the time during the impeachment trial as to whether or not this Senate could instruct the impeachment managers to do certain things that they were not instructed to do by the House of Representatives whose mouth-piece and representatives they were. It appears to me that it was competent for this Senate to try Judge Cox upon the charges that were preferred by the House of Representatives, but that the House of Representatives could not delegate their powers to the managers. And I have had doubts all the time as to the legality of the Senate's instructing the managers to bring the specifications that were not authorized by the House of Representatives. And cannot see anything to be gained by taking a vote at all upon the specifications under the seventeenth article. Judge Cox is convicted on a majority of the charges, and now if it is in order, I move you, that the Senate refuse to vote at all upon the specifications under article seventeen. I make that as a motion.

Senator PILLSBURY. Mr. President, it seems to me before commencing on this article——

Senator WILSON. I do not yield the floor yet. I think we must either take a vote on the article as a whole, or else it would be illegal to pass upon specifications that were brought, not by the House of Representatives, but by the instruction of the Senate. There are better lawyers on this floor than I pretend to be, but to avoid all doubt or difficulty under that head I made the motion that I did—that we, as a Senate, refuse to vote at all upon the specifications under article seventeen.

Senator GILFILLAN, J. B. It is not necessary to have any motion, but simply to proceed under the rule.

Senator PILLSBURY. Mr. President, it seems to me, as this charge is for habitual drunkenness——

Several Senators. No, no; this is article seventeen.

Senator HINDS. Mr. President, it seems to me that the natural and the proper way of doing this is, first to determine the specifications, whether the first, second, third, or any of them, have been proven, not whether the respondent is guilty on the specifications, because we cannot hold him guilty on a specification; if he is acquitted or held guilty, it must be upon the article. The natural way would be first to determine whether either one of these specifications have been proven by taking a vote upon them. If proven or not proven, then after that has been determined, (and the result shows which of the specifications have been proven or disproven) we take a vote upon the question of guilty or not guilty upon the article.

Senator CROOKS. I would ask the Senator a question. Suppose he be found guilty upon one or more of the specifications under article seventeen, might he be declared acquitted of the charge under the article?

Senator HINDS. Yes, he might.

Senator GILFILLAN, J. B. Mr. President the rule is explicit upon this point. Under the regular order we are now to vote upon the several articles of impeachment. Rule 24 provides that on the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately. Rule 25: "In taking the votes of the Senate on the articles of impeachment, the presiding officer, or clerk of the court of impeachment, shall call each Senator by his name, and upon each article propose the following question, to-wit:" Now that is the only vote our rules provides shall be taken. It is the only issue there is for this court to determine. The specifications amount to nothing except that we did require the managers to give a list of the times and occasions upon which they intended to bring witnesses, so that the counsel for respondent might prepare witnesses in defense or rebuttal. That is all there is of it.

I call for the regular order.

The PRESIDENT *pro tem.* The chair will hold that the Senate shall vote on the article,—article seventeen.

Senator CROOKS. Mr. President, it strikes me that it will be necessary, in order to vote intelligently upon article seventeen, that the specifications under that articles should be considered. It might be that the respondent would be found guilty under two, three or four of the specifications, but not guilty of the charge. And I cannot see how the Senate can intelligently vote, under the circumstances, directly upon the charge, without testing the sense of the Senate upon the validity or the non-validity of the specifications brought in, at the Senate's request, by the honorable board of Managers.

That is the only point I can see in it. I think they must express themselves upon the validity of each and every specification under the charge before they can reach the charge itself,—finding him as they may, innocent of one, two, three or four of the specifications and guilty of the rest and not guilty of the charge. Or else take the other horn of the dilemma and come back to the very arguments and objections made

on behalf of—I will not say of the respondent's case—but on behalf of the Senators here, that we were empowering the honorable board of managers who were delegated by the other House to bring these articles of impeachment, and in the name of the whole people, giving powers to them which, under the constitution, is given only to the House itself, and that the nature of these specifications was that of new charges brought without the consent and knowledge of the honorable House of Representatives. Now, having brought those specifications in here as secondary (and probably and undoubtedly as much in the interest of the respondent as of the State, that he might have knowledge of what was meant by this charge) and the respondent having pleaded under them and produced evidence under them, I think it is but right to him and right to the honorable managers that the specifications be considered separately and acted upon, and after they are acted upon that the Senate then act upon the seventeenth article of impeachment as a whole, subject to its action upon the several specifications. Now, I know of my own knowledge that in courts-martial that is the custom and the practice. A man may be charged with a crime and fifty specifications made and he may be found guilty upon two specifications, but not guilty upon forty-eight.

Senator MEALEY. What is the question?

The PRESIDENT *pro tem.* The question is upon article seventeen. Objection has been made to calling the roll on article seventeen as a whole. The Chair is of the opinion that the vote should be taken upon article seventeen.

Senator WILSON. Mr. President, I will renew my motion, but vary it a little—that our rules be so far suspended that we omit taking any vote on article seventeen or the specifications.

Senator HINDS. Let us go on.

The PRESIDENT *pro tem.* The Secretary will read article seventeen.

The Secretary having begun to read the article,

Senator CROOKS (interrupting). Mr. President, I would then move that we strike out at this time article seventeen and all the evidence under that article, together with the specifications.

Senator JOHNSON, A. M. I second the motion.

Senator HINDS. It is contrary to the order. I object that it is out of order.

Senator WHITE. Mr. President, I do not think we have authority to strike out any article on which evidence has been taken here. We are simply trying a case, and we must render a verdict.

The PRESIDENT *pro tem.* The Chair is of the opinion that it would be out of order.

The Secretary then read Article Seventeen as follows:

ARTICLE XVII.

That E. St. Julien Cox, being a Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at diverse and sundry other times and places in the State of Minnesota, not enumerated in any of the foregoing articles, from the 4th day of January, A. D., 1878, to the 15th day of October, A. D., 1881, acting as and exercising the pow-

ers of such judge, did enter upon the trial of causes and the examination and disposition of other matters and things before him as such judge, for trial, examination and disposition, and did at such times and places 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, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

The PRESIDENT *pro tem.* The Secretary will call the roll on Article Seventeen as a whole.

Senator CROOKS. I desire to ask the President a question. Will that obviate touching upon the specifications at all,—that is, wipe them out?

The PRESIDENT *pro tem.* The chair so understands it,—that the vote upon the article settles the whole question as to all of these specifications.

Senator CROOKS. Absolutely——

The President directed the Secretary to call the names of the Senators.

Each Senator as his name was called rose in his place and the Secretary proposed to him the following question:

"Mr. Senator, how say you, is the respondent, E. St. Julien Cox, judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty, as charged in the Seventeenth article of impeachment?"

Senator ADAMS, (when his name was called.) I desire to do that which I have not done with reference to any preceding article, I desire to explain my vote,—the position that I occupy. I have questioned the law upon all these articles, as you well understand. I question the right, under the law, either statutory or common-law, to make the offenses, as charged in these specifications impeachable. The House of representatives who preferred these charges came before this court. The charges were not sufficiently definite, in the opinion of a majority of the court, to meet the requirements necessary to be embraced in an article. The House of Representatives could not delegate its authority to its board of managers. The Senate of the State of Minnesota, sitting as a high court of impeachment, was not authorized to add to nor take from, only as they might see proper to strike out any article in these articles of impeachment. Having permitted specifications to be presented by the honorable board of managers, that never went before the House of Representatives (the only authority capable of passing upon their competency,) and submitting them to the court, the entire action was illegal and I hold that Article Seventeen, by virtue of the illegal action had by this court, is null and void and hence I vote not guilty.

Senator CAMPBELL. (When his name was called.) I desire to say

that I have some doubt whether enough has been proven under these specifications, to warrant me in voting guilty upon the article, and therefore vote not guilty.

Senator CROOKS. (When his name was called.) I should have preferred, Mr. President, to have voted, or rather to have had the Senate vote with me, upon these specifications under this article separately. I think it were prudent to have done so. The Senate has taken a different view of it. I do not know that it would have changed my view at all, but I would like to see the record made up, as it goes along, in my judgment as regularly as possible. I hold the position I have taken upon all the other articles on this subject, and vote not guilty.

Senator GILFILLAN, C. D. (When his name was called.) Mr. President, when the court required the specifications to be filed under this article I had my doubt as to the authortty of the court to so order; I have it now. I have no doubt as to the facts proved in this case, but I have as to the law authorizing the specifications under the article. I therefore vote not guilty.

Senator HINDS (when his name was called.) Mr. President, I consider that specifications two, four and seven have been established by the evidence and that the others have not been proven. I therefore vote upon the article guilty.

Senator MCCORMICK (when his name was called.) I vote guilty on several of the specifications, but not on all of them. Therefore I shall vote not guilty.

Senator POWERS (when his name was called.) Mr. President, there were eight specifications brought in here, in the first place. Three of them were abandoned; no evidence was offered at all.

On specification one, three witnesses testified they thought he was drunk and four that he was sober, perfectly sober.

On specification two, there were four witnesses who thought he was drunk to the best of their judgment; their opinion leaned that way. Four were very positive that he was perfectly sober.

Specification four charges that he was drunk on the first day of July. One or two men come up and swear they think he was drunk on the seventh day of August. One of them is impeached by eight witnesses, and another man whom I thought to be seemingly a very intelligent man (he was superintendent of education and county surveyor) swears positively to his sobriety.

On another of those specifications two men swear they think he was intoxicated—one of them belongs to another article altogether—and three men swear very positively to his sobriety.

Well, that leaves one specification, I think. On that, five witnesses think that he was intoxicated more or less and ten swear very positively to his sobriety.

Now, I would have said I did not consider him guilty, but I wanted to say that I base that opinion not upon any technicality or anything of that sort, but that the evidence on the specifications that have not been abandoned *in toto* goes to establish the innocence of this man,—if a preponderance of testimony amount to anything at all; so that I vote not guilty.

Senator TIFFANY. (When his name was called.) I vote guilty on three of the specifications; therefore I vote guilty on the article.

Senator WILSON. (When his name was called.) The gist of this arti-

cle is that the respondent was drunk on divers occasions between two dates, and I think the evidence under the specifications abundantly establishes that fact. I will vote guilty.

VOTE ON ARTICLE XVII.

The Senators who voted guilty were Messrs.

Aaker,	Howard,	Officer,	Tiffany,
Buck, D.,	Johnson, F. I.,	Perkins,	Wheat,
Case,	Johnson, R. B.,	Rice,	White,
Clement,	Macdonald,	Shaller,	Wilkins,
Gilfillan, J. B.,	Miller,	Shalleen,	Wilson.—21.
Hinds,			

The Senators who voted not guilty were Messrs.

Adams,	Crooks,	McCrea,	Pillsbury,
Bonniwell,	Gilfillan, C. D.,	McLaughlin,	Powers,
Campbell,	Johnson, A. M.,	Mealey,	Simmons.—15.
Castle,	McCormick,	Morrison,	

Whereupon the President announced that the respondent E. St. Julien Cox, Judge of the Ninth Judicial District, has been declared guilty upon the Seventeenth Article by twenty-one Senators.

Fifteen Senators have pronounced him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

The PRESIDENT *pro tem.* The hour for the recess has arrived, but we have one more article, and it will be the sense of the Senate that we finish that article before recess, unless objection is made. The Secretary will read the Eighteenth Article.

The Secretary then read the Eighteenth Article, as follows:

ARTICLE XVIII.

That E. St. Julien Cox, being a Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, has been in said State from and since the 30th day of March, in the year 1878, and now is guilty of the offense of habitual drunkenness, whereby he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

The President directed the Secretary to call the names of the Senators.

Each Senator, as his name was called, rose in his place and the Secretary proposed to him the following question:

"Mr. Senator, how say you, is the respondent, E. St. Julien Cox, Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, guilty or not guilty, as charged in the Eighteenth Article of impeachment?"

Senator CROOKS, (when his name was called). For the reason which I have given before, I hold him not guilty, in my best judgment.

Senator MACDONALD, (when his name was called). Mr. President, from my view of what habitual drunkenness means, I must vote not guilty.

Senator McCORMICK, (when his name was called). On the same basis that the gentleman from Stearns votes not guilty, I vote not guilty.

Senator PILLSBURY, (when his name was called). Mr. President, in my views of what constitutes habitual drunkenness, I must vote guilty on the charge.

Senator POWERS, (when his name was called). Mr. President, under this article there have been twenty-nine witnesses called upon the part of the State and thirty-five for the defense. There have been thirty-two drunks testified to specifically; but thirteen of them referred more or less to the same drunks, that is three or four witnesses in several cases referred to the same time, or times and places. Six were on the bench or in court time. Twenty-six were off the bench or not specified, and six referred to specific charges in other articles. In five cases they seemed quite positive; in sixteen cases they "*thought* he was more or less intoxicated," or they "*considered* him under the influence of liquor," or they "*felt* that he was intoxicated." Two of the principal witnesses for the prosecution say that they "never saw him so drunk that he could not attend to business;" and one says he has seen him when he "*thought* he was drunk, and yet he was transacting business correctly." Four able-bodied witnesses—among them John Lind, B. F. Webber and Sumner Ladd, (who are generally very positive)—say that by far the greater number of times that they have seen him during the last four years he has been "*perfectly sober*." One of the witnesses only saw him a moment as he passed him on the street, and he thought he was under the influence of liquor. One man thought he was "intoxicated," after he had been lecturing on temperance, but he thought *any* man was "intoxicated" who drank or tasted liquor at all. If a man used wine or brandy sauce on his pudding at dinner he would be intoxicated! This is not his evidence; this is mine. If he partook of the sacrament, of course he would be drunk! If he inhaled the perfumes of bay rum from his whiskers, or kissed a woman who had used spirits of camphor in a decayed tooth, it would produce immediate inebriety! In fact, he thought the whole Senate was pretty near drunk. Well, he thought Judge Cox was "intoxicated."

One man testified that he was "hilarious," and showed him some French papers, a kind of Police Gazette. Mr. Pierce saw him "disgustingly drunk" (of course!) on the train going to Redwood Falls. There is nothing said about his holding court on the train.

Well, now, thirty-five witnesses—comprising lawyers, school superintendents, chairmen of boards of county commissioners, clerks of courts, county attorneys, judges, merchants, bankers, priests, sheriffs, farmers, agents, hotel men, commercial travelers, druggists, jewelers and bell ringers—come forward and deny all the worst of these drunks *in toto*. Even "His Reverence," Mr. Liscomb, is flatly contradicted by two witnesses, and very respectable appearing men, too; Mr. Seward, a young attorney, and Mr. Todd, a merchant. *I presume they told the truth.* I have no doubt of it.

Another of the witnesses for the prosecution, Mr. Morrell, had previously been impeached, or attempted to be, to say the least of it, by eight different persons. Others, unimpeached, come here and swear that the Judge was *perfectly sober*. In thirteen or fourteen of the worst cases specified by the witnesses for the prosecution, these gentlemen testify, on oath, to his absolute and perfect sobriety.

Now, how shall we reconcile all this conflicting evidence? I do not know. I only know that it is enough to create a very serious doubt in my mind, and this respondent shall have the benefit of that doubt, so far as my vote goes.

In the trial of the Tower case, at Redwood Falls, in 1880, four apparently credible witnesses, if I remember aright, testified to his sobriety. In the case indicated at Marshall, in 1880, Judge Weymouth considered him sober. So at the hearing of the motion at St. Peter, 1880. Father Bergholz explains in an easy and natural way his conversation with him on some Greek and Latin terms.

The PRESIDENT *pro tem.* The Senators will give their attention.

Senator POWERS. Oh, It isn't necessary. In the case of the Hawk trial, at Redwood in January 1880, I think, eight witnesses contradict Messrs Wallin and Webber. It is easier for me to believe that two men may be mistaken than that eight such men as have appeared here for the defence, the sheriff, the clerk and ex-clerk of the court, a banker and two or three intelligent farmers, were all mistaken or wilfully falsified the record. So, also, of the silly evidence as to the Judge's intoxication, because, forsooth, he did not talk like a judge on the bench or a philospher when he was joking with an acquaintance and fooling with a dog. The owner of the much abused dog swears that he was sober—that is, the Judge, not the dog.

So on the night of the bell-ringers' entertainment in June, 1880, at Redwood, and the Luscher and Braley trial and the Thorpe and Brewster trial. In the case of Guenther vs. the city of Mankato, Judge Severance, a man in whose *veracity* I have the most unbounded confidence, considered him intoxicated. But what are we going to do with the evidence for the defence? Mr. William C. Durkee says on oath, "He was perfectly sober, as far as I noticed." Mr. Freemen, county attorney, swears "He was perfectly sober." Mr. Meade, judge of probate testifies, "I saw nothing that would lead me to suppose that he was otherwise than sober at the time." What are we to do, I say, with the testimony of these men? Shall we ignore it altogether? Somebody was obviously mistaken. Who was it? I do not know. *You* do not know, and I question if the witnesses know, for I take them all, in this case, to be honest, truthful men.

If Judge Cox had been impeached for having more brains and honesty and legal acumen than judicial dignity of deportment, I should vote to sustain the charge. If he had been impeached for eccentricity of conduct, and an "utterly utter" Coxonian style of speech,—or for charging a jury in the most plain and homely language in vogue among a pioneer class of people on the frontiers of civilization, or for indulging in boils on the fleshy part of his anatomical structure, in violation of every principle of æsthetics, and regardless of style in the manly art of *sitting down*, I think he could have been convicted.

But the charge in this Article, if I remember aright, is for habitual drunkenness. It may be "known all over the district." It may be abundantly sustained by newspaper literature; the people may demand his conviction, but the dear people have not *proved* his guilt; and they have not come very near proving it, either, they have not come as near proving it, in my opinion, as the woman did to having twins. They did not "come within one of it."

Now I will not stop to speak of the Clifton House drunk, in which it

has been shown that the Clifton House was closed up, and that the Judge could not have got into the house unless he went down the chimney. I will not stop to speak of the trip from Sleepy Eye to Redwood, in which five men swear to his sobriety. If all the other charges I have not spoken of, and shall not speak of, had been proved, it would not make out habitual drunkenness, admitting that they constituted an impeachable offense.

Now, this is my last speech. I have but little more that I care to say in this case. Before I take my seat I want to call your attention to the fact that there is a time in the world's history when we shall all think of the scene or scenes that have been enacted here to-day.

We were told before we commenced this trial that the whole of the Ninth Judicial District was resonant with the sounds of the bacchanalian revelries of this man—Judge Cox. We were told that you could not put your finger down any where without touching the "slimy trail" of this miserable drunkard and *roue*; and the people clamored for a trial, and we came here, and there were twenty articles and eight specifications. What was the result? Before we reached the defense at all, article six and article nine and article thirteen and article sixteen and article twenty have all "given out"—worse than the Yankee's calf,—or been withdrawn. And not only that, but specifications three and six and eight had all been abandoned before a word was said in their defense, and on request, the manager,—the able manager, the candid, honest manager! got up and told us virtually that he believed that four others they had failed in proving. We have, however, voted that he is guilty on those that the managers themselves had virtually abandoned. So that leaves how many? That leaves ten articles. It seems to me that there has been a great deal of expense, a long and tedious trial. The whole State has been worked up into a furor of excitement. Senators tell us that they *know* he is a drunkard. Well, I do not know it, and I *dare* not know it, and I would not use that knowledge if I did. I would go on to the stand and be subject to cross-examination if I knew it.

I have seen times, when I was advocating in the Senate chamber, unpopular measures, that afterwards became laws, so I thought I would just take the liberty to make a few remarks in explanation of my vote here, and on the general principles of this trial. I think it has been a terrible failure from beginning to end.

And I will say in conclusion, that there is no man who entertains—I was going to say more contempt for drunkenness than I do. I will not say that. I will not say that I have a feeling of unalloyed pity or sympathy for a drunkard; but I will say that I have a kind of mixture of pity and contempt, and a dozen emotions all combined. I look upon it as a disease—a mania. It is called dypsomania when it becomes confirmed, and it is, undoubtedly. I look upon it as a human infirmity, weakness or vice. I have no sympathy with it at all, but I want to see a man proven guilty by the testimony, and this I think the respondent has not been, on a single charge, excepting four and five.

Senator WHITE (when his name was called.) Mr. President, I can hardly reconcile to my mind how we can vote a man guilty on all the articles we have found him guilty on for drunkenness, and where it is proved that he has been in the habit of getting drunk often, and still he is not an habitual drunkard. I vote guilty.

VOTE ON ARTICLE XVIII.

The Senators who voted guilty were Messrs.

Buck, D.,	Hinds,	Officer,	White,
Campbell,	Howard,	Pillsbury,	Wilkins,
Clement,	Johnson, R. B.,	Tiffany,	Wilson.—15.
Gilfillan, J. B.,	McLaughlin,	Wheat,	

The Senators who voted not guilty were Messrs.

Aaker,	Gilfillan, C. D.,	McCrea,	Powers,
Adams,	Johnson, A. M.,	Mealey,	Rice,
Bonniwell,	Johnson, F. I.,	Miller,	Shaller,
Case,	Macdonald,	Morrison,	Shalleen,
Castle,	McCormick,	Perkins,	Simmons.—21.
Crooks,			

Whereupon the President announced that the respondent, E. Jt. Julien Cox, Judge of the Ninth Judicial District, has been declared guilty upon the eighteenth article by fifteen Senators.

Twenty-one Senators have pronounced him not guilty.

Having been pronounced guilty by less than two-thirds of the Senators present and voting, he stands acquitted upon this article.

Senator PILLSBURY. Mr. President, I move that the Senate now take a recess until eight o'clock.

The PRESIDENT *pro tem.* The chair before declaring the motion would like to state to the Senators that it is important that we have a full Senate this evening. The question of the judgment will be decided I presume after recess, and it is quite as important that we have a full Senate at that time as at any time during the proceedings.

Senator CROOKS. Mr. President, for the reason that there are absent Senators, the Senators who have been on the floor this afternoon, and who are sick and not fit to be here and I think who wish to be here. and as this matter of passing judgment and carrying with it the penalty will undoubtedly bring up a great deal of discussion, I would move as a substitute to the resolution offered by the Senator from Hennepin that the Senate do now adjourn.

The motion was seconded.

The PRESIDENT *pro tem.* It is moved and seconded that the Senate do now adjourn.

The yeas and nays having been called for.

The PRESIDENT *pro tem.* The Secretary will call the roll on the motion to adjourn.

The roll being called, those who voted in the affirmative were—

Messers. Adams, Bonniwell, Castle, Crooks, Johnson, A. M., Mealey, Miller, Morrison, Peterson, Powers and Simmons.

Those who voted in the negative were—

Messrs. Aaker, Buck, D., Campbell, Case, Clement, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, F. I., Johnson, R. B., MacDonald, McCormick, McCrea, McLaughlin, Officer, Perkins, Pillsbury, Rice, Shaller, Shalleen, Tiffany, Wheat, White, Wilkins and Wilson.

The PRESIDENT *pro tem.* The Senate will take a recess until 8 o'clock P. M.

EVENING SESSION.

The Senate met at 7:30 P. M., in secret session, and was called to order by the President *pro tem.*

Senator MEALEY. Mr. President, I desire to offer an order.

The PRESIDENT *pro tem.* The Secretary will read the order.

The SECRETARY. Senator Mealey sends forward the following order:

Ordered, That further proceedings of this Court be with open doors until otherwise ordered.

Senator CROOKS. Mr. President, I move a call of the Senate.

The PRESIDENT *pro tem.* The Secretary will call the roll.

Senator CROOKS. I move that the doors be closed and that Senators be not allowed to leave. I believe that is the order, unless the rules have been suspended in that respect.

The PRESIDENT *pro tem.* The Sergeant-at-arms will close the doors.

The Secrtary having called the roll the following Senators answered to their names:

Messrs. Aaker, Bonniwell, Buck, C. F., Buck, D., Campbell, Case, Castle, Clement, Crooks, Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., McCormick, McCrea, McLaughlin, Mealey, Miller, Officer, Perkins, Peterson, Pillsbury, Powers, Shalleen, Simmons, Tiffany, Wheat, White and Wilson.

Senator CROOKS. Who are the absentees?

The SECRETARY. The other Senator from Ramsey, (C. D. Gilfillan,) Senators R. B. Johnson, Perkins, Adams, Beman, Langdon, Lawrence, Macdonald, Morrison, Rice, Shaller and Wilkins.

The PRESIDENT *pro tem.* The Secretary will furnish the Sergeant-at-arms with a list of the absentees.

Senator WHITE. Senator Morrison was suffering severe pain in the head when I saw him last, and I move that he and Senator McDonald be excused.

Senator CROOKS. I second the motion.

The PRESIDENT *pro tem.* That will be taken to be the sense of the Senate unless objection is made.

Senator MILLER. I move, Mr. President, that further proceedings under the roll be suspended.

Senator CROOKS. I would ask the Senator to wait a moment. If there is any reason to excuse a Senator from attendance I am perfectly willing to do so. If any are ill, as in the case of Senator Morrison, they ought to be excused. When Senators are well and able to be here they should be present. It is necessary to finish this business. I propose to stay here and finish it, so far as I am concerned, and I want all the Senators who are able, to help to do so.

Senator MEALEY. I move that Senator Adams be excused. He is evidently unwell or he would be here.

Senator CAMPBELL. I was going to move that Senator MacDonald be excused. He has been called home.

The PRESIDENT *pro tem.* He has already been excused. He and Senator Morrison were excused on motion of Senator White. It will be considered as the sense of the Senate that Senator Adams be excused, if he is indisposed.

Senator PETERSON. I saw Senator Rice a few minutes ago and he told me he would be here in fifteen minutes.

Senator MILLER. I move that further proceedings under the call be suspended. I hope we can now go on.

Senator CROOKS. I trust it will not prevail. We are about to conclude this important matter, and I think that Senators who are able

ought to be present. It was the sentiment of the Senate that we should come here to-night and conclude this business. I have put myself to inconvenience to come here, and I propose to stay and help to finish it so far as I have any part in it. I trust that the gentleman will be with me in that, and will wait at least a reasonable time for absent Senators to come in. If they could not be here it would be entirely different. [After a moment's consultation with other Senators.]

I second the motion that further proceedings under the call be dispensed with, because I understand that other Senators now absent, will shortly come in.

The PRESIDENT *pro tem.* That will be taken as the sense of the Senate unless objection is made.

Senator GILFILLAN, J. B. I did not understand the purport of the motion last made.

The PRESIDENT *pro tem.* That further proceedings under the call be dispensed with.

Senator CROOKS. I was saying Senator and Mr. President, that I understand the Senators who are absent, except those who have been excused, will be here in a few minutes. I understand that there are preliminary motions to be made and that we may save time by allowing them to be made now. If Senators refuse to come in, I shall insist, at a future time, on sending for them.

Senator GILFILLAN, J. B. Very well, sir.

The PRESIDENT *pro tem.* The Secretary will again read the resolution offered by Senator Mealey.

The Secretary read as follows:

Ordered, That further proceedings of this Court be with open doors until otherwise ordered.

The PRESIDENT *pro tem.* Is the motion seconded?

Senator JOHNSON, F. I. I second the motion.

The PRESIDENT *pro tem.* Is the Senate ready for the question?

Senator MEALEY. I would say, Mr. President, in behalf of that, that it has been suggested, and I think very properly, that we have arrived at that stage of these proceedings where the managers and counsel for the respondent should be present, as questions of law may arise; and I think they consider it their privilege to be here now.

The PRESIDENT *pro tem.* As many as are in favor of the adoption of the order just read, presented by Senator Mealey will say aye. Those opposed, no. The ayes have it.

Senator Gilfillan, J. B. I call for the ayes and noes.

The PRESIDENT *pro tem.* I believe a call for the ayes and noes requires a calling of the roll. The Secretary will call the roll.

Senator CAMPBELL. Mr. President, I did not understand what the question was. I was engaged in another matter.

The PRESIDENT *pro tem.* The question is the adoption of the resolution or order offered by Senator Mealey that the Senate now proceed to transact its business with open doors. Those in favor of the adoption of the order will say aye.

Senator HINDS. What is the order?

The PRESIDENT *pro tem.* The Secretary will again read the order for the benefit of the Senator.

The Secretary having read the resolution,

Senator HINDS. We are getting along well enough as we are, Mr.

President. My attention was called away for a moment. I did not notice this order and I did not notice the statements that the mover has made, but it does strike me very forcibly that this is the time and the occasion, above all other times and occasions during the progress of this trial, when we should be by ourselves—

Senator CROOKS. With the Senator's consent I will interrupt him for just a second, to ask the President whether the Senate is now in secret session, and if so, to say that our friends [the newspaper reporters] should be asked to remove themselves.

The PRESIDENT *pro tem.* Under our rules we are still in secret session. I had not noticed that the reporters were in here.

Senator JOHNSON, F. I. I would rather have them sit at the table.

The PRESIDENT *pro tem.* I think the newspaper report this evening of to-day's proceedings was much better than any we have had since the impeachment trial commenced. Under our rules the newspaper reporters will have to leave, I suppose.

Senator CAMPBELL. I move, Mr. President that the rules be so far suspended as to permit them to remain.

Senator HINDS. We are not in a condition to entertain the motion.

Senator CAMPBELL. In what condition are we, if you please?

Senator HINDS. We are not in session at all.

Senator CAMPBELL. We are not in session! Then, I suggest that we cannot expel them.

The PRESIDENT *pro tem.* The Sergeant-at-arms will remove the gentlemen.

The Sergeant-at-arms having done so,

The PRESIDENT *pro tem.* The Senator from Scott has the floor.

Senator HINDS. I was proceeding to remark that I thought this time and this occasion, above all other times and occasions since these proceedings commenced, is the one when we should be quietly by ourselves. We have simply found that the respondent was not guilty on a good many articles and that he was guilty on some, and it is not to be presumed that any body else in all this world knows what the result has been. But we have not got through with our duties here. No judgment has been rendered. No vote has been taken upon very important questions. One of them is, shall the respondent be removed from office? He is still in office and will still remain in office unless we go farther than we have gone now. The other question will be, shall the respondent be disqualified? Shall he be disqualified in part or shall he be permanently disqualified? When that vote is reached then the question still remains as to the rendition of a judgment, because it is not likely that a mere vote upon these two questions would be effectual to accomplish anything, for the result of judicial deliberations is always a judgment or an order entered as the result. In this case it would be a judgment, because the constitution uses the word judgment. We should enter a judgment. Now, ought we not be by ourselves when we deliberate what the terms of that judgment shall be? It seems to me very important.

The PRESIDENT *pro tem.* The roll will be called upon the adoption of the order.

Senator CASE. I would ask for the reading of that order again.

The Secretary read as follows:

Ordered, that the further proceedings of this court be—

Senator PILLSBURY. Mr. President, I would be very glad to have this

resolution passed, but we have discussed this question two or three times and spent half an hour of our session in talk about opening the door. I do not think that any body cares enough about the matter to have the question discussed. Therefore, I move that the order be laid on the table,—not to kill the motion, but to avoid discussion.

Senator CASTLE. I second the motion to lay upon the table.

The PRESIDENT *pro tem.* The motion to lay upon the table cannot be determined without a call of the yeas and nays. Those who are in favor of laying the motion on the table will say aye. Those opposed, no. The chair is in doubt. The Secretary will call the roll.

Senator POWERS. Before the vote is taken, Mr. President, I desire to say a word.

The PRESIDENT *pro tem.* There can be no discussion on the motion to lay upon the table. The Secretary will proceed with the roll call.

The roll having been called, those who voted in the affirmative were—

Messrs. Aaker, Buck, D., Case, Castle, Clement, Gilfillan, J. B., Hinds, Howard, Johnson, F. I., McCormick, McCrea, McLaughlin, Pillsbury, Rice, Shalleen, Tiffany, Wheat and Wilson.

Those who voted in the negative were—

Messrs. Bonniwell, Campbell, Crooks, Mealey, Miller, Officer, Peterson, Powers, Shaller, Simmons, White and Wilkins.

The PRESIDENT *pro tem.* The roll having been called upon the notice to lay upon the table, there were 18 yeas and 13 nays; so the resolution lies upon the table.

Senator POWERS. Mr. President, I will now move that the members of the press be admitted.

Senator MEALEY. I second the motion.

Senator POWERS. Allow me to state the question. I wish to state why I make that motion.

The PRESIDENT *pro tem.* The Senator from Fillmore moves that the representatives of the press be admitted.

Senator POWERS. Now, Mr. President, I have no personal feeling in this matter, one way or the other, but it does seem to me to be the supremacy of folly for us to pretend to sit here with closed doors. When we go out, here is one reporter with an ear trumpet at one door, reporting everything that is passing, and up-stairs are half a dozen more, reporting everything that is passing, partly right and partly wrong. At 3 o'clock in the afternoon down comes the Dispatch, like an angel from heaven, with a report of our proceedings up to within ten minutes of its receipt; and yet we are talking about sitting with closed doors! It seems to me like a farce and a humbug. If we are to have a report taken, let us invite the reporters in, give them comfortable seats and cushions, if they want them, and let them get the report and have it right—make it convenient for them, and if not—

Senator PILLSBURY. I am in favor of the motion, if it can be passed anywhere within an hour or so, without taking two or three hours' discussion. I move the previous question on the motion.

Senator CAMPBELL. I second the motion for the previous question, and call for the ayes and noes.

Senator PILLSBURY. [To Senator Campbell.] If you will take the vote on that by common consent, I will withdraw my motion for the previous question.

Senator CAMPBELL. All right.

Senator PILLSBURY. Mr. President, I withdraw my motion.

Senator CAMPBELL. Mr. President, I withdraw the call for the yeas and nays.

The PRESIDENT *pro tem*. As many as are in favor of the motion of the Senator from Fillmore will say aye; those opposed no. The ayes have it. The sergeant-at-arms will admit the representatives of the press.

Senator HINDS. Mr. President, I present the following order:

The PRESIDENT *pro tem*. The Senator from Scott presents the following order, which the Secretary will read.

The Secretary read as follows:

Ordered, That a vote be now taken upon this question. Shall the respondent be removed from office?

Senator CASTLE. Mr. President, I desire to send this order forward.

The PRESIDENT *pro tem*. Do you offer that as a substitute, Senator Castle?

Senator CASTLE. I do, sir.

The PRESIDENT *pro tem*. The Secretary will read it.

The Secretary read as follows:

Ordered, That the sentence of this court be, and is, that the respondent, E. St. Julien Cox, be, and he hereby is, suspended from his office of Judge of the Ninth Judicial District for the period of one year.

Senator CROOKS. Who offered that resolution?

Senator CASTLE. I did, sir.

Senator CAMPBELL. That is offered as a substitute for the order of the Senator from Scott.

The PRESIDENT *pro tem*. The Secretary will call the roll.

Senator CAMPBELL. I would like to hear the order of the Senator from Scott read again.

The Secretary read as follows:

Ordered, That a vote be now taken upon this question, shall the respondent be removed from office?

The PRESIDENT *pro tem*. The vote will be taken upon the substitute.

Senator HINDS. Mr. President, I presume that I understand the purport of both of these propositions—

Senator CASTLE. [After a short consultation with Senator Hinds.] I will say, Mr. President in explanation of my substitute for this resolution that the original motion, if carried, would amount to a permanent removal. The resolution which I have sent up—or the order of judgment or whatever you may term it—if adopted, would amount to a disqualification of the respondent to hold the office of judge, or a suspension in the office for the period of one year. That is the effect of the order and that is what I intended should be its effect. I do not wish to obtain any covert advantage, nor do I desire to introduce an order which would have any covert meaning. I have this much to say, and only this much—(I have said probably all that I shall say to this body while I am a member of it)—that we have been told from the beginning by the managers, and by all who have represented them, that the desire was not to punish the respondent in this case. I have no doubt that argument has had an effect, I may say a very great effect, upon the minds of the members of this court in coming to this vote. No moral turpitude having been shown, no want of integrity or purity, or anything that would indicate that the respondent in this case desired to do

a wrong, or intended to do a wrong, it seems to me, Mr. President, that after the blow we have given him we can afford to stop short of the pound of flesh.

Senator BUCK, D. Mr. President and Senators, I feel able to say but very little this evening, but the order or resolution, or whatever it may be offered by the Senator from Washington county, strikes me as very singular indeed. We have been now nearly three months engaged in the trial of this respondent, and now when, by a vote of nearly three to one, he has been found guilty of many of the charges that have been alleged against him, it is proposed to suspend him! The constitution or the law does not allow anything of that kind. The constitution does not warrant you suspending this man. You pass a vote of suspension here, and what will be the result? He will draw his salary for the next year. If that will pass——

Senator CASTLE. I will say, Senator, that I will submit that question to Senator Hinds. If he says that is so, I will withdraw the resolution. I do not wish to offer a resolution here that I do not conceive to be the law or that we cannot act upon.

Senator BUCK, D. I am expressing my own views on this matter. The constitution does not warrant suspension. Its language is, "removal or disqualification." Suspension does not, in my view, come within the meaning of either of those terms, because it is not a punishment that is justified or warranted by the language of the constitution; and I think that if we suspend him we do not remove him, and we do not disqualify him. Now, is that the fair construction; if so, would he not hold his office and draw his salary? Why? Because at the end of the year he would go right on—

Senator CASTLE. At the end of the year he could, but not now, because he is already suspended by the Governor now.

Senator BUCK, D. Now let us see where is the law for that. What are you going to do in the meantime? Who is going to be judge of the Ninth Judicial District when there is no vacancy? Why, it is astonishing; it is an alarming kind of doctrine to be announced here. It would be a farce. It would result in complications as bad as they are now. Nobody can go into that district as the judge of the Ninth Judicial District, unless it is somebody sent by the Governor, for the reason that this Judge cannot act in the meantime. There will be no judge in fact for the Ninth Judicial District. There can be nobody appointed to fill the vacancy.

Senator CASTLE. That is true.

Senator BUCK, D. And the Senator, I understand, admits that. Then where is the rule or law that prohibits him from drawing his pay during this time? It is all wrong, and the Senate ought not to entertain such a resolution or think for a moment of passing such a resolution as that.

Senator CASTLE. Just one word, Mr. President; the Senator is clearly wrong in his construction of the law. I do not think there can be any question about it. If he had examined carefully the wording of the constitution, I think his good judgment as a lawyer would have led him to an entirely different conclusion. The language of the constitution is this:

The Governor, Secretary of State, Treasurer, Auditor, Attorney General and the

Judges of the Supreme Court and the District Courts, may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgment in such cases shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit to this State.

It shall not extend any further than that. Now I conceive it to be a proposition of law that where the maximum is given anything included within that maximum may be made the degree of punishment. For instance, we have a statute that provides that a person convicted of the crime of larceny in a dwelling may be punished by a fine not exceeding so much or be imprisoned in the State prison for a period not longer than four years. Now, would any sane man pretend for one moment that the court might not say that the person convicted of that crime should be sentenced to State prison for one year, or any other time included within the maximum period? So far as the salary is concerned, Mr President, I am inclined to think—I understand from the Senator from Hennepin (Senator Pillsbury,) that under the construction which is put upon the law, (which I think is wrong,) the respondent draws his salary now. I do not think that under the statute he would have the right to it.

Senator PILLSBURY. I did not say that he draws his salary.

Senator CASTLE. Well, I understood you said so.

Senator PILLSBURY. I did not mean to say that he is drawing his salary, but I say that he has a right to do so.

Senator CASTLE. Well, I say, Mr. President, that he has no right to draw his salary. When he is suspended he is dead so far as that office is concerned, until his right to hold office is restored to him. To obviate any objection I will add to that order, "In the meantime, he shall receive no salary."

Senator WILSON. Under military law the officer draws his pay until convicted.

Senator CASTLE. Until stricken from the rolls, but this man is in the service. I certainly, Mr. President, have no desire to introduce any resolution, the effect of which may be uncertain, and I believe the Senators upon this floor will do me the justice of saying that I have the courage to state what I think, and that I have never attempted in this Senate during the whole period that I have been here, to accomplish anything by covert means. I say to the Senate in all fairness that what I desire to accomplish is what the fair wording of that instrument means,—that this respondent shall be suspended in his office for a period of one year and shall not draw his salary during that time, which, I think, will reach the objection of the Senator from Blue Earth as to the matter of drawing his salary.

Senator BUCK, D. It certainly does not. If he is entitled to draw his salary we cannot say here that he cannot do it.

Senator BUCK, C. F. We can pass such a sentence. We can fine him.

Senator BUCK, D. Well, if I say—

Senator CASTLE. Mr. President, I do not care to debate this question. As I stated I have taken up the time of the Senate longer than I should have done in debating the other question, and I have said all I care to say.

Senator HINDS. Mr. President, I am satisfied, in my own mind, that the only judgment that this court can enter is a political judgment—a judgment that affects merely the political situation.

Senator CASTLE. There is no doubt about that.

Senator HINDS. I do not think we can fine him a penny. I do not think we can prohibit him from drawing a dollar of salary that he would otherwise have a right to draw. We can simply operate upon his political status in the State—

Senator CASTLE. Will you permit me one moment, Senator?

Senator HINDS. Certainly, sir.

Senator CASTLE. In your judgment, as a lawyer, if he is suspended, will he be entitled to draw his salary?

Senator HINDS. I do not at all doubt but what he would.

Senator CASTLE. Very well, Mr. President—

Senator HINDS. I do not doubt at all that he has a right to his salary up to yesterday.

Senator CASTLE. I was going to say, to cut the discussion short, that if the Senator is of that opinion, and is also of the opinion that we cannot cut off his salary for the year, that I would ask leave to withdraw the order. I do not want any doubtful judgment here about which we shall have any wrangling in the future. I will ask leave to withdraw the order to save debate.

Senator HINDS. I would not like to have the Senator withdraw his motion on my opinion. He asked me for my opinion and I gave it to him.

Senator CASTLE. I have no doubt the Senator answered truthfully when I asked him upon his honor. He gave me his opinion as a lawyer, and that is good enough for me.

The PRESIDENT *pro tem.* Is the motion withdrawn?

Senator CASTLE, Yes, sir.

The PRESIDENT *pro tem.* Then the question will be upon the order of the Senator from Scott, that being the only thing before the house. The Secretary will please read that order again.

The Secretary read as follows:

Ordered, That a vote be now taken upon the question, Shall the respondent be removed from office?

The PRESIDENT *pro tem.* The roll will be called, and those who favor the adoption of the order—

Senator BUCK, D. Mr. President,—

Senator POWERS. Mr. President, before the roll is called—

Senator BUCK, D. I believe I have the floor.

The PRESIDENT *pro tem.* The Senator from Blue Earth has the floor.

Senator BUCK, D. I am in favor of this order, provided we are safe in the passage of it as it is now. I am very frank to say that it does not go far enough, and the only question in my mind is,—and I would like to hear from the Senator from Scott on that point,—whether, having passed that order, it does not become the judgment of the court, so as to be final and so that we could not go any further if we should want to; whether if we desired, for instance, to disqualify him for a certain time—for three, or five, or ten years or whatever the term might be—should it not be all in one order first the question. Shall he be removed from office; secondly, a disqualification for a certain length of time? I make the suggestion. I want to be clear in my mind about it. I do not want to have this order passed and to have that to be the judgment of this court without having the matter understood.

Senator HINDS. My opinion is adverse to the suggestion that the

Senator has made. If this order should be voted down, that he be not removed from office (that is, if it should be carried in the negative) that, probably, will have the effect to dispose of any future propositions of that kind, but if it is carried I think it will go no further and will have no greater effect than as a mere order.

It is not a judgment at all, and does not propose to be one. It is simply taking a vote upon that question.

Senator BUCK, D. One step.

Senator HINDS. One step looking towards a determination as to what the judgment shall be. Now a Senator might draw up and present an order, declaring that the court render judgment so and so. Another Senator might not be satisfied with such an order. He might want something else. A third one might want something still different. No one knows what the opinions of other Senators are as to what kind of a judgment ought to be rendered. This order, in my view, has the effect to determine what kind of a judgment should be entered. So far as that question is concerned, shall removal from office be a part of the judgment? The order might even have been written, shall we take a vote upon the question, shall removal from office be a part of the judgment rendered in this case? If I were to re-write it, I should re-write it in that language.

Senator GILFILLAN, J. B. I would suggest that the Senator re-write his order.

Senator HINDS. And if I am permitted to withdraw it—

Senator CASTLE. I believe, Mr. President, that the Senator—

Senator MEALEY. I believe I have the floor. I want to ask, for information, whether if the order which you sent up is passed, Judge Cox will be disqualified for the remainder of his term?

Senator HINDS. Under that he would not be. The question would then have to be taken upon that, shall he be disqualified? This merely shows that we desire to render a judgment that would remove him from office and it shows nothing else.

Senator MEALEY. Let me ask you further. If it should be the sentiment or desire of this Senate that Judge Cox should be removed from office for one year only, would such an order as that be proper if this one is passed?

Senator CAMPBELL. No; this removes him.

Senator HINDS. Let me understand you, Senator.

Senator MEALEY. I ask this question. If that order of yours is passed, would Judge Cox be disqualified under that order for the balance of his term? I think you answered me that he would not be.

Senator HINDS. I did.

Senator MEALEY. Very well. Then I ask a still further question. If that order is passed, would it be proper for me, or any other Senator here, to offer a motion or resolution to the effect that Judge Cox be suspended from office for twelve months?

Senator PILLSBURY. No, sir.

Senator HINDS. No, sir; it would not.

Senator MEALEY. Very well; that is what I wanted to get at.

Senator HINDS. But it would be in order for you to move that he should be disqualified for twelve months or forever. The question as to suspension from office is not involved in any of these proceedings as they now stand; but the question as to whether he shall be removed

from office is involved. The future and further question that would be involved, whether he should be disqualified——

Senator MEALEY. I am obliged to the Senator for the information, and I will say in connection with that, that I will move as an amendment to the order sent up by the Senator from Washington, merely to get an expression of the opinion of the Senate——

The PRESIDENT, *pro tem.* That order has been withdrawn.

Senator MEALEY. Well, I can renew it as my own. The Secretary has it there and I will renew it.

Senator PILLSBURY. Question!

Senatory MEALER. I do that to get an expression of the opinion of the members of the Senate.

The PRESIDENT *pro tem.* The yeas and nays will be called upon that. You simply offer that order without amendment.

Senator MEALEY. I offer it as an amendment to the order of Senator Hinds.

The PRESIDENT *pro tem.* I understand that Senator Hinds has withdrawn his for the purpose of writing another. Is that not correct Senator Hinds.

Senator HINDS. Yes, sir.

Senator MEALEY. I was not aware of that, and——

Senator GILFILLAN, J. B. We might take a vote upon this, Mr. President, as an original motion.

Senator MEALEY. I will offer it as an original motion.

The PRESIDENT, *pro tem.* The yeas and nays will be called upon the adoption or rejection of that as an original order. The roll will be called and those in favor of the adoption of it will vote aye.

Senator AAKER. Let the order be read, Mr. President.

Senator BUCK, D. Which order is that?

Senator AAKER. The one we are going to vote upon.

The PRESIDENT *pro tem.* The Secretary will read it. We might as well vote upon that without debate, because the object of it is to get the sentiment of the Senate.

Senator MEALEY. It might be well for the Secretary to read the order first.

The SECRETARY. [Reading.] "Ordered, that the sentence of this court be, and is, that the respondent, E. St. Julien Cox, be, and he hereby is, suspended from his office, as judge of the Ninth Judicial District for the period of one year.

Senator CASTLE. With all the emoluments pertaining to the said office.

Senator MEALEY. It is not your resolution. You withdrew it. It is now mine.

The PRESIDENT *pro tem.* The Secretary will proceed to call the roll.

Senator CASTLE, (when his name was called.) Mr. President, I have no doubt in my own mind that this resolution will meet what I intended it should, but in deference to the expressed opinions of other members of the bar on the floor of this Senate, for whose opinions I entertain a very high respect, that it might not accomplish such purpose and may lead to complications undesirable and to a position uncertain in its nature, I shall be compelled to vote no.

Senator POWERS, (when his name was called.) Mr. President, for the purpose of tempering justice with mercy on charges for an offense which,

I think, has scarcely been proven, and in order to give this respondent an opportunity or chance to resign (which I am authorized to believe he would do,) and to prevent disqualifying him from holding office, and to prevent any petty attorney or vindicative suitor from bringing an action that would prevent even his practicing in the courts, I would vote for this resolution or a resolution to suspend him during the whole of his term, and to suspend all emoluments, profits, salary and everything of that kind, so as to save the effects which would almost inevitably follow removal from office. I vote aye on the resolution.

Senator CROOKS, (when his name was called). Mr. President, for the reasons, better expressed than I can, by my friend, the Senator from Fillmore, I vote aye.

The roll having been called, those who voted in the affirmative were—

Messrs. Adams, Bonniwell, Buck, C. F., Crooks, Mealey, Powers and Simmons.

Those who voted in the negative were—

Messrs. Aaker, Buck, D., Campbell, Case, Castle, Clement, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Miller, Morrison, Officer, Perkins, Pillsbury, Rice, Shaller, Shalleen, Tiffany, Wheat, White, Wilkins and Wilson.

The PRESIDENT *pro tem.* The question being upon the adoption of the resolution offered by the Senator from Rice, there were 27 nays and 7 yeas.

So the resolution is lost.

Senator POWERS. I beg now to move that the respondent, E. St. Julien Cox, be removed from office during the remainder of his term, and that all salary and emoluments be suspended.

Senator HINDS. Removal would suspend them.

Senator CROOKS. I would call the attention of the Senator from Fillmore——

Senator HINDS. The order I withdrew for the purpose of amendment I now offer.

Senator CROOKS. The Senator from Fillmore meant suspended. You said removed.

The PRESIDENT *pro tem.* Will the Senator send up his resolution in writing. The Secretary will read the resolution offered by Senator Hinds?

The Secretary read as follows:

Ordered, That a vote be now taken upon the question, shall the judgment to be rendered against the respondent embrace his removal from office?

The PRESIDENT *pro tem.* If that is adopted, it would supercede the necessity for yours, Senator Powers.

Senator POWERS. What is the one now sent up?

The SECRETARY. The vote on this question: Ordered, that a vote be now taken upon this question, shall the judgment to be rendered against the respondent embrace his removal from office?

Senator POWERS. Mr. President, I wanted at first to vote for his removal from office during the whole of his term and a suspension of all emoluments and everything of that kind, so as to leave him in a position where he could resign and still retain the means of supporting his family.

The PRESIDENT, *pro tem.* You said removal, but you meant suspension.

Senator POWERS. I mean suspension.

Senator CASTLE. I would say to the Senator that he, not being acquainted, probably, with the practice, does not quite catch the scope of the order offered by the Senator from Scott. There could scarcely be such a thing in fact—although it might be possible—as suspending the respondent during his term of office because, when his term of office expired he would be out of office any way. Now the proposition submitted by the Senator from Scott amounts to this: If we vote in favor of it, it is, impliedly, a vote for present removal. Then would come the question of a further disqualification. The motion of the Senator from Scott would comprehend, in effect, just what the motion of the Senator from Fillmore would comprehend,, because it avoids the possible complications that might arise with reference to the respondent drawing his salary. There seems to be an idea entertained by the State officers that suspension does not work a forfeiture of salary. There might be some question upon that point, and hence I would suggest to the Senator from Fillmore, let me vote first upon the proposition submitted by the Senator from Scott for removal. Then the question of a further disqualification will be the only question next in order, save the entry of the judgment.

Senator POWERS. Mr. President, I have the impression, and I have obtained it from talking with legal gentlemen, that although we may not choose in our sovereign power to pass a resolution here disqualifying the respondent from holding office, that any lawyer or non-professional person can go before the supreme court—and it will be the duty of the judges, they having no option in the matter—and have a writ issued that will prevent the respondent from practicing law in this State and that that will be likely to follow him up in any other State to which he may go. It seems to me that is a punishment more severe than any person in the Senate that I have talked with feels disposed to visit upon this respondent. Now, that is all I want to accomplish and I want to accomplish it legally.

Senator GILFILLAN, C. D. I would ask the Senator if any action they may take hereafter will affect that question one way or the other. The respondent is already convicted, and if there is any foundation to be laid for a movement to disbar him it has already taken place. The ground is already laid, if it exists at all. Whatever we may hereafter do, we can neither decrease it or increase it.

Senator POWERS. My motion to suspend him was simply to give him a chance to get out of the way.

Senator GILFILLAN, C. D. It is the conviction that is to be found, and which the Senator from Fillmore voted for.

Senator POWERS. I beg your pardon, Senator, I did not so vote.

Senator GILFILLAN, C. D. I think the Senator voted guilty upon two articles. It may possibly be that it was upon articles on which the State did not have votes enough to convict him.

Senator GILFILLAN, J. B. Yes; they did.

The PRESIDENT *pro tem.* They did, both of them.

Several SENATORS. Question! Question!

The PRESIDENT *pro tem.* The question is upon the order offered by the Senator from Scott.

Senator WHITE. I do not like to have this taken out of its order. I would like to hear it explained by the Senator.

Senator HINDS. It is simply to determine whether the judgment we are going to render shall in part be that he be removed from his office. It is not the judgment. It is merely instruction as to what the judgment ought to be.

The PRESIDENT *pro tem.* That is all there is to it.

Senator WHITE. Let the Secretary report the order.

The SECRETARY, (reading.) Ordered, that a vote be now taken upon this question, shall the judgment to be rendered against the respondent embrace his removal from office?

Several SENATORS. Question! Question!

The PRESIDENT *pro tem.* The Secretary will call the roll.

Senator CASTLE. Mr. President, I have another order here, which I would rather prefer to offer, if you will wait half a minute for me to finish writing it.

The PRESIDENT *pro tem.* As a substitute for this?

Senator CASTLE. Yes, sir. I offer this as a substitute, Mr. President, and ask that it be submitted by the presiding officer to the judgment of the Senate.

The PRESIDENT *pro tem.* It will be read by the Secretary.

The Secretary read as follows:

Shall E. St. Julien Cox be removed from his office as Judge of the District Court, for the Ninth Judicial District, for the causes stated in the articles of charge preferred against him, upon which you have found him guilty?

Senator CASTLE. I will state, Mr. President, that I offer that for this reason: It is in the exact language that was adopted in fixing the judgment in the trial of Judge Barnard in New York, under a constitution substantially similar to ours, and it, in my judgment, is only preferable to the one offered by the Senator from Scott in that it brings the question squarely up, and decides upon a single vote, whether or not the respondent should be removed from office. With reference to the point suggested by the Senator from Blue Earth, that even if this were done we could not act farther, that also is settled in this same case, where they not only proceeded to remove the respondent there from office by passing a resolution of this kind, but also introduced a vote upon another resolution for a permanent disqualification from holding any office; and as the Senator will recollect, the court of impeachment of the State of New York at that time was aided by the association and assistance of the judges of the court of appeals, perhaps the ablest court of appeals the State of New York has had since its organization.

Senator JOHNSON, F. I. I would like to ask one question. Does the resolution, if it passes, disqualify him from holding office as judge of the Ninth Judicial District, or from holding office in any other district?

Senator CASTLE. It removes him from the office of judge. When that resolution passes Judge Cox dies, and becomes Mr. Cox.

The PRESIDENT *pro tem.* This resolution will not prevent, as I understand it, any further action in the premises.

Senator CASTLE. This resolution will not prevent any further action in the premises. The only objection that I have to the resolution of the Senator from Scott is that it will force us to go on then and take a vote also on the matter of removal.

Senator HINDS. In that the Senator is mistaken, it would not call for any additional vote. It is true that neither one of these propositions is a judgment. Whether the one or the other is adopted, we have then to vote upon the farther question, shall he be disqualified from holding this office or any other, and to what extent? Even that is not a judgment, and although that is all the record that the Barnard case shows, yet there is no doubt that the record that was deposited in some safe keeping embraced a judgment also, though—

Senator BUCK, D. There is a judgment there.

Senator HINDS. Is there? I did not notice it. It matters not whether there was or not.

Senator BUCK, D. I will read it, if the Senator desires it. There are only a few lines.

Senator HINDS. I do not desire it. I think there should be a judgment in addition to that, and that the judgment should be in form, and whether the one proposition that is now before the Senate is adopted or the other, it will require just as many votes. The proposition of the Senator is the proposition that I withdrew. I withdrew it because the Senator from Blue Earth made the suggestion (and there may be some foundation for it, also,) that perhaps if we passed simply a resolution that he should be removed from office that might be claimed to be the judgment or final determination of this case, and that therefore we could not proceed any further in that regard. I say I withdrew it, because he made that suggestion. I do not think that the suggestion is well founded, but it is possible that it may be. Hence I withdrew it, and I have drawn the last order here with a view of avoiding any such contingency if it was possible,—to show directly that this order, if we vote in its favor, is merely an instruction as to what the judgment shall be, and I think it is the preferable of the two, notwithstanding that at first my conclusion was that the one the Senator from Washington offered was sufficient.

The PRESIDENT *pro tem.* The vote will be taken upon the substitute offered by the Senator from Washington.

Senator AAKER. Will the substitute be read by the Secretary.

The SECRETARY, (reading). *Ordered*, That a vote be now taken upon this question, Shall the judgment to be rendered against the respondent embrace his removal from office?

If the order is adopted, then the vote is to be taken upon the question which the order proposes.

Senator HINDS. That simply ascertains whether the judgment which we render shall involve this idea. Now we come to present that judgment. This is an instruction that the judgment shall be so drafted as to include a removal from office. That is all it does amount to—one step.

The SECRETARY. I will have to make up a journal here, and it seems to me that the question might be voted upon directly. Of course I will take instruction as to that from the Chair.

Senator CASTLE. That is the point I made—the precise point and the only point, that it saves two votes—just the point made by the Secretary.

Senator PILLSBURY. The point I make is that the difference is the difference between tweedle-dee and tweedle-dum, and we are consuming a great deal of time over it.

The PRESIDENT *pro tem.* The question will be now upon the substitute. The Secretary will read it.

The SECRETARY. The substitute is, Shall E. St. Julien Cox be removed from his office as Judge of the Ninth Judicial District for the causes stated in the articles of charges preferred against him, upon which you have found him guilty?

Senator BUCK, D. Now read the question.

The SECRETARY. [Reading.] Ordered, that a vote be now taken upon this question, shall the judgment to be rendered against the respondent embrace his removal from office?

The PRESIDENT *pro tem.* Under the rule the question will be taken upon the motion of the Senator from Washington. The roll will be called.

Senator CROOKS. We can, by unanimous consent, under the resolution offered by the Senator from Scott, say that we will proceed. Then what?

Senator HINDS. Why, we do proceed.

Senator PILLSBURY. You have to pass the resolution and you have to take the vote.

Senator HINDS. No, we have not to take the vote. It merely determines that the judgment which we are to render shall embrace this. There is nothing else of this at all.

Senator BUCK, C. F. If you vote in the affirmative, it merely says that the judgment shall embrace removal?

Senator HINDS. Certainly.

Senator CASTLE. I withdraw my resolution, Mr. President.

Several SENATORS. Question! question!

The PRESIDENT *pro tem.* The Secretary will call the roll on the question of the addition of the order as offered by the Senator from Washington, and if you do not like it, vote it down.

Senator PILLSBURY. That is withdrawn. Senator Castle withdrew his motion.

The PRESIDENT *pro tem.* I do not understand that it is withdrawn.

Senator CASTLE. I wanted to stop the talk.

Senator PILLSBURY. That is all I am anxious for.

The PRESIDENT *pro tem.* The Secretary will proceed to call the roll.

Senator AAKER. (When his name was called.) I want to know what resolution we are voting upon.

The SECRETARY. On this question, shall E. St. Julien Cox be removed from his office as Judge of the district court for the Ninth Judicial District for the causes stated in the charges preferred against him, upon which you have found him guilty?

Senator CASTLE. The motion is simply to substitute this in place of the other.

Senator ADAMS. (When his name was called.) Mr. President, having voted no upon all the propositions to convict, from a sense of honest conviction, disbelieving in the whole ground-work of impeachment, so far as the law is concerned—doing it under my oath, then, to be true to myself and to make my record consistent, I must vote no.

Senator CROOKS. (When his name was called.) Mr. President, holding as I do, that under the provisions of the constitution of Minnesota and its law, there has been no crime or mis-demeanor committed by

this respondent, there can undoubtedly be no penalty imposed upon him and I vote no.

Senator HINDS. (When his name was called.) I do not understand that in casting my vote upon this, I am casting it upon the question whether he shall or shall not be removed, but whether the order that I present shall be amended by substituting this in its place.

Senator AAKER. That is the question.

Senator Hinds. I therefore vote no,—that this substitute shall not take the place of the order that I presented.

Senator HOWARD. [When his name was called.] I vote aye; that is, for your bill.

Senator Powers. [When his name was called.] Mr. President, I voted, under a mental reservation, guilty on Article Four, which was not a charge of intoxication upon the bench, but where the lawyers had met before him formally, to make out a case. There was no evidence before the court that he had notice of that; and I voted guilty. Also under protest, under Article Five, which was not intoxication upon the bench, and those are the only articles that I think have been proven at all, unless it be some of the charges under Article Eighteen. I shall therefore vote no for this penalty, because I think it disproportioned to any offense that has been proven against him. If something milder were presented, I would vote for it.

The roll being called, those who voted in the affirmative were—

Messrs. Aaker, Campbell, Howard and Johnson, A. M.

Those who voted in the negative were—

Messrs. Adams, Bonniwell, Buck, C. F., Buck, D., Case, Castle, Crooks, Gilfillan, C. D., Gilfillan, J. B., Hinds, Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Pillsbury, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wheat, White, Wilkins and Wilson.

The PRESIDENT *pro tem.* The question being taken upon the adoption of the order from the Senator from Washington, there were yeas four and nays 32; so the order is adopted.

Senator GILFILLAN, J. B. That is not the question.

Senator HINDS. It is suggested that the President has misstated the question. The question was not taken upon the order of the Senator from Washington, but as to whether the order presented by me should be amended by substituting his in place of it. That is the question we voted upon.

Senator ADAMS. That was not the question.

The PRESIDENT *pro tem.* I understood that we voted upon Senator Castle's motion.

Senator PILLSBURY. I now call for the vote upon the motion of Senator Hinds.

President Gilman here took the chair.

The PRESIDENT. The question will now be upon the adoption of the order offered by Senator Hinds.

The SECRETARY. The order of Senator Hinds is as follows:

Ordered, That a vote be now taken upon this question, shall the judgment to be rendered against the respondent embrace his removal from office?

The PRESIDENT. The question is upon the adoption of the order offered by Senator Hinds, which has just been read by the Secretary. Is the Senate ready for the question? The Secretary will call the roll.

Senator CASTLE, (when his name was called). Mr. President, I think the members of this court will bear me witness that so far as my humble abilities would permit, I have expressed my opinions openly and as strong as I could against the state of things that is now existing. This court has determined that the respondent is guilty. Whatever my private judgment may have been in the premises is immaterial. This, the court of last resort, of original and final jurisdiction, has found the respondent guilty. I am not disposed to push my opposition to this tribunal beyond the bounds of propriety, if I know it. I have doubts—in deference I should say to the doubts of others—whether a less punishment than removal from office would be in consonance with the provisions of the statute. I shall vote aye on this resolution.

Senator MEALEY, (when his name was called). Mr. President, adopting the explanation of the Senator from Washington, I shall have to vote aye on this.

Senator POWERS, (when his name was called). Mr. President, if I believed that a thing was wrong, for all the men and all the women and all the children on God Almighty's earth, or on the other side, I would not be a party to that wrong, and I desire to wash my hands of the whole thing, and therefore I vote no.

The roll being called, those who voted in the affirmative were—

Messrs. Aaker, Buck, D., Campbell, Case, Castle, Clement, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Pillsbury, Rice, Shaller, Shalleen, Tiffany, Wheat, White, Wilkins and Wilson.

Those who voted in the negative were—

Messrs. Adams, Bonniwell, Buck, C. F., Crooks, Powers and Simmons.

The PRESIDENT. The question being on the adoption of the order, there were yeas 31, and nays 6, so the order is adopted.

Senator HINDS. Now I call for the regular order.

The SECRETARY. Now, under the order, the vote must be taken on that question.

Senator HINDS. Mr. President, I would state that when this order was first written it was drafted with a view of simply presenting an order of business—what we should do next. When the controversy arose between the Senator from Washington, with his substitute, and myself, I had overlooked the fact that we were voting upon this proposition merely as an order of business, and I make this explanation to show that I did not comprehend the objection that the Secretary suggested. We have now to amend—

Senator CASTLE. You may as well give me credit for that—to comprehend the objection that I suggested, in other words. It is taking three votes to get around to the position that I tried to get the Senator to take in the first place.

The PRESIDENT. The following order, offered by Senator Hinds, will now be read by the clerk.

The SECRETARY. The question is, shall the judgment to be rendered against the respondent embrace his removal from office?

The PRESIDENT. The Secretary will call the roll upon the adoption of the motion.

Senator AAKER. (When his name was called.) I believe I voted on that.

The SECRETARY. No; you voted that you would vote. [Laughter.]

Thy roll being called, those who voted in the affirmative were—

Messrs. Aaker, Buck, D., Campbell, Case, Clement, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Miller, Morrison, Officer, Perkins, Peterson, Pillsbury, Rice, Shaller, Shalleen, Tiffany, Wheat, White, Wilkins and Wilson.

Those who voted in the negative were—

Messrs. Adams, Bonniwell, Buck, C. F. Castle, Crooks, Johnson, A. M., Powers and Simmons.

The PRESIDENT. The question being upon the adoption of the order introduced by Senator Hinds there were yeas 28 and nays 8; so the order is adopted.

Senator PETERSON. Mr. President, I move that if any of the managers desire to be admitted to the hall that they be allowed to come in.

Senator GILFILLAN, J. B. I move that nothing be done here to interrupt our regular business. Let us go on.

Senator PETERSON. Mr. President, I do not make the motion for the purpose of having the doors opened to everybody, but I was on the outside a moment ago and Mr. Dunn and Mr. Gould asked me if they could not be admitted, inasmuch as the members of the press have been admitted. They are standing there, having no chairs, and their position is not a very comfortable one.

Senator GILFILLAN, J. B. I am opposed to extending to them any courtesy that we do not extend to the respondent.

Senator PILLSBURY. I give notice of debate.

Senator GILFILLAN, J. B. I move that it be laid on the table.

The PRESIDENT. Senator Gilfillan moves that the motion lie on the table. As many as are of the opinion that the motion to lay on table should prevail will say aye; the contrary, no. The ayes have it.

The Sergeant at arms will understand that the proposition to open the doors has been voted down.

What is the farther pleasure of the Senate?

Senator CROOKS. I would ask, Mr. President, pending the preparation of the order by the Clerk, shall we get through with all our business to-night, or shall we not get through until to-morrow? If so, I will offer a resolution as to the time of meeting.

Senator GILFILLAN, C. D. Mr. President, while there is a little delay I think we might introduce a little business here. I desire to offer an order.

The PRESIDENT. Senator Gilfillan, C. D. offers the following, which will be read by the clerk.

The SECRETARY. [Reading.] Ordered, that the clerk of this court prepare and cause to be published by the public printer, an index to the public proceedings of this court.

The PRESIDENT. The question is upon the adoption of the order.

The Clerk will call the roll upon the adoption of the order, as it undoubtedly involves an expenditure of money.

Senator JOHNSON, F. I. What is the question, Mr. President?

The PRESIDENT. The Secretary will read the order again.

The Secretary having read the order, the roll being called, those who voted in the affirmative were:

Messrs. Aaker, Adams, Bonniwell, Buck, C. F., Buck, D., Campbell, Case, Castle, Clement, Crooks, Gilfillan, C. D., Gilfillan, J. B., Hinds,

Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., McLaughlin, Miller, Morrison, Officer, Perkins, Peterson, Pillsbury, Shaller, Shalleen, Simmons, Tiffany, Wheat, White and Wilkins.

Those who voted in the negative were:

None.

The PRESIDENT. The question being on the adoption of the order there were yeas 31 and nayes none; so the order is adopted.

Senator HINDS. Mr. President, I desire to present this order.

The PRESIDENT. The Secretary will read the order presented by Senator Hinds.

The SECRETARY, [reading.] Ordered, that a certified copy of the judgment to be rendered in this case be transmitted to his excellency, the Governor, by the clerk of this court.

The PRESIDENT. The question is upon the adoption of the order. As many as are of the opinion the motion should prevail will say aye, contrary minded, no. The ayes have it.

The order is adopted.

Senator ADAMS. I would enquire, Mr. President, if the judgment of the court is embraced in the resolution just passed in relation to disqualification, or whether there is something else to be added to it, before the judgment is made up?

Senator CAMPBELL. The judgment is not made up.

Senator HINDS. Mr. President, I offer the following order:

The PRESIDENT. Senator Hinds offers the following order which will be read by the clerk:

The SECRETARY. [Reading.] Ordered, that the judgment to be rendered against the respondent embrace his disqualification to hold and enjoy any judicial office of honor, trust or profit in this State, for the period of three years from this date.

The PRESIDENT. The question is upon the adoption of the order.

Senator HINDS. From this date.

The PRESIDENT. The order will be again read.

The Secretary having read the order.

Senator CROOKS. Who offers that resolution?

The PRESIDENT. Senator Hinds.

Senator CROOKS. I give notice of debate.

Senator WHEAT. Mr. President, I move to amend that resolution by the following.

The PRESIDENT. Senator Wheat offers the following order, which will be read by the clerk.

Senator CROORS. I gave notice of debate, Mr. President.

Senator BUCK, D. This is not a resolution. It is part of the judgment to be entered in this case, in accordance with the rules of this court.

Senator GILFILLAN, J. B. It is not even an order, It is a motion for the entry of an order.

Senator CASTLE. It is not either, Mr. President. It is a part of the judgment of this court in regular proceedings.

Senator CAMPBELL. Yes, sir.

The PRESIDENT. The chair will hold that it is not a subject of debate. The following order is offered by Senator Wheat.

Senator GILFILLAN, J. B. We cannot hear distinctly, and I would like to have both read,—both the original and the substitute.

The SECRETARY. Senator Wheat offers to amend by striking out the word "three" and inserting the word "seven" in place thereof. The order as offered reads:

Ordered, That the judgment to be rendered against the respondent embrace his disqualification to hold and enjoy any judicial office of honor, trust or profit in this State for the period of three years from this date.

And the amendment would make the period seven years instead of three, by proper change.

The PRESIDENT. The question is upon the adoption of the amendment of Senator Wheat.

Senator WHEAT. Mr. President, I see by the indications of Senators that that amendment is thought to be severe; but, sir, it appears to me that the proposition of the Senator from Scott, if adopted, would amount to no more nor less than a disgrace to the State of Minnesota. It is not the proper punishment. I think that in order to do justice to the State of Minnesota in this case, a judgment that would disqualify the respondent for at least seven years is certainly necessary. I do not desire to debate this question. It is a question which does not need debate. It is simply a question of degree.

The PRESIDENT. The question is upon the adoption of the amendment by Senator Wheat, is the Senate ready for the question?

Several Senators. Question!

The PRESIDENT. The Clerk will call the roll upon the adoption of the amendment.

The Secretary proceeded to call the roll.

The PRESIDENT *pro tem*. For the information of Senator Powers, who has just come in, the motion of Senator Hinds, and the amendment to the same offered by Senator Wheat will be read by the Clerk.

The Secretary having read the order and the proposed amendment to to the same.

Senator POWERS. I vote no, Mr. President. In explanation of my vote, just a word.

Senator BUCK, D. I rise to a question of order. The Senator has voted already.

Senator POWERS. That is in perfect harmony with the other gag law. [Laughter.]

Senator BUCK, D. I do not desire to apply gag law, and withdraw the motion. The Senator knows I am very kind to him.

Senator POWERS. I know that the Senator is my friend.

Senator WHEAT. I would like to hear the explanation.

Senator CAMPBELL. I move that he be heard in explanation of his vote.

Senator POWERS. Oh, I would just as soon explain my vote. I see that the Senator from Scott has placed the period of disqualification just long enough to put it beyond the time of the next election, so that the respondent may not be in the way of any of his friends. That is all. [Laughter.]

The roll being called,

Those who voted in the affirmative were—

Messers. Gilfillan, C. D., Gilfillan, J. B., Wheat and White.

Those who voted in the nagative were—

Messrs. Aaker, Adams, Bonniwell, Buck, C. F., Buck, D., Campbell,

Case, Castle, Clement, Crooks, Hinds, Howard, Johnson, A. M., Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Mealy Miller, Morrison, Officer, Perkins, Peterson, Pillsbury, Powers, Rice, Shaller, Shalleen, Simmons, Tiffany, Wilkins and Wilson.

The PRESIDENT *pro tem.* The question being upon the adoption of the amendment offered by Senator Wheat, there were nays 33 and ayes 4; so the amendment was lost.

The question now recurs upon the adoption of the resolution offered by Senator Hinds. The clerk will call the roll.

Senator CROOKS. Mr. President, will you have it distinctly reported what the question is that is now before the Senate.

The PRESIDENT. The resolution offered by Senator Hinds will be read by the clerk.

The Secretary having read the resolution.

Senator CROOKS. That I understand, Mr. President, is in addition to removal from office,—that for a period of three years—(I suppose it is from the record of the entry of judgment)—he cannot occupy any judicial position in this State, if that order is adopted?

The PRESIDENT. That is the question. The clerk will call the roll pon the adoption of the order.

Senator MEALEY, (when his name was called.) Mr. President, I think that penalty just three months too much, for the cause of action proven. I vote no.

The roll having been called by the Secretary.

The PRESIDENT. The question being upon the adoption of the order of Senator Hinds there were yeas 24—

Senator CASTLE. Mr. President, in regard to the announcement of that vote I would like to suggest—I was doing what I had no business to do, engaged in other matters—but there is a question that might, perhaps, arise in this matter. The chair might state the vote in the first instance. There are some Senators who hold that it requires the same vote to fix a penalty that it does to convict, and I would suggest that the President simply announce what the vote has been, and then, if there should any question arise, we can determine the other proposition.

Senator GILFILLAN, J. B. I would like to enquire if all present have voted?

Senator CROOKS. I move a call of the Senate.

Senator RICE. It is out of order.

The PRESIDENT. The chair would state that it is customary for the chair in announcing a vote to announce also whether the proposition or motion is carried or not. The chair will say that if it is thought necessary to fix a penalty, it might be well to take the vote again, so that before going farther there may—

Senator CASTLE. I say it *might* be necessary. If the Chair will have the goodness to announce just what the vote is as taken—how many yeas and how many nays—it might not be necessary to take up farther time, without declaring whether or not the motion was carried.

The PRESIDENT. The Chair will state that there is not a two-thirds vote in favor of the proposition.

Senator CASTLE. Will the Chair please state what the vote was.

The PRESIDENT. There were 24 yeas and 13 nays.

The SECRETARY. And four Senators, who did not vote, are absent—Senators Beman, Langdon, Lawrence and MacDonald,

The PRESIDENT. It is a question that has occurred to the Chair in regard to the matter of fixing the penalty, and it would be gratifying to the Chair to have the matter determined by the Senate in order that it may not be compelled to determine whether or not the motion prevails.

Senator CASTLE. I merely made the suggestion, because I do not care to have the friends of the resolution placed in a false position. I had no other motive.

The PRESIDENT. The proceeding of taking the vote upon that question having been interrupted, the Chair will consider that no vote has been taken. That will enable Senators who desire to do so, to discuss the point raised by Senator Castle. There has been no vote announced.

Senator BUCK, C. F. Mr. President, as I understand——

Senator CASTLE. Mr. President, I understand that this vote has been taken once; I do not know of any power to take a vote over again.

Senator BUCK, C. F. Do I understand the President to have decided the question that it had not carried?

The PRESIDENT. The Chair has not made any decision in the matter. The Chair stated that the proceedings in taking the vote having been interrupted—some remarks having been made and some desire exhibited to discuss the point that was overlooked at the time of taking the vote—the Chair decides that the vote, so far as it has proceeded, is void, and calls for a new calling of the roll, to enable Senators to discuss the question, if they desire to.

Senator CASTLE. I say, Mr. President, that the vote was all taken before any question was raised, and every man reported before any question was raised. I simply called attention to this matter in fairness to the friends of this measure, that they should not be placed in a false position, and for no other purpose.

The PRESIDENT. It was not the desire of the Chair to have the vote again taken. That course was suggested by the Chair with a view to the accommodation of Senator Castle.

Senator HINDS. It is usual for the Secretary to read off the names of the Senators present and voting, showing how each Senator has voted. Now I may be recorded wrong, different from what I intended to vote, or I may wish to change my vote, and when the list is read by the Secretary there is a chance for any Senator to change his vote if he sees fit to do so. Now I ask that the vote as recorded be read.

The PRESIDENT. The vote as recorded will be read by the Secretary.

The SECRETARY. Those who voted in the afirmative were—

Senators Aaker, Buck, D., Campbell, Case, Clement, Gilfillan, C. Gilfillan, J. B., Hinds, Howard, Johnson, F. I., Johnson, R. B., McCormack, McCrea, Mctaughlin, Miller, Officer, Pillsbury, Rice, Shaller, Shalleen, Tiffany, Wheat, White, Wilkins and Wilson.

Those who voted in the negative were—

Senators Adams, Bonniwell, Buck, C. F., Castle, Crooks, Johnson, A. M., Mealey, Morrison, Perkins, Peterson, Powers, Shaller and Simmons.

Senator SHALLER. Mr. President, I vote aye.

Senator CASTLE. That makes ten; the necessary number, anyhow.

The PRESIDENT. The question being upon the motion of Senator Hinds, there were ayes 25, and nays 12, so the order is adopted.

Senator HINDS. I move, Mr. President, that a judgment of the court be rendered as follows:

The PRESIDENT. The clerk will read the order embraced in the motion of Senator Hinds.

The Secretary read as follows:

JUDGMENT.

In the matter of the impeachment by the House of Representatives of E. St. Julien Cox, Judge of the District Court of the State of Minnesota in and for the Ninth Judicial District, of crimes and misdemeanors in office, to-wit:

The Senate of the State of Minnesota having organized and qualified as a court of impeachment for the trial of the impeachment by the House of Representatives of the State of Minnesota of E. St. Julien Cox, Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, of crimes and misdemeanors in office, and when sitting for the purpose of such trial, the Senators being upon oath to do justice according to law and evidence.

And the articles of such impeachment having been served upon said E. St. Julien Cox, Judge as aforesaid, by copies thereof, more than twenty days previous to the day set for the trial thereof.

And the said E. St. Julien Cox, having demurred thereto, which being overruled by this court, except as to article nineteen, such demurrer being sustained as to article nineteen.

And the said E. St. Julien Cox, Judge as aforesaid, having appeared before this court of impeachment in person and by counsel and responded to said impeachment and the articles thereof by answer denying the charges therein made against him.

And this court of impeachment having heard and duly considered the proofs produced in support of said impeachment and the articles thereof, and having heard and duly considered the proofs produced by the said respondent E. St. Julien Cox, Judge as aforesaid, in opposition thereto and in defense of himself against the charges made by said impeachment and the articles thereof against him.

And this court of impeachment having heard the argument of the managers on behalf of the House of Representatives, and of counsel in behalf of the said respondent E. St. Julien Cox, Judge as aforesaid.

And the said E. St. Julien Cox, Judge as aforesaid of the district court of the State of Minnesota in and for the Ninth Judicial District, having, by the concurrence of two-thirds of the members of the Senate present, constituting the court of impeachment, been convicted of the crimes and misdemeanors charged againt him in said impeachment in

ARTICLE II.

That E. St. Julien Cox, being a Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such Judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Waseca, in said State, to-wit: On the 24th day of March, A. D. 1879, and divers days between that day and the 7th day of April, A. D. 1879, acting as, and exercising the powers of such Judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the District Court of

said Waseca county, and did there and then preside as such Judge at the trial, examination and disposition thereof, while he, the said E. St. Julien Cox, was in a state of intoxication, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from 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 said office with decency and decorum, faithfully and impartially and according to his best learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, there and then was guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE III.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Brown in said State, to-wit: On the 12th day of June, A. D., 1879, and on divers days between that day and the 25th day of said June, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and there pending in the district court of said Brown 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 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 to discharge the duties of his said office with decency and decorum, faithfully and impartially and according to his best learning, judgment and discretion to the great disgrace of the administration of public justice and to the evil example of persons in office, by reason whereof the said E. St. Julien Cox was then and there guilty of misbehavior in office and of crimes and misdemeanors in office.

ARTICLE IV.

That E. St. Julien Cox, being a judge of the district court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his oath of office and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 15th day of August, A. D., 1879, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and the examination and disposition of other matters and things then and there pending in the district court of said Nicollet 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, 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 learning, judgment and discretion, to the great disgrace of the administration of public justice and to the evil example of persons in office, by reason whereof, he, the said E. St. Julien Cox, then and there was guilty of misbehavior in office and of crimes and misdemeanors in office.

ARTICLE V.

That E. St. Julien Cox, being a judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Nicollet, in said State, to-wit: On the 13th day of October, A. D. 1879, acting as and exercising the powers of such judge, did then and there examine and disprove of matters and things then and therein 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 theretofore been tried before him as such judge, in which one Albrecht was plaintiff and one Long was defendant, while he, the said E. St. Julien Cox, 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julian Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE X.

That E. St. Julien Cox, being a judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his said oath of office, and of the constitution and laws of the State of Minnesota, at the county of Lyon, in said State, to-wit: On the 2nd day of May, A. D. 1881, acting as and exercising the powers of such judge, did enter upon the trial of certain causes and 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, caused by the voluntary and immoderate use of intoxicating liquors, which disqualified him from 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in

office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XIV.

That E. St. Julien Cox, being a Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his oath of office and the constitution and laws of the State of Minnesota, at the county of Lincoln, in said State, to-wit: On the 14th day of June, A. D. 1881, and on divers days between that day and the 21st day of said June, acting as and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the District Court of said Lincoln 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, 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

ARTICLE XV.

That E. St. Julien Cox, being a Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, unmindful of his duties as such judge, and in violation of his oath of office, and of the constitution and laws of the State of Minnesota, at the county of Lyon, in said State, on the 21st day of June, A. D. 1881, and on divers days between that day and the 30th day of said June, acting as, and exercising the powers of such judge, did enter upon the trial of certain causes, and the examination and disposition of other matters and things then and therein pending in the District Court of said Lyon county, and did and then 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, 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 learning, judgment and discretion, to the great disgrace of the administration of public justice, and to the evil example of persons in office, by reason whereof he, the said E. St. Julien Cox, was then and there guilty of misbehavior in office, and of crimes and misdemeanors in office.

It is considered, adjudged and determined by the Senate of the State of Minnesota, sitting upon oath to do justice according to the law and evidence, and constituting this court of impeachment as aforesaid, and the judgment of this court of impeachment is that the said respondent, E. St. Julien Cox, Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, be and he is hereby removed from his said office of Judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District; and that he, the said E. St. Julien Cox, be and is disqualified for and during the full period of three years to hold or enjoy the office of judge of the District Court of the State of Minnesota, in and for the Ninth Judicial District, and of all other judicial offices of honor, trust or profit in this State, for the period of three years from this 22d day of March, A. D. 1882.

The PRESIDENT. The question is upon the adoption of the order. Is the Senate ready for the question?

Senator WILSON. Question!

The PRESIDENT. The Secretary will call the yeas and nays upon the adoption of the order just read.

Senator PERKINS (when his name was called.) Mr. President, I am compelled to vote no upon the entry of this judgment for the simple reason that in my judgment it includes too much,—a disqualification to hold judicial office.

The roll being called those who voted in the affirmative were:

Messrs. Aaker, Buck, D., Campbell, Case, Clement, Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Miller, Officer, Pillsbury, Rice, Shaller, Shalleen, Tiffany, Wheat, White, Wilkins and Wilson.

Those who voted in the negative were—

Messrs. Adams, Bonniwell, Buck, C. F., Castle, Crooks, Johnson, A. M., Mealey, Morrison, Perkins, Peterson, Powers and Simmons.

The Secretary having read the names, as recorded, of the Senators who voted in the affirmative and of those who voted in the negative.

The PRESIDENT. The question being on the adoption of the order there were yeas 25 and nays 12; so the order is adopted.

Senator PILLSBURY. Mr. President, I ask leave to introduce the following order.

The PRESIDENT. The following order is presented by Senator Pillsbury and will be read by the Clerk.

The SECRETARY read as follows:

Ordered, that the Secretary have printed, bound and forwarded to each member of this court three copies of the proceedings of this court.

Senator GILFILLAN, C. D. I would call the attention of the Senator to the fact that on the 13th day of December, we made provision for the distribution to the members and officers of this court of copies of our proceedings.

Senator PILLSBURY. I did not know that. I withdraw the order.

Senator CASTLE. What is that? Let us know before you withdraw the order.

Senator PILLSBURY. I am informed that the order referred to by Senator Gilfillan provides for only one copy. That is not enough.

Senator GILFILLAN. This is the order referred to, Mr. President:

Resolved, That there be printed one hundred copies of the daily proceedings

of this court, and 400 volumes of the proceedings in the impeachment and trial thereof of Judge Cox, and that there be bound of such proceedings one copy for the use of each member and officer of the Senate, and 100 copies for the use of the law library.

Senator PILLSBURY. I insist upon my motion. I think Senators should have three copies.

Senator GILFILLAN, C. D. That would make four.

Senator PILLSBURY. Then I move to amend my motion so as to make it read "two additional copies."

The SECRETARY. [Reading.] Ordered, That the Secretary have printed, bound and forwarded to each member of this court two copies of the prooeedings of this court in addition to the one already ordered.

Senator PILLSBURY. That is it.

The PRESIDENT. The question is upon the adoption of the order. Is the Senate ready for the question? The clerk will call the roll upon the adoption of the order.

Senator CROOKS. I move that we now adjourn.

Senator GILFILLAN, C. D. I hope that motion will not be presented. We have some matters of business which ought to be attend to.

Several Senators. Question!

The roll being called upon the passage of the order offered by Senator Pillsbury, there were 24 yeas, and 7 nays, as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Adams, Bonniwell, Buck, C. F., Campbell, Clement, Crooks, Gilfillan, J. B., Howard, Johnson, A. M., Johnson, R. B., McLaughlin, Mealey, Miller, Officer, Peterson, Pillsbury, Powers, Shaller, Shalleen, Simmons, Wheat, White and Wilson.

Those who voted in the negative were—

Messrs. Buck, D., Case, Gilfillan, C. D., Johnson, F. I., Perkins, Tiffany and Wilkins.

And so the motion was dopted.

Senator GILFILLAN, C. D. I suppose it is desirable upon the part of hose Senators who want three copies to get them within a reasonable ime. I would call upon the Secretary to produce the order that was presented some days ago and then laid on the table.

The Secretary having produced the order,

The PRESIDENT. The order presented by Senator Gilfillan, C. D., will be read by the Secretary.

The Secretary read as follows:

Ordered, That the notes of the proceedings of this court taken down by the reporters since March 7th, inst., and those hereafter reported, be written out as copy and delivered by said reporters to the public printer w thin three days from the time such notes are taken, and that no bill be allowed by this court for any work done by the reporters not in accordance with that order.

Ordered, That from this date the public printer shall publish within two days after the receipt of any of the copy described in the above order the proceedings embraced in such copy, and deliver the same to the clerk of this court.

Senator GILFILLAN, C. D. The order would not be proper in the state it is now in, but we should have some substitute for it requiring the reporters to hand a transcript of their notes of the proceedings to the printer, and the public printer to have them printed and delivered to the

clerk of this court within a certain number of days after the receipt of them.

The PRESIDENT. It would be well for the matter to be referred to the Senator who introduced the order.

Senator PILLSBURY. I move that it be referred to Senator Gilfillan, C. D.

Senator GILFILLAN, C. D. I would prefer to have it submitted to some other gentlemen.

The PRESIDENT. The order will be submitted to Senator Gilfillan, C. D.

Senator RICE. Mr. President, I desire to offer the following order.

The PRESIDENT. The following order which is offered by Senator Rice will be read by the clerk.

The Secretary read as follows:

WHEREAS, It is well known to this Senate that the respondent is in greatly embarrassed financial circumstances and unable to recompense counsel in his behalf; and,

WHEREAS, It is considered by the Senate of the utmost importance in a case of this magnitude, both to the State and to the respondent, that the respondent be fully and fairly represented by able counsel without regard to whether the respondent is able to employ such counsel; therefore, be it

Resolved, That counsel for the respondent, Messrs. Allis, Brisbin, Sanborn and Arctander, who have attended on the sessions of this court, be allowed, as a part of the expenses of this court, the sum of five dollars each for each and every day that each of said counsel have attended upon the sessions of this court; and that the clerk of this court be authorized and empowered to issue to each of said counsel the proper voucher for the same, upon the verified account of such counsel having been filed with him.

The PRESIDENT. The question is upon the adoption of the order.

Senator BUCK, D. I think it ought to be understood here that Mr. Arctander has been drawing salary at the rate of $2,000 a year from this State during all the time he has been here.

Senator RICE. I beg the Senator's pardon. That is not correct. He is not drawing it from the State but from the Twelfth Judicial District. Where the district has made a call upon him during this term he has furnished a substitute for himself.

Senator BUCK, D. I have been told by good authority that one term of court had to be adjourned to wait for him.

Senator RICE. I know the term referred to. It was one to be held at Willmar and there was not a single case of criminal prosecution, and that is all he has had.

Senator GILFILLAN, J. B. I would like to ask for imformation whether any Senator knows of any legal authority that we have to appropriate or to attempt to appropriate money in this way.

Senator RICE. About the same authority we had to pay a chaplain at the regular session.

Senator GILFILLAN, J. B. But we have not had the benefit of clergy during the whole term of this court.

Senator CASTLE. I think that is an unfortunate fact, too. [Laughter.]

Senator RICE. We had no authority to pay a chaplain during the regular session,

Senator GILFILLAN, J. B. Well, if that was wrong, it would not make this right.

Senator RICE. Nor in a contested election suit.

Senator GILFILLAN, J. B. The Legislature frequently has the power to appropriate money when a court of impeachment has not. I do not know of any power that we have to appropriate money.

Senator RICE. The money is taken out of the regular appropriation for legislative expenses. So in this case, it will be taken out of the money set apart for deficiencies that arise.

Senator GILFILLAN, J. B. I do not know, Mr. President, of any authority in the law for such an appropriation. Now, the order or resolution, or whatever it is that is offered, recites the fact that the respondent is poor and unable to pay his counsel. I submit in connection with that, this fact should be taken into consideration, and that is, that ever since the impeachment, and during the whole pendency of the impeachment, and until now, he has been drawing his salary as Judge from the State at the rate of $3,500 a year. I suppose that will cease, probably, now, upon his removal from office. It has been suggested here that his salary has not been accruing to him during the pendency of this impeachment, but I know of no such law—either statutory or constitutional law.

Senator CASTLE. I would ask the Senator if he states of his own knowledge that he has actually drawn his pay.

Senator BUCK, D. He is entitled to it.

Senator CASTLE. I ask the Senator if he states of his own knowledge that the respondent has drawn it? I understand him to say the respondent has drawn it, and I ask him whether he states it as a fact?

Senator GILFILLAN, J. B. I am not speaking of the fact, but of the law.

Senator CASTLE. I think there is a very grave question about that law.

Senator GILFILLAN, J. B. The constitution provides that his term of office shall be seven years, and his pay is prescribed by law. I do not know of anything that can take away that pay, except some express authority. The only thing that is taken from him by the impeachment is the right to exercise the duties of his office. He is not even suspended from office or removed in any other sense than this which is provided by the constitution:

Section three of article thirteen provides that "no officer shall exercise the duties of his office after he shall be impeached and before his acquittal." Now then, I say, that without exercising the first duties of his office, there has been accruing to him since his impeachment, from the State of Minnesota, his salary at the rate of $3,500 a year up to the present time. He is entitled to draw it if he thinks proper, and out of that he can compensate his counsel if he sees fit to do so. I do not know of any legal right we have to appropriate this money. Some Senator may cite some authority which has escaped my attention, but I do not know of any.

The PRESIDENT. The question is upon the adoption of the order. Is the Senate ready for the question. The Secretary will call the roll upon the adoption of the order.

The Secretary having begun to call the roll,

Senator PERKINS. (When his name was called.) As I understand

this matter if the motion or order is carried it will result simply in authorizing the issuance of orders or scrip if you may so term it, for the payment of money, which is not negotiable and which will depend for its ultimate payment upon the action of the next legislature. They may pay it then or they may not. Therefore, I think it is proper to leave a question of that kind to the next legislature, and consequently I vote no.

The roll being called those who voted in the affirmative were—

Messrs. Adams, Bonniwell, Buck, C. F., Campbell, Case, Castle, Crooks, Mealey, Morrison, Peterson, Pillsbury, Powers, Rice and Simmons.

Those who voted in the negative were—

Messrs. Aaker, Buck, D., Gilfillan, C. D., Gilfillan, J. B., Hinds, Howard, Johnson, R. B., McLaughlin, Miller, Officer, Perkins, Shaller, Shalleen, Tiffany, Wheat, White and Wilkins.

The Secretary having read the names as recorded of those who voted in the affirmative and those who voted in the negative.

The PRESIDENT. The question being on the adoption of the order there were yeas 15 and nays 17; so the motion is lost.

Senator HINDS. Mr. President, I present the following order.

The PRESIDENT. Senator Hinds offers the following order which will be read by the clerk.

The Secretary read as follows:

Ordered, that five dollars ($5) per day additional compensation be paid to the President *pro tem* for the time he has occupied the chair since the 15th.

Senator HINDS. Mr. President, it has been noticed, I presume, by Senators, that during most of the time since February 15th, the chair has been occupied by the President *pro tem.* He is receiving five dollars per day as a Senator. Now, I suggest, and I think it is proper that we should recognize his services in that capacity, that we allow him five dollars a day additional compensation.

Senator ADAMS. Mr. President, I would inquire of the Senator from Scott whether this is twenty dollars a day for the two presiding officers of the court, ten dollars a day for the presiding officer of the Senate as the constitution provides, and ten dollars a day during his absence for some body's else?

Senator HINDS. It would amount at most to fifteen dollars a day for both, This resolution or order gives five dollars a day additional to the President *pro tem.* That is all it does. He gets five dollars a day as a Senator.

Senator ADAMS. Doesn't the President of the Senate get ten dollars a day?

The PRESIDENT. The chair will state that there was a communication some time since directed to the Secretary or clerk of this court which the clerk has, and will please read. It will throw some light upon the matter now under discussion.

The SECRETARY. I have here in an official postoffice envelope from the office of the Third Assistant Postmaster General, Division of Dead Letters, postmarked at Washington, March 18th 2 P. M., 1882, addressed to C. A. Gilman, St. Cloud, this enclosure: An envelope, postmarked St. Cloud, March 5, 1882, addressed to Hon. S. P. Jennison, clerk of the High Court of Impeachment, St. Paul, Minnesota, and inside of that this letter, now received by way of Washington:

ST. CLOUD, MINN., March 4th, 1882.

Hon. S. P. Jennison:

Well, it is addressed to the Secretary of this Senate.

My business is such that I cannot leave it now except at a great sacrifice, and President *pro tem* Wilson and other Senators so ably fill the chair during this trial that my presence there is not absolutely necessary. Please omit my name from the list in making out the pay-roll, or if already made out, strike my name off as I I struck it it off the last list.

Hoping to be able to be with you at some time before the close,

I am, respectfully,

[Signed,] C. A. GILMAN.

I should supplement that by saying that although I never received it, the President has not been here since and I have drawn him no orders. I have complied with his request, although I had not yet received it, because he has not been here to get them, and has not signed the vouchers. I cannot issue orders without his signature.

Senator HINDS. The Senator's question is more amply answered than I was able to answer it.

Senator ADAMS. I am satisfied.

The PRESIDENT. The question is upon the adoption of the order. The Chair will state that it may be necessary to have a majority of all the Senators to vote in favor of that under Rule 50. The Secretary will call the roll.

The Secretary having begun to call the roll,

Senator RICE. I would ask the Senator from Scott if it is with the consent or at the request of the President *pro tem.* that he offers this order.

Senator HINDS. I believe that under the rules of the Senate the calling of the roll is now in order.

Senator RICE. That is not answering my question.

Senator POWERS, (when his name was called). With the explanation made by the President, Mr. Secretary, I vote aye.

The roll being called, those who voted in the affirmative were—

Messrs. Aaker, Adams, Bonniwell, Buck, C. E., Buck, D., Campbell, Case, Clement, Crooks, Gilfillan, C. D., Hinds, Johnson, A. M., Johnson, F. I., Johnson, R. B., Mealey, Officer, Pillsbury, Powers, Shaller, Simmons and White.

Those who voted in the negative were—

Messrs. Castle, Gilfillan, J. B., Howard, Miller, Perkins, Peterson, Shalleen, Tiffany, Wheat and Wilkins.

The Secretary having read the names as recorded of those who voted in the affirmative and of those who voted in the negative,

The PRESIDENT. The question being on the adoption of the order, there were ayes 21 and noes 10. So the motion prevails, and the order is adopted.

Senator GILFILLAN, C. D. I would like to call the attention of the court to one matter. The Committee on Accounts have had presented to them on several occasions items for board, in bills presented by the sergeant-at-arms and his deputy, incurred while they were traveling around in the business of the court. The members of the court will also remember that the managers had such items in their bills, and the court directed the Committee on Accounts to reject those items in the managers' accounts.

The members of the committee have refused to allow those that were embraced in the accounts of these officers. We have allowed the accounts after we had stricken them out. They have made out, however, a separate bill including these accounts, and have presented it to me and wish action upon it by the Senate. I will state, in justice to these gentlemen, that they claim they paid their board while here in St. Paul at hotels, and also while they were absent, as well as paying their bills at hotels while traveling around the country. I say that for the information of the Senate while asking whether the bills shall be allowed.

Senator ADAMS. I move that the committee be authorized to settle the accounts.

Senator PERKINS. Mr. President, I would like to ask the Senator from Ramsey a question. Do these gentlemen claim that their board has cost them more while they were traveling about this work than it would have been if they had remained here in attendance upon court? Do they claim that their bills have been larger in the same time?

Senator GILFILLAN, C. D. I cannot answer the question, but I presume it has.

Senator PERKINS. Do they so claim?

Senator GILFILLAN, C. D. They claim that they have had to pay them twice.

Senator PILLSBURY One of the officers stated to me that they had to board here by the week and when they were sent out to serve subpœnas their board here continued.

The PRESIDENT. Will Senator Adams please put his motion in writing.

The SECRETARY. One bill is that of A. H. Bertram, hotel bill while serving subpœnas and performing the duties of sargeant-at-arms on the following days: January 10th to 12th, inclusive, January 16th to 18th, January 27, and February 8th to 9th, inclusive; total $16.50. C. M. Reese, when on duty serving subpœnas, January 6th to 14th, 1882, inclusive, 9.00; hotel bill from January 29th to February 16th, inclusive, $1.50 a day; hotel bills, March 3rd and 4th, two days, at $1.50; a total of $43.50. And Mr. Mellen's bill, board from January 6th, $58.50.

Senator MEALEY. I move that those bills be allowed.

Senator CROOKS. I second the motion.

The PRESIDENT. The Chair would suggest that allowing those bills directly would require a majority vote of all the Senate because it involves an appropriation or an issuance of certificates.

Senator GILFILLAN, C. D. If the Senator will change the resolution so as to authorize the committee on accounts to act in the matter, it might be better.

Senator CROOKS. Let them act and report.

Senator MEALEY. I will change the motion and make it so that the committee be authorized to audit the bill.

The PRESIDENT. Senator Mealey moves that the committee be directed to allow the bills in question. Is the Senate ready for the question?

Senator POWERS. Mr. President, I understand—I do not know whether it has been explained or not—that that is for just transient board, a day or two at a time, that their board continued to run here in the city at the same time and that they have been compelled to pay both, as they could not leave their hotels each time they were sent out. I could not hear what the Senator from Ramsey said; perhaps he explained that.

It seems it is for money they have absolutely paid out of their pockets in the shape of extras.

The PRESIDENT. The question is upon the adoption of the motion of Senator Mealey that the committee be directed to allow the bills in question. Is the Senate ready for the question?

Those who are of the opinion that the motion should prevail will say aye; those opposed, no.

The ayes have it. The motion prevails.

Senator CAMPBELL. Mr. President, I offer the following order.

The PRESIDENT. Senator Campbell offers the following order which will be read by the clerk.

The Secretary read as follows:

Ordered. That the official stenographers of the Senate, sitting as a Court of Impeachment, cause to be prepared for the public printer a full copy of the proceedings of this court not yet published within four weeks from this date, and that they be required to furnish the same as fast as prepared.

The PRESIDENT. The question is upon the adoption of the motion. Is the Senate ready for the question.

As many as are of the opinion the motion should prevail will say, aye. The contrary minded, no.

The ayes have it. The order is adopted.

Senator HINDS. If there is no other business, Mr. President, then I move that the doors be opened and the result of the trial be announced by the President.

The PRESIDENT. Does that mean that the judgment should be read at length.

Senator HINDS. No; simply to announce upon which articles the respondent has been found guilty, and upon which he has been acquitted, and what the judgment of the court is.

Senator GILFILLAN, J. B. Mr. President, before that is done I would like to have a reconsideration of a former vote. I find that some of the Senators feel as though justice has not been done upon the question of voting compensation to the attorneys of the respondent. I voted against it, and so for the sake of bringing the question up, and giving all Senators an opportunity to act again in the matter, I move a reconsideration of the vote by which the motion to appropriate money to pay the respondent's counsel was lost.

The PRESIDENT. Senator Gilfillan, J. B. moves a reconsideration of the vote by which the motion of Senator Rice was lost, the motion being in relation to the payment of fees to the counsel for the respondent.

The question is upon the motion to reconsider. As many as are of the opinion the motion should prevail will say aye; those of the contrary opinion, no.

The ayes have it. The question is now before the house for consideration.

Senator MILLER. Mr. President, this is a resolution, is it not?

The PRESIDENT. A motion for the reconsideration of the vote by which Senator Rice's motion in relation to fees to the counsel for the respondent was lost. The vote by which the motion was lost has been reconsidered, and the question is now before the Senate for its consideration.

Senator MILLER. The question which is before the Senate now is in the shape—

The PRESIDENT. The question is upon the adoption of the order as introduced by Senator Rice.

Senator MILLER. I give notice of debate.

Senator RICE. You cannot give notice of debate upon the order.

The PRESIDENT. What is the motion of the Senator?

Senator MILLER. I give notice of debate.

The PRESIDENT. It has been decided that this is not in the nature of a resolution, and that a notice of debate is not in order.

The question is upon the adoption of the order.

Senator MILLER. I call for the yeas and nays.

Senator CAMPBELL. It is well understood, Mr. President, that the respondent in this case, notwithstanding the fact that he has been drawing for a few years the salary of a judge of the district court, is very poor. I suppose it is well understood that he has scarcely enough money to take him home. And it is well known that his attorneys have received no remuneration for their time; and in view of the judgment passed by this court on the respondent, and in view of the fact that his attorneys are poor—I do not desire to enlarge upon their poverty, but it is a fact within my knowledge that the majority of them are poor men—I think we might well afford, I say, in view of the judgment and of the circumstances both of the respondent and his counsel, to grant to them at least partial remuneration for their services. I hope the Senate will take that view of it, and if they cannot do full justice to these gentlemen in the way of remuneration, that they do them at least partial justice. I believe it is a fact, in cases where persons accused of crime are on trial and unable to pay an attorney to assist them in their defense, that the court usually makes an order appointing attorneys and obligating the district or county in which the trial is had, to pay for their services. I do not think we shall be exercising an undue liberality with the people's money if we pay these gentlemen a reasonable compensation—*some* remuneration, and I hope the order will be adopted.

The PRESIDENT. The question is on the adoption of the order. Is the Senate ready for the question?

Several SENATORS. Question! question!

Senator POWERS. Mr. President, it may not perhaps be understood just how much this involves. They do not ask for the amount that was paid to the attorneys for the prosecution, the managers. They do not ask for solid time. They ask simply compensation for the time that they have been in actual attendance, at half the per diem that was allowed to the managers. I believe it will amount altogether to 45, 25 and 5 days—perhaps I have omitted one for I am going entirely by memory—so that it is not a large amount. It will pay their board bills and that is all.

Senator HINDS. I move to amend by adding at the end these words: "Not to exceed in all the sum of $300."

Senator RICE. I will accept the amendment.

Senator POWERS. That will not cover it.

Senater RICE. It may not, but then it will be sufficient to pay their board bills.

The PRESIDENT. The motion will be reconsidered.

Senator RICE. I hope every Senator here will vote for the adoption of this order. As the Senator from Meeker has just said the respondent is a poor man and so are his counsel. I do not know about Mr. Sanborn but he will not get much out of it under this order. He was here only two or three days. It is so with Mr. Allis. He is a poor man. I know that Mr. Arctander is a poor man. I know that he is supporting his parents in the old country and is supporting a large family at home and his wife's relations. He has heavy expenses and the fact that he draws a salary from the Twelfth Judicial District should not in any way operate against him here. Of course, Mr. Arctander may have said some things here during the trial that were displeasing to Senators. No doubt he did, but the better you know Mr. Arctander the better you think of him. He is a man of impulse and zealous in the cause of those he champions. He would do any earthly thing for one who was his friend, would spend every dollar in the world in his behalf, and his zeal in this respect is his greatest fault. It is his nature and he ought not to be blamed for it. Hence the Senate should excuse him if he has made some remarks during the course of this long trial that were displeasing to individual Senators.

Senator GILFILLAN, C. D. Let us have a vote.

The PRESIDENT. The question is upon the adoption of the order.

Senator HINDS. The question is upon the amendment.

The PRESIDENT. The amendment has been accepted. Senator Hinds moves to amend by adding at the end of the order "provided, that the amount shall not exceed $300." The amendment was adopted and that will be taken as the sense of the Senate.

Senator CAMPBELL. I move as an amendment that the order be changed so as to read "not to exceed $350." I think that will cover it. I understand so, at least.

Senator RICE. I hope the amendment of the Senator will be undisturbed. We shall have to have a unanimous vote here or we shall not get anything, and I think that $300 will do them some good. It will pay board bills.

Senator CAMPBELL. Three hundred and fifty will cover it.

The PRESIDENT. The question will be upon the adoption of the order of Senator Rice appropriating five dollars a day for each day's attendance to counsel for the respondent. Senator Hinds moves to amend by adding the words "provided the amount shall not exceed the sum of three hundred dollars ($300)." Senator Campbell oves to amend the amendment by making it read, "Provided the amount shall not exceed the sum of three hundred and fifty dollars ($350)."

Senator CAMPBELL. I do not wish to jeopardize the passage of the order.

Senator HINDS. I will accept it.

The PRESIDENT. The question is upon the adoption of the amendment to the amendment. As many as are in favor of the motion will say aye. Those opposed, no.

Senator POWERS. Mr. President, I would say that I have figured up the number of days and that under the resolution the compensation will amount to just five dollars a day. The Senate will bear in mind that Mr. Arctander, in addition to sitting up until four o'clock in the morning, has prepared for us two indexes of the testimony which have saved a great deal of trouble.

The PRESIDENT. The question being put upon the amendment of Senator Hinds as amended by Senator Campbell, the ayes have it. The question is now upon the order of Senator Rice as amended. The Secretary will call the roll upon the adoption of the order as amended, which provides that the sum appropriated shall not exceed the sum of $350.

The Secretary having begun to call the roll,

Senator GILFILLAN, J. B (when his name was called.) Mr. President, this whole appropriation amounts to $300.

The PRESIDENT. Not to exceed $350.

Senator GILFILLAN, J. B. I wish to say by way of explanation that I have a good deal of doubt as to our right to make this appropriation. I did not believe we had the legal right to make the last appropriation that was voted, hence I voted against it, but the appropriation was carried. Now as there are so many Senators who think we have the right to do this, and as this appropriation is, I think, really as well deserved as the other—not much difference, perhaps—I will vote aye.

Senator PERKINS (when his name was called.) For the reasons stated by the Senator from Hennepin, and for the further reason that the amount is fixed I will vote aye.

Senator TIFFANY (when his name was called.) In justice to myself I desire to say that I do not think we have any right to appropriate this money; and again, the respondent has brought this whole thing upon the State by his voluntary act, and in justice to myself I will vote no.

Senator WILSON (when his name was called.) I was always taught to return good for evil, and although many of the friends of this order voted against paying me what I thought was my just due, I vote yea for this.

Senator MILLER. I desire to say, Mr. President, in answer to that, that while I did not intend to vote for this order, I did intend to vote for the order providing extra compensation for our President *pro tem*; but having noticed when the question arose as to whether the order providing for the payment of money to the counsel for the respondent should be adopted, that the President *pro tem* went out to the cloak room and did not seem to want to vote, I concluded to vote no.

The PRESIDENT. There is no question before the Senate in regard to that matter.

Senator WILSON. I do not think it is necessary to call the attention of the Senate to the fact that I did not leave the room intentionally to avoid voting on that order. I had occasion to leave, and during my absence the matter was determined.

The roll being called, those who voted in the affirmative were—

Messrs. Aaker, Bonniwell, Buck, D., Campbell, Case, Castle, Clement, Gilfillan, J. B., Hinds, Howard, Johnson, F. I., Johnson, R. B., Mealey, Miller, Officer, Perkins, Peterson, Pillsbury, Powers, Rice, Shaller, Shalleen, Simmons, Wilkins and Wilson.

Those who voted in the negative were—

Senator Tiffany.

The PRESIDENT. The question being upon the adoption of the order of Senator Rice, there were yeas 25 and nays 1. So the order is adopted.

What is the further pleasure of the Senate?

The SECRETARY. Here is an order which Senator Powers requested me to bring to the notice of the Chair some time,

The PRESIDENT. The Clerk will read the order.

The SECRETARY. (Reading.) Ordered, that upon the adjournment of the court the Secretary deliver to the respondent or his counsel a duly certified and properly authenticated copy of the record and proceedings of this case.

Senator POWERS. I would explain, Mr. President, that that is an order which has been handed to me. I do not know the full scope of it, but it has been deemed necessary by the counsel for the respondent in this case, and I move its adoption.

Senator WILSON. I suppose that contemplates merely the result, the finding?

Senator POWERS. I think so, perhaps.

Senator HINDS. It contemplates everything from beginning to end.

The SECRETARY. It means that; yes, sir.

Senator CAMPBELL. I would explain, Mr. President, in compliance with the request of one of the respondent's counsel, that they desire, in case they should deem it to be their duty to go to the Supreme Court upon any question on which we have passed, to have a correct copy of the proceedings here upon which to base their application to the Supreme Court. The request is made in that view, as I understand from one of the counsel for the respondent who has conversed with me about it.

Senator HINDS. Then with that explanation, it is a very improper thing for this court to do. The request having been made with that object in view the court should not aid it in the least. By a resolution or order that has been made, the record of this case is to be deposited with the Secretary of the State. It is open then as a public record to all the world. If they wish to come and get a copy of it they can do so.

Senator GILFILLAN, J. B. What is the proposition?

Senator HINDS. That the Secretary furnish to the respondent a certified copy of the whole proceedings from the begining to the end of our record.

Senator WILSON. That would involve a good deal of money, however.

Senator GILFILLAN, J. B. I would suggest as an amendment, "upon his paying the clerk his fees therefor."

Senator CAMPBELL. I understood that it did not amount to anything more than the judgment.

Senator GILFILLAN, J. B. I do not press the amendment, but I suggest that the remark of the Senator from Scott is perfectly proper. We have no right to promulgate certified copies of the record. The Secretary of State may do it. He is the proper party to furnish a certified copy, and I have no doubt he will be very glad to do so upon the payment of his fees.

Senator CASTLE. Do you claim that these records have to be deposited in the office of Secretary of State with the stenographer's minutes?

Senator GILFILLAN, J. B. I suppose the official record has no business there.

Senator HINDS. Where?

Senator CASTLE. In the office of the Secretary of State.

Senator HINDS. By the order of this court it is to be so deposited for safe keeping.

Senator GILFILLAN, J. B. I so understand it.

Senator CASTLE. The Secretary—

Senator HINDS. The official report, not the stenographer's minutes.

Senator CASTLE. Has there been an order of that kind adopted by the Senate?

Senator HINDS. Yes, and the clerk has been making up the record in accordance with that.

The SECRETARY. The stenographic report ends there. The rest of it is kept in the usual legislative way.

The PRESIDENT. The question is upon the adoption of the order requesting the Secretary to furnish the respondent with a certified copy of the case.

Senator CASTLE. I should say, Mr. President, that after we had deprived a man of an office, after we had done for an individual what we have done for the respondent in this case, we could do no less than furnish him with a copy of the official record. I should say it was a right under the circumstances that he was entitled to. I do not suppose that any member of this court is ashamed of his conduct in the premises.

The PRESIDENT. The question is upon the adoption of the order. As many as are of the opinion the motion should prevail will say aye.

Senator CAMPBELL. I desire to say, before the motion is put, that I understood Senator Allis perfectly well. He said he did not desire anything except the proceedings; that is, he did not desire the testimony, but only a certified copy of the proceedings. I understand that includes the vote on all the articles and the judgment. I understand that to be what they want, and I will modify the motion so as to cover that and no more.

The PRESIDENT. The proper course would be to draw an order to that effect.

Senator HINDS. Provided, that the Secretary will furnish him with a certified copy of the judgment. I have no objection to that, but even that is not necessary.

Senator CAMPBELL. And the vote upon the articles of impeachment.

Senator HINDS. No, sir, of the judgment; that is the final result.

Senator POWERS. I think, Mr. President, that that is all he wants because the other he can get in the volume that will be printed.

Senator HINDS. He can get even the other.

Senator GILFILLAN, J. B. Question!

The PRESIDENT. The question is upon the adoption of the order. Did the Senator from Meeker wish to amend the order?

Senator CAMPBELL. I simply desired to state that that is all they require and that is all the order contemplates.

Senator HINDS. It is not all that the order would bring forth.

The PRESIDENT. The motion as introduced is very comprehensive.

Senator CAMPBELL. I move that amendment.

The SECRETARY. It now reads, "a duly certified copy of the record and proceedings of the case."

The PRESIDENT. With the permission of the Senator making the motion the Secretary can change the order so that it will apply to certain parts of the proceedings.

Senator CAMPBELL. The judgment and vote upon the articles of impeachment.

Senator POWERS. I would consent to that change, Mr. President; I think that is what he wants.

Senator HINDS. A certified copy of the vote upon the articles?

The PRESIDENT. And the judgment.

Senator HINDS. I have no objection to furnishing him that.

The PRESIDENT. The order will be modified so as to require the Secretary to furnish him with the record of the vote upon the articles and the judgment.

Senator GILFILLAN, J. B. Then it ought to embrace the orders preliminary to the judgment so as to make a succinct, intelligent record.

The PRESIDENT. The order will be so amended. The question will be now upon the adoption of the order as amended.

Senator CASTLE. How would it be to have him make and deliver a record of this day's proceedings in full.

Senator GILFILLAN, J. B. That would embrace the discussion.

Senator CASTLE. What if it did. The discussion does not amount to anything.

Senator HINDS. No, sir; it would not; because the official records do not embrace the discussion, but the proceedings and the result.

Senator CASTLE. I think that a record of to-day's proceedings would be better—more comprehensive.

Senator GILFILLAN, J. B. As contained in the official records? Well, that will be satisfactory.

The PRESIDENT. Is that satisfactory to the Senator from Meeker?

Senator CAMPBELL. Yes, sir.

The PRESIDENT. The order will be amended so that it will apply to the proceedings of this day.

Senator HINDS. Relating to the merits.

Senator CASTLE. Why, the proceedings of to-day, and there is nothing in those irrelevant to this matter.

Senator HINDS. Oh, there are a number of orders that we have made that all should not want to have incorporated in the record furnished under this order.

Senator CAMPBELL. No; we do not want anything in relation to paying counsel.

The PRESIDENT. The Secretary will prepare the order to accord with the views last expressed, and have it ready before it is to be acted upon.

Senator AAKER. I move that we adjourn.

After a short intermission,

The SECRETARY. There is an order which I finished in the manner in which I understood it was desired to be. It is as follows (reading):

Ordered, That upon the adjournment of this court the Secretary deliver to the respondent or his counsel a duly certified and properly authenticated copy of the proceedings of this day, showing the record of conviction and of the judgment of the court.

The PRESIDENT. You have heard the order as read. As many as are of the opinion the motion should prevail will say aye; the contrary-minded no.

The ayes have it. The order is adopted.

Senator WILSON. I move that we adjourn until ten o'clock to-morrow morning.

Senator HINDS. The regular hour is nine.

Senator PILLSBURY. I understand that no business is to be done. Nine o'clock will be too early.

The PRESIDENT. The Senate stands adjourned until to-morrow morning at ten o'clock.

FIFTY-FIFTH DAY.

ST. PAUL, Minn., Thursday, March 23, 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, Buck, C. F., Campbell, Case, Castle, Gilfillan, C. D., Howard, Johnson, F. I., Johnson, R. B., McCormick, McCrea, McLaughlin, Mealey, Miller, Morrison, Officer, Perkins, Peterson, Powers, Rice, Shaller, Shalleen, Simmons, 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 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 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. What is the pleasure of the Senate? Of course, Senators understand that the regular business for which they have been convened, has been mainly transacted.

After some delay.

On motion of Senator Campbell, the Senate took a recess for fifteen minutes.

AFTER RECESS.

Senator CAMPBELL. Mr. President, if there is no other business, as the doors are now open, I move you that the Secretary be instructed to inform the managers, the respondent and his counsel, of the judgment of this court.

The motion having been adopted, the Secretary then read the judgment.

Senator POWERS. I have sent up a little resolution to the Clerk's desk, Mr. President, which I would like to have read, and it is something that will not call for any discussion.

The Secretary read the resolution as follows:

Resolved, That we desire to express our most cordial approbation of the faithful services and uniform courtesy of Messrs. George N. Hillman and Joseph E. Lyons, the official reporters in the E. St. Julien Cox impeachment trial, and their very clear and accurate report.

Senator POWERS. I presume, Mr. President, it will be a pleasure to the Senators to pass a resolution of that kind. I move the adoption of the resolution.

The resolution was adopted.

Senator MEALEY. Mr. President, I have an order here which I would like to send up and have it become a part of the records.

The Secretary read the order as follows:

Ordered. That upon the adjournment of this court the Secretary deliver to the respondent a duly certified and authenticated copy of the record and proceedings of this case.

Senator MEALEY. I would say that the counsel takes the position that unless an order of the kind is passed after the court adjourns the Secretary would not perhaps be the proper person to certify to the record; that upon such an order as this he could certify to the copy of our proceedings.

Mr. ALLIS. Mr. President, the respondent of course would like an exemplification of the records of the proceedings in this case. As I understand it would simply require the Secretary to put the journals together, as I suppose he has done there, and add his certificate. I had myself doubts as to whether he would have the power as an ordinary clerk of court to make such a certificate, after the adjournment of the Senate, unless the order had been previously passed, authorizing him to do it. The object of this is to enable the Secretary, at his convenience to make up such a record, make the proper certificate and give it to the respondent, in order that the counsel for the respondent may have an exemplification of the record of this court for any purpose which they may be advised they desire to use it. I suppose that it is no more than reasonable that they should have it. I do not understand that it is going to involve any expense or labor.

Senator AAKER. Mr. President, I would like to hear the order read which was adopted last night.

The Secretary read the order as follows:

Ordered, That upon the adjournment of this court the Secretary deliver to the respondent or his counsel a duly authenticated copy of the proceedings of this day, showing a record of conviction and the judgment of this court.

Mr. ALLIS. That won't be a record of the proceedings in this case.

Senator WILSON. I understand that what you want is the printed journals in full, the same as those? (Referring to the record to be filed in the office of the Secrelary of State.)

Mr. ALLIS. Yes, sir, that is what I understand A record of the judgment would be of no use to the respondent.

The Secretary stated that if there were no provision made for paying the expense of a certified copy he should not furnish it.

Senator GILFILLAN, C. D. It seems to me that that order is entirely unnecessary. We have passed an order directing the record to be deposited in the office of the Secretary of State; it thus becomes an official record of the State, and the respondent can get a copy of it if he sees fit. I should object to our clerk making a record and having all the consequences ensue that might follow from that certification. If it is simply a certificate of the judgment passed last night I would have no objection, but if the Senate compel the clerk to certify to that entire record it might involve some errors. I don't think this court ought to order the clerk to do that.

Mr. ALLIS. Mr. President, allow me to suggest to the Senate that it would take Judge Cox six months of hard work to pay for a copy that record made by the Secretary of State. Of course if there is any labor involved upon the part of the Secretary of the Senate, Judge Cox would be willing to pay for it; but to go to the Secretary of State and

order a copy of several thousand folios, at ten or fifteen cents per folio, would simply be to deny him the record. Now, he may wish to use this exemplification of the record, but he cannot afford to order it from the Secretary of State.

Senator CASTLE. Mr. President, I move to amend the order by adding at the end thereof these words, "Upon being paid a reasonable compensation therefor."

I can see a legal point in this matter that the counselor has not stated. Our statute provides, as I recollect, that the certified copies of any records or papers by the person in whose custody by law they are, shall be received with the same force and effect as the originals. Now, as I understand, there is no law for the depositing of the proceedings of this tribunal with the Secretary of State, consequently the Secretary of State is not by law the custodian of these papers and his certificate of their authenticity might be worthless. I can see no objection to this court giving to the respondent, as soon as prepared, a copy of the proceedings. It hardly seems to me that any member of the court should object. The proceedings are to be printed any way, and no member of the court could object to the counsel having recourse to all the legal remedies that the law might give him—if he has any at all—and I will ask leave to offer that amendment, and I think that to it no one will object.

Senator MEALEY. I accept that amendment.

Senator GILFILLAN, C. D. We have made proper provision for the publication of the entire proceedings of this court. Now, if they want anything in the way of legal evidence, if a certified copy of that document would not be sufficient, they have the power of the court to bring the original document out of the Secretary's office into the court to be used as evidence; and it strikes me that that is the proper way for them to proceed. We furnish them, from the published proceedings, all the information they wish; now, when they want to get at the proceedings, they can bring the document itself.

Senator CASTLE. I certainly can see no objection to authorizing the Secretary of the court to do what is required of every officer in whose custody records and papers are by law. It seems to me to be a great injustice, if the respondent desires a certified copy of this record, that we should deny him of that small privilege.

Senator HOWARD. Mr. President, this is a matter which looks to me like being of some importance, and I think we should work with care to see that this is carried out correctly. A certified copy of the proceedings in regard to the judgment might be correct; that would be proper, but in regard to giving a certified copy of all these journals, providing there were any errors in printing or otherwise, I submit, whether it would not give an opportunity for taking exceptions and making trouble hereafter. I do not see the particular necessity of a certified copy of all the proceedings, and it would certainly make a great amount of labor for the Secretary. It appears to me that a certified copy of the judgment or a copy of the proceedings of yesterday would cover the whole ground.

The PRESIDENT. The question is on the adoption of the order.

Mr. ALLIS. I want to make a single further explanation. The real and sole object in asking the Senate to authorize this is because there was a doubt in our mind as to the power of the Secretary of this body, after the adjournment, to make the certificate. Now, we could have made the same arrangement with the Secretary; he is now to be paid,

and as this simply puts away all doubt as to the sufficiency of his certificate, it seems to me it ought to pass.

The PRESIDENT. The question is upon the adoption of the order. Is the Senate ready for the question? As many as are in favor of the adoption of the order will manifest it by saying aye.

The yeas and nays were then called for.

Senator AAKER. I would like to hear the order read again.

The PRESIDENT. The order as amended will be read for the information of the Senate.

The Secretary then read the order as follows:

Ordered, That upon the adjournment of this court the Secretary deliver to the respondent a duly certified and authenticated copy of the record and proceedings of this case upon being paid a reasonable compensation therefor.

Senator AAKER. Does that cover the ground for the whole of the proceedings from the commencement?

The PRESIDENT. The entire proceedings.

Senator CASTLE. Upon being paid for it, Senator.

The roll being called upon the adoption of the order there were yeas ten and nays fourteen as follows:

Those who voted in the affirmative were—

Messrs. Aaker, Bonniwell, Campbell, Castle, Crooks, Mealey, Peterson, Powers, Simmons and Wilson.

Those who voted in the negative were—

Messrs. Case, Gilfillan, C. D., Howard, Johnson, R. B., McRea, McLaughlin, Miller, Morrison, Officer, Perkins, Shaller, Shalleen, Tiffany and Wilkins.

So the order was not adopted.

The President then inquired of the Secretary if the record of the proceedings of the court was completed, including the final determination of the case and the judgment of the court, as required by the order of the court.

To which the Secretary responded that it was so made and completed, and he then presented the same. The President and Secretary then authenticated the same, and the hour of 12 m. having arrived, the President declared the court adjourned.

CERTIFICATE.

STATE OF MINNESOTA,
Senate Chamber,
ST. PAUL, MINN., March 23, 1882.

We do hereby certify that the foregoing is the record of the proceedings of the Senate of the State of Minnesota organized and sitting as a court of impeachment for the trial of the impeachment of E. St. Julien Cox, Judge of the Ninth Judicial District of the State of Minnesota of crimes and misdemeanors, and of the determination of such trial and of the judgment of the court thereon.

C. A. GILMAN,
President of the Senate and of the court.

Attest:

S. P. JENNISON,
Secretary of the Senate and of the court.

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