TWENTIETH SESSION,—1878.

JOURNAL

OF THE

SENATE OF MINNESOTA,

SITTING AS A

HIGH COURT IMPEACHMENT,

FOR THE TRIAL OF

HON. SHERMAN PAGE,

Judge of the Tenth Judicial District.

VOLUME 1.

PRINTED BY AUTHORITY.

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SAINT PAUL.

MANAGERS ON THE PART OF THE HOUSE OF REPRESENTATIVES.

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

Counsel with Managers—W. P. CLOUGH, Esq

ATTORNEYS FOR RESPONDENT.

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

OFFICERS OF THE COURT

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

JOURNAL OF THE SENATE.

TWENTIETH SESSION.

NOTE.—The following is a compilation of the proceedings of the Senate, relating to the impeachment of Sherman Page, Judge of the Tenth Judicial District, which transpired during the twentieth session of the Legislature.—CHAS. W. JOHNSON, *Secretary of the Senate.*

FIRST DAY.

THURSDAY, February 28, 1878.

IN SENATE.

Impeachment of Sherman Page, Judge of the Tenth Judicial District.

At eight minutes past three o'clock, a special committee from the House of Representatives, consisting of

Messrs. J. P. West, N. Richardson, J. C. Edson, H. J. Brainerd and J. M. Bowler,

Appeared before the bar of the Senate, and announced that they had a communication from the House to make to the Senate, relative to the impeachment of Sherman Page, Judge of the Tenth Judicial District.

The President inquired the pleasure of the Senate.

Mr. Armstrong moved that the committee from the House of Representatives present to the Senate any communication with the transmission of which they were charged.

Which motion prevailed.

Mr. West, of the spceial committee, then presented the following communication:

MR. PRESIDENT:—In obedience to the order of the House of Representatives, we appear before you, and in the name of the House of Representatives, and of the whole people of the State of Minnesota, we do impeach Sherman Page, Judge of the Tenth Judicial District, of corrupt conduct in office, and of crimes and misdemeanors in office; and we further inform the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same; and in their name we demand that the Senate take order for the appearance of the said Sherman Page, to answer said impeachment.

Mr. Nelson offered the following resolution, which was adopted:

Resolved, That a committee of three Senators, be appointed by the President to wait upon the Governor, and inform him that the House of Representatives by a committee of their body had appeared at the bar of the Senate, and impeached Sherman Page, judge of the 10th judicial district, State of Minnesota, for corrupt conduct in office, and of crimes and misdemeanors and offenses; to the end that such action may be taken by the executive, as is required by the constitution of the State, and the exigencies of the occasion.

The President announced the appointment of Senators Nelson, Armstrong and Doran, as the special committee referred to in Mr. Nelson's resolution.

Mr. Gilfillan J. B., offered the following resolution, which was adopted:

Resolved, That the message from the House of Representatives in relation to the impeachment of Sherman Page, judge of the tenth judicial district of the State of Minnesota, be referred to the judiciary committee to consider and report thereon.

SECOND DAY.

SATURDAY, MARCH 2, 1878.

IN SENATE.

Mr. Armstrong, from the committee on judiciary, made the following report,

Which was adopted:

In the matter of the Impeachment of Sherman Page, Judge of the Tenth Judicial District, State of Minnesota.

The judiciary committee as per Senate resolution of February 28th, which reads as follows:

Resolved, That the message from the House of Representatives in relation to the impeachment of Sherman Page, Judge of the Tenth Judicial District of the State of Minnesota, be referred to the judiciary committee to consider and report thereon.

And who were thereby appointed to take into consideration the impeachment at the bar of the Senate, by the House of Representatives, of Sherman Page, Judge of the Tenth Judicial District of the State of Minnesota, have considered the subject, and do most respectfully submit the following report, which they recommend to be adopted, and that the Secretary of the Senate be directed to notify the House of Representatives of the same.

Whereas, the House of Representatives on the 28th day of February, 1878, by two of their members at the bar of the Senate, impeached Sherman Page, Judge of the Tenth Judicial District of the State of Minnesota, of corrupt conduct in office, and of crimes and misdemeanors in office, and informed the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him, and make good the same, and likewise demanded that the Senate take order for the appearance of said Sherman Page to answer said impeachment; Therefore,

Resolved, That the Senate will take proper order thereon, of which due notice shall be given to the House of Representatives.

The committee also report the following rules which they recommend to be adopted·

RULES OF PROCEEDURE AND PRACTICE IN THE SENATE, PRELIMINARY TO SITTING AS A COURT OF IMPEACHMENT.

Rule 1. Whensoever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against any person, and are directed to carry articles of impeachment to the Senate, the Secretary of the State shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment agreeably to said notice.

2. When the managers of an impeachment shall be introduced at the bar of Senate, and shall signify that they are ready to exhibit articles of impeachment against any person, the presiding officer of the Senate shall direct the sergeant-at-arms to make proclamation, who shall, after making proclamation, repeat the following words, to-wit: All persons are commanded to keep silence on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the State of Minnesota articles of impeachment against————————.

After which the articles shall be exhibited and read, and then the presiding officer of the Senate shall inform the managers that the Senate will take proper order on the aubject of the impeachment, of which due notice shall be given to the House of Representatives, and said articles of impeachment shall be filed with the Secretary of the Senate and by him certified to the High Court of Impeachment, when organized.

Rule 3. Upon such articles being presented to the Senate, the Senate shall, at such day or hour as may be ordered by the Senate, proceed to organize as a High Court of Impeachment to consider said articles, and that the Chief Justice or one of the associates justices of the Supreme Court of this State be invited to be present and administer the usual oaths.

THIRD DAY.

MONDAY, MARCH 4th, 1878.

IN SENATE.

MESSAGES FROM THE HOUSE

The following message was received from the House of Representatives:

Mr. PRESIDENT:—I am directed to inform the Senate that the House has adopted articles of impeachment against Sherman Page, Judge of the 10th judicial district, and have adopted as a Board of Managers to appear at the bar of the Senate to conduct said impeachment, Messrs. Campbell S. L., Gilman C. A., Mead, West J. P., Hinds, Morse and Feller.

MARK D. FLOWER,
Chief Clerk House of Representatives.

At 3 o'clock P. M., Messrs, Campbell, Hinds, Gilman, Mead and Feller, members of the House of Representatives, managers appointed to conduct the impeachment of Sherman Page, judge of the tenth judicial district, appeared at the bar of the Senate, and Mr. Campbell addressed the Senate as follows:

Mr. PRESIDENT:—The managers of the House of Representatives, by order of the House, are ready at the bar of the Senate, whenever it may please the Senate to hear them, to present articles of impeachment in maintainance of the impeachment preferred against Hon. Sherman Page, judge of the tenth judicial district of the State of Minnesota.

The sergeant-at-arms of the Senate, made the following proclamation:

Hear ye, Hear ye?

All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the State of Minnesota articles of impeachment against Sherman Page, judge of the tenth judicial district of the State of Minnesota.

Whereupon the managers presented the following particular articles of impeachment of Sherman Page, judge of the tenth judicial district of Minnesota, which, on motion, were read by the Secretary of the Senate.

ARTICLES EXHIBITED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MINNESOTA, IN THE NAME OF THEMSELVES, AND OF ALL PEOPLE OF THE STATE OF MINNESOTA, AGAINST SHERMAN PAGE, JUDGE OF THE TENTH JUDICIAL DISTRICT, IN MAINTAINANCE AND SUPPORT OF THEIR IMPEACHMENT AGAINST HIM FOR CORRUPT CONDUCT IN OFFICE, AND FOR CRIMES AND MISDEMEANORS IN OFFICE.

ARTICLE I.

Heretofore, to-wit: at a general term of the District Court in and for the county of Mower, in the Tenth Judicial District, beginning on the third Tuesday of September, in the year 1873, the said Sherman Page, then being and acting as Judge of the District Court of the Tenth Judicial District, and then as such judge presiding at the term of court so being holden, the grand jury of the county of Mower for said term of court, found and presented to said court an indictment against one D. S. B. Mollison, by which indictment the said Mollison was accused of the offence of composing and publishing in the Austin Register, a newspaper published in the village of Austin, in the said county of Mower, a certain article or communication containing certain false and libellous statements concerning him, the said Sherman Page, as such judge. At the term of court aforesaid, and shortly after the presentation of the said indictment, and while the said Sherman Page was presiding over such court as judge, the said Mollison was arraigned before said court to answer the charges contained in said indictment, and was required by the said court to plead to said indictment, and, thereupon, he, the said Mollison, did, in due form of law, make and enter in said court his plea of not guilty to the said indictment, and to all and singular the charges therein contained, whereby all the matters and things in said indictment set forth, were fully put in issue.

At the term of court aforesaid, and after said Mollison had made and entered his plea aforesaid, and while the said Sherman Page was presiding over said court as judge, he, the said Mollison, duly informed the said court, while the same was in open session, that he was ready to proceed with the trial of his said case at that term of court; but he, the said Sherman Page, as such judge, wrongfully and maliciously, and with intent thereby to oppress and injure him, the said D. S. B. Mollison, and solely upon the motion of himself, the said Page, as such judge, and without being moved or requested thereto by the county attorney of said county, or by the said Mollison, refused to permit the said cause to be tried at the said term of court, and continued the trial of the same until the next general term thereof, and required him, the said Mollison, to enter into recognizance, in the sum of fifteen hundred dollars, with sufficient sureties, to appear at the next general term of said court and answer the said indictment, and abide the order of the court therein, or, in default of such recognizance, to be committed to jail to await the action of the court in respect to said cause.

Afterwards, and at the same term of court, the said Mollison did, in obedience to said requirement of the said Sherman Page, as such judge, enter into recognizance in said court in the sum of fifteen hundred dollars, with two sureties, to appear at the next following general term of said court, and answer the charges set forth in the said indictment, and abide the order of the court therein.

Since the holding of the said term of court, in the month of September, A. D. 1873, general terms of the said court, for the said county of Mower, have been holden as follows, to-wit.

In the month of March, A. D. 1874.
In the month of September, A. D. 1874.
In the month of March, A. D. 1875.
In the month of September, A. D. 1875.
In the month of March, A. D. 1876.
In the month of September, A. D. 1876.
In the month of March, A. D. 1877.
In the month of September, A. D. 1877.

At each and every of said terms of court the said Sherman Page has acted and presided as the judge thereof, and at each of the said terms of court the said Mollison has appeared in said court, and has duly informed the court in open session, and while the said Sherman Page was presiding as such judge, that he was ready to proceed with the trial of his said cause, but he, the said Sherman Page, as such judge, wrongfully and maliciously, and with the intent thereby to injure and oppress him, the said Mollison, at each and every of the said terms of court, solely of his own motion as such judge, and without being moved thereto by the said Mollison, or by the county attorney of the said county of Mower, refused to permit such cause to be tried at such term, and continued the trial of the said cause until the then next succeeding general term of such court, and required the said Mollison to be and appear at the then next succeeding general term of said court to answer to the charges contained in the said indictment, and to abide the order of the court therein, upon pain of forfeiting his recognizance.

The said action of the said Sherman Page, as such judge, in so refusing to permit the said cause to be tried, and in so continuing the trial thereof from term to term, was done under the pretence on the part of him, the said Page, that he was unwilling to preside over the said court during the trial of the said cause, and that he desired and in-

tended to procure some of the other judges of the district court of this State, to preside in the said court during the trial of said cause.

But he, the said Sherman Page, as such judge, wrongfully and maliciously, and with the intent thereby to injure and oppress him, the said Mollison, has neglected to procure, and has not procured any of the other judges of the District Court of this State to preside over any term of the District Court holden in the said County of Mower, since the presentation of the said indictment, at which a jury for the trial of causes has been in attendance.

By reason of the said wrongful, malicious and oppressive conduct of the said Sherman Page, as such judge, the said Mollison has never been able to procure his said cause to be tried, and the same still remains pending in said court, and undetermined, although his said recognizance has never been released or discharged by the said court.

By reason of which aforesaid acts, on his part done and performed, he, the said Sherman Page, became and was guilty of corrupt conduct in his said office, and of misdemeanors in his said office.

ARTICLE II.

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

While the said indictments remained pending and undetermined in said Court, and shortly prior to a general term thereof, which was held in the month of March, A. D. 1875, the said defendants in said indictments procurred to be issued by the clerk of the said Court, subpœnas requiring several persons to attend at the said term of Court so to be holden in the month of March, A. D. 1875, as witnesses on behalf of the said defendants upon the trial of the said indictments.

After the said subpœnas had so been issued, the same were placed by the said defendants in the said indictments, or by their request in the hands of one Thomas Riley for service; the said Thomas Riley then being a deputy sheriff of the said county of Mower, and by agreement before that time, only entered into between himself and the sheriff of said county, entitled to collect for his own use and benefit all fees allowed by law for such services as he should render as deputy sheriff of said county.

After the said subpœnas had been placed for service in the hands of the said Riley, he, the said Riley, duly served the same upon the persons therein named as witnesses, and his legal fees for making such services amounted altogether to the sum of forty-three and ten one hundredths dollars ($43.10.)

After the said Riley had served the said subpœnas, he presented his bill for serving the same, amounting in all to the sum last aforesaid, to the Board of County Commissioners of the said county of Mower, at a session thereof holden in the month of March, A. D. 1875, in order to have the same allowed and paid out of the county treasury of said county.

While the said Board of County Commissioners was so in session, and while said Board had the question of the allowance of said bill under consideration, the said Sherman Page, being Judge as aforesaid, appeared before said Board, and wrongfully and maliciously, and with an intent thereby to injure the said Thomas Riley, and with an intent to procure the said Board to disallow all the said bill, in an angry and threatening manner asserted to said Board that it would be illegal for said Board to allow any part of the said bill to be paid out of the county treasury of the said county, by reason whereof the said Board did wholly disallow said bill.

Afterwards, and after the said proceedings upon said indictment had terminated in favor of the said defendants therein, as has been hereinbefore stated, and at a session of the said Board of County Commissioners holden in the month of January, A. D. 1876, the said Riley again presented his bill to the said Board for allowance and payment out of the county treasury of said county; the District Court of said county not having made any order forbidding the payment of the fees of the said Riley out of such county treasury.

While the said board had the question of the allowance of the said bill under its consideration at the session of the said board last aforesaid, he, the said Page, then being judge as aforesaid, wrongfully and maliciously and with the intent thereby to injure the said Thomas Riley, by using his position as such judge to procure the said board erroneously to disallow the whole of said bill of said Riley for said services, again appeared before the said board and in an angry, arbitrary and threatening manner, pretended to the said board that the said bill for services was wholly illegal, and that no part of the same ought to be allowed by said board, and that said board could not lawfully allow any part of the same; although he, the said Page, then well knew and was then and there reminded that if the same were disallowed by said board, the said Riley would thereupon commence legal proceedings against said board to enforce the payment of said bill out of the county treasury of said county, and that such legal proceedings would probably come before the district court for Mower county, and that it would probably become the duty of him, the said Page, as such judge, to pass upon and decide the question as to whether the said bill, or any part thereof, was legally payable out of the county treasury of said Mower county.

The said board of county commissioners, in consequence of the said conduct of the said Page, at the session thereof last aforesaid, wholly disallowed said bill of said Thomas Riley.

Thereupon, to-wit: on March 22d, A. D. 1876, the said Thomas Riley duly commenced a suit against the said board of county commissioners before L. A. Griffith, Esq., one of the justices of the peace in and for the said county of Mower, to recover the amount of said bill out of the county treasury of said county.

Such proceedings in the said Justice's Court were thereupon had in said suit that thereafter, to-wit: on April 6, A. D. 1876, judgment was rendered in favor of the said Thomas Riley, and against the said Board of County Commissioners, for the sum of forty-three and ten one-hundredths dollars (43.10-100) damages, besides the plaintiff's disbursements in said suit.

Afterwards, to-wit: on April 10, 1876, the said Board of County Commissioners duly appealed from the said judgment of the said Justice of the District Court for the said County of Mower, and the return of the said Justice upon such appeal afterwards, to-wit: on April 14th, A. D. 1876, was duly filed in the said District court for said county, whereby the said district court became fully possessed of the said cause and obtained full jurisdiction over the same and over the parties thereto

Afterwards, to-wit: on the seventeenth day of February, A. D. 1877, the issues in said cause were tried before the said Sherman Page, as judge as aforesaid, and thereupon, to-wit: on the day last aforesaid, he, the said Sherman Page, as such judge, maliciously, and with intent to injure and oppress him, the said Thomas Riley, falsely and erroneously found, determined and decided that the issuance by the clerk of said court of the said subpœnas, so served by the said Thomas Riley, was unauthorized by law, and that at said general term of said court, held in March, A. D. 1875, the judge of said court had in open court made an order and directed that none of the costs or fees for issuing or serving said subpœnas be paid by the said county of Mower, and that he, the said Thomas Riley, was not entitled to be paid out of the county treasury of the said county anything whatever for serving the said subpœnas; whereas, in fact, the issuance of said subpœnas by the clerk of said court was fully authorized by law, and the said court had never made any order directing that the fees of the said Thomas Riley, for serving the said subpœnas, should not be paid out of the county treasury of said county, and the said Riley was entitled to be paid his fees for so serving the said subpœnas out of the county treasury of said county as the said Page, as such judge, at the time of his making the said finding, determination and decision, well knew.

By reason of the said acts on the part of the said Page, the said Thomas Riley has never received any compensation whatsoever for for his services in serving the said subpœnas. By reason of which aforesaid acts on his part, done and performed, he, the said Sherman Page, became and was guilty of corrupt conduct in his said office, and misdemeanor in his said office.

ARTICLE III.

At an adjourned general term of the district court for the county of Mower, held as heretofore, to-wit: in the month of January, A.D. 1876, for the trial of issues of fact by jury, and at which the said Sherman Page, then being such judge, presided, one W. T. Mandeville attended upon the said court as a deputy sheriff of the said county of Mower, duly deputized by the sheriff of said county for the special and sole purpose of such attendance at such term from the beginning until the adjournment of said term, being a period of six consecutive days in all, as he, the said Sherman Page, as such judge all the time during such term well knew; which attendance as such special deputy sheriff during all the period thereof was necessary for the proper conduct of the business of said court, at which the said Sherman Page, as such judge, fully assented to, acquiesced in and approved.

At or shortly after the conclusion of the said term of clerk, to-wit: in the month of January, A.D. 1876, the said Mandeville duly applied to the said Page, as judge as aforesaid, who had not or at any time prior thereto made or filed any formal order of the said court determining or fixing the number of deputies which it would be necessary for said sheriff to have for attendance upon such term of court, for an order of direction of him, the said Page, as such judge, allowing him, the said Mandeville, compensation out of the county treasury of said county for the said services as such special deputy.

Upon such application to the said Page, as such judge, being made by the said Mandeville, he, the said Page, then and there for the purpose of insulting and humiliating him, the said Mandeville, maliciously replied and stated to him, the said Mandeville, in a loud tone of voice: "Mandeville, how did Mr. Hall (meaning the then sheriff of said county) come to appoint you deputy? What dirty work did you do to help elect him (meaning the said sheriff) to office that he should appoint you deputy?" or words to that effect; and he, the said Page, as such judge, then and there with the intent thereby to injure and oppress him, the said Mandeville, by preventing him, the said Mandeville, from being paid for his said services as such special deputy sheriff, wrongfully declined and refused to give him, the said Mandeville, any order or direction for his payment by the said county for his said services.

Afterwards, to-wit: in the year 1876, the said Sherman Page, still being judge, as aforesaid, the said Mandeville again, on several occasions, applied to him, the said Page as such judge, for an order or direction by him, the said Page, as such judge, for the payment by the said county of Mower for the said services of him, the said Mandeville, but on each and every of the said occasions the said Page, as such judge, maliciously and with intent thereby to injure and oppress him, the said Mandeville, by preventing him, the said Mandeville, from being paid for his said services as such special deputy, wrongfully declined and refused to give him, the said Mandeville, an order or direction for the payment by the said county for such services, in consequence whereof the said Mandeville has never received any payment whatever for or on account of his said services.

And the said Sherman Page as judge, as aforesaid, to further assist in carrying out his said intent and purpose toward the said Mandeville after the conclusion of the said adjourned term of court, and after the said Mandeville had applied to him as such judge for an order or direction as aforesaid, and after he, the said Page, as such judge, had declined and refused to grant any such order or direction in favor of the said Mandeville, as aforesaid, to-wit in the month of January, A. D 1876, made and filed with the clerk of the said court an order in writing, bearing date as of the first day of the said adjourned term of court, to-wit: the —— day of January, A. D. 1876, in which order it was set forth in substance that the said court had fixed and determined that one F. W. Allen was allowed to act as special deputy of the sheriff of said county, for attendance upon the said court at the said adjourned term thereof.

By reason of which aforesaid acts on his part done and performed, he, the said Sherman Page, became and was guilty of corrupt conduct in his said office and of misdemeanors in his said office.

ARTICLE IV.

Heretofore, to-wit: on January 11th, A. D. 1877, a writ of execution was duly issued out of the district court for the county of Mower upon a judgment theretofore, duly rendered in said court and docketed in the office of the clerk thereof, for the recovery by the State of Minnesota from Dwight Weller, W. R. Kellogg and George F. Schofield of the sum of seventy-seven and 5-100 dollars, which writ of execution was in due form of law and was directed to the sheriff of the county of Mower

and commanded him to satisfy the said judgment, with interest and his fees, out of personal property of said judgment debtors within his county; or if sufficient personal property could not be found, then out of the real property in his county belonging to the said judgment debtors on the day when the said judgment was docketed in his county, or at any time thereafter not exceeding ten years. Said writ of execution, upon the issuance of the same, was duly placed for service in the hands of one David H. Stimpson, then and ever since a deputy sheriff of said county of Mower, duly deputized by R. O. Hall, then and still sheriff of said county, and duly qualified to act as such deputy sheriff, with directions from the attorney of the said judgment creditors to enforce the same against the property of the said judgment debtors.

After the receipt by himself of said writ of execution as aforesaid, the said David H. Stimpson, as such deputy sheriff, duly proceeded to enforce the same against the said judgment debtors, and thereafter, to-wit: in the month of February, A. D. 1877, collected from the said judgment debtors therein the sum of twenty dollars. Out of the said sum so by him collected he, the said David H. Stimpson, as such deputy sheriff, afterwards, to-wit: on February, 27, A. D. 1877, paid into the hands of the clerk of the district court for said Mower county, for the use of said judgment creditor the sum of fourteen and 50-100 dollars, and retained in his possession the residue thereof, being the sum of five and 50-100 dollars as and for his fees for his said services as such deputy sheriff in and about the service of said writ of execution and the enforcement of the same against the property of the said judgment debtors and the collection of the said sum of money therein; the sum of five and 50-100 dollars then and there being his lawful fees as such deputy sheriff for such services and he being then and there lawfully entitled, as such deputy sheriff, to retain the same out of the said moneys so by him collected.

Afterwards, to-wit: at a general term of the District Court for Mower county holden in the said county in the month of March, A. D. 1877, the said Sherman Page then being judge, as aforesaid, and presiding over said court as such judge, he, the said Sherman Page, as such judge, wrongfully and maliciously, and with intent thereby to insult, humiliate, injure and oppress the said David H. Stimpson, in open court, in the presence and hearing of the Grand Jury of Mower county in attendance upon the said term of court, and in the presence and hearing of a large number of other persons in attendance upon the said term of court, threateningly and in a loud tone of voice, and without any previous notice having been in any manner given him, the said David H. Stimpson, and without any opportunity having been given him, the said David H. Stimpson, to defend his conduct in retaining his said fees out of the said moneys so by him collected, peremptorily commanded and ordered him, the said David H. Stimpson, to pay over to the clerk of said court the said sum of five and 50-100 dollars, so by him retained as his fees, forthwith, and in the presence of the said Grand Jury, and he, the said David H. Stimpson, thereupon, and in the presence of the court and of the said Grand Jury, and of a large number of other persons in attendance upon said court, being thereto compelled by the said command and order of the said Page, as such judge, did forthwith pay over the said sum to the said clerk.

And the said Page, as such judge, needlessly, and with the intent then and there further to insult and humiliate him, the said Stimpson, then and there, in the presence and hearing of the said grand jury, and of a large number of other persons in attendance upon said term of court,

maliciously reprimanded and accused him, the said Thompson, of demanding and retaining illegal fees as deputy sheriff, and then and there maliciously threatened him that if he, the said Stimpson, should thereafter take any illegal fees as such deputy sheriff, he, the said Page, as such judge, would cause him, the said Stimpson, to be severely punished therefor.

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

ARTICLE V.

Heretofore to-wit: on June 2, A. D. 1874, the said Sherman Page being judge as aforesaid, as such judge, needlessly, maliciously and unlawfully, and with intent thereby to foment disturbance among the inhabitants of the said county of Mower, and in particular among the inhabitants of the village of Austin, in said county, and with the further intent thereby to insult and humiliate one George Baird, then sheriff of the said county of Mower, duly elected and qualified, and acting as such sheriff, wrote and caused to be delivered to the said Baird as sheriff of the said Mower county, at the village of Austin, in the said county of Mower, two certain orders or commands which accompanied each other, and were together delivered to the said Baird by the direction of the said Page as such judge, and which were of the tenor following, that is to say:

STATE OF MINNESOTA, }
TENTH JUDICIAL DISTRICT. }

To GEORGE BAIRD,
Sheriff of Mower County:

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

In your proceedings you will be guided by the provisions of chapter 98 of the the General Laws of this State. You are especially directed to disperse in the manner above indicated any assemblage of persons whose evident design and purpose is to violate and prevent the execution of the laws of the State and the ordinances of the city of Austin.

Witness my hand this second day of June, 1874.

SHERMAN PAGE,
Judge of the District Court,
Tenth Judicial District.

PRESTON, JUNE 2d, 1874.

GEORGE BAIRD, Esq.,
Sheriff.

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

Yours truly,

S. PAGE.

By which acts on his part he, the said Sherman Page, then and there became and was guilty of corrupt conduct in his said office, and of misdemeanors in office.

ARTICLE VI.

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

Heretofore, to-wit: at a general term of the district court for the county of Mower, holden in the said county in the month of September, A. D. 1876, the said Ingmundson then being and acting as county treasurer as aforesaid, and the said Page then being judge as aforesaid and presiding over the said court as such judge, he, the said Page, as such judge, stated to the grand jury of the county of Mower, then and there in attendance upon said court, that he had been informed or that he understood that irregularities had occurred or existed in the office of county treasurer, of said county, and then and there, as such judge, instructed the said grand jury to inquire into and investigate such matter. Whereupon the said grand jury at the same term of court, did fully investigate and inquire into the manner in which the business of of the said county treasurer's office had been and was being carried on, and thereupon and at the same term of court duly reported in writing to the said court to the effect that it, the said grand jury, had made such investigation and inquiry, but that it, the said grand jury, had not been able to discover any irregularities in the conducting of the business of said office.

Afterwards, to-wit: at a general term of the District Court for the said county of Mower, holden in said county in the month of March, A. D. 1877, the said Ingmundson then being and acting as county treasurer as aforesaid, and the said Page then being judge as aforesaid, and presiding over the said court as such judge, he, the said Page, as such judge,

maliciously and without probable cause, and with intent to injure and oppress him, the said Ingmundson, and to impair his good reputation and favoras such county treassurer with the people of said Mower, county dnd to cause and procure him, the said Ingmundson, to be erroneously, and without cause, indicted or presented by the grand jury of said county for misconduct in office, at or about the first day of said term, in the course of a general charge to the grand jury of said county in attendance upon said term of court, instructed said grand jury to the effect that information had come to him, the said judge, assuch judge, of certain irregularities in the office of the county treasurer of said county; that the said court had been informed that the county treasurer ot said county had received a town order from the treasurer of the town of Clayton in said county, that afterwards, when the town treasurer of said town had demanded from the said county treasurer the money which he had collected for said town, he, the said treasurer had refused to pay over such money in his hands unless the said town treasurer would receive the said town order as cash to the amount thereof, and that said grand jury should investigate such matter, and if it should find on such investigation the facts to be, as he, the said judge, had so stated, it would be warranted in finding an indictment against said county treasurer; whereupon the said grand jury retired in order to proceed with the business before it.

Afterwards, to-wit: at the same term of said court, and at or about the beginning of the second week thereof, the said Page, as such judge, maliciously, and without probable cause, and with the purposes and intents towards the said Ingmundson, aforesaid, again instructed the said grand jury touching irregularities in the office of the county treasurer of said county, and again urged the said grand jury to take action in respect thereto; whereupon the said grand jury again retired in order to proceed with the business before it.

Afterwards, to-wit: at the same term of court, and about Wednesday or Thursday of the second week of said term, the said grand jury came into court while the same was in open session, and while the said Page was presiding over the same as such judge, and presented to the said court a written paper, wherein the said grand jury reported to the court to the effect that the said grand jury resolved that it did not find any irregularities in the county treasurer's office sufficient to found a presentment upon. Thereupon the said Page, as such judge, upon reading the said report of said grand jury, maliciously, and with intents and purposes towards the said Ingmundson aforesaid, again instructed the said grand jury to the effect that the said paper or report was not such a statement as he, the said judge, wanted, that he, the said judge, did not want the conclusions of said grand jury but the facts in the said matter; and that he, the said judge, wanted said grand jury to investigate the said matter and give or report to him, the said judge, the facts. Whereupon the said grand jury again retired in order to proceed with the business before it.

Afterwards, to-wit: at the same term of court, and on the Friday or Saturday of the second week thereof, the said grand jury again came into court, and in open court presented to the court a written paper touching the manner in which the said county treasurer had conducted the business of his office, in and by which said paper the said grand jury reported to the effect that on December 30, A. D. 1875, the said Ingmundson, then being county treasurer of the said county of Mower, did take and receive from the town treasurer of the town of Clayton, one of the towns of said county of Mower, a certain town order of such

town for the payment of the sum of one hundred fourteen and 52-100 dollars, that he, the said Ingmundson, did then and there pay to the said treasurer of the said town of Clayton the sum of one hundred fourteen and 52-100 dollars for and upon such order, out of the funds belonging to said town of Clayton in his hands as such county treasurer. That the said Ingmundson afterwards and in his settlement with the said town, held the said order as a voucher and receipt for moneys paid out by him for and belonging to such town, and then and there demanded of the said town that it should take and receive said order as a receipt and voucher for the amount named therein as having been paid by said Ingmundson to the treasurer of said town, and refused to pay said town the sum of one hundred fourteen and 52-100 dollars by reason of holding the said order; that on the 20th day of March, A. D. 1877, the said Ingmundson, being the county treasurer of said county as aforesaid, did receive, by his deputy, from a resident of the town of Marshall, the same being one of the towns of said county, for the payment of the sum of fifty dollars, and then and there paying therefor the sum of forty dollars in money, and giving to such person a tax receipt covering his said taxes, to the amount of ten dollars; that the said Ingmundson did, at the same time and place, receive of another resident and tax payer of said town of Marshall, a certain town order of said town of Marshall, for the payment the sum of fifty-two dollars, and then and there giving to said person holding said order, a tax receipt therefor on general taxes on real estate, a portion of which were delinquent, to the extent of said order, and in payment of said tax.

Upon such report last aforesaid being presented to the court by the said grand jury, the said Page, as such judge, read the same at length, and fully acquainted himself with the contents of said report, and then and there, well knowing all and singular the said contents of said report; and then and there well knowing that the matters in said report stated, did not, if true, constitute any criminal misconduct in office on the part of said Ingmundson, as such county treasurer, he, the said Page, as such judge, maliciously and with the intents and purposes toward said Ingmundson, aforesaid, then and there falsely instructed the said grand jury, that if the matters set forth in said report were substantiated by evidence, and were true, the same constituted misconduct in office and public offences, on the part of said Ingmundson, and that it would be the duty of said grand jury to find an indictment against him, the said Ingmundson, therefor; and that the said grand jury should retire to its room, and take further action upon the said matters; whereupon the said grand jury did retire to its room to further consider said matters.

The said grand jury did not make any presentment or indictment against said Ingmundson, but at or about the close of said term of court, to-wit: on Saturday of the second week thereof, the said grand jury did come into court and report to the effect that it had no further business before it and was discharged.

Afterwards, at the same term of said court and immediately after the discharge of the said grand jury, the said Page, as such judge, maliciously and with the intent thereby to injure and oppress the said Ingmundson and to impair his good fame among the people of the said county of Mower, in open court ordered and directed Lafayette French, then the county attorney of said county, to prefer to him, the said judge, a criminal offense against the said Ingmundson, charging against him, the said Ingmundson, the same matter set forth in the report of

the grand jury last above mentioned as criminal offenses, and to have him, the said Ingmundson, arrested upon such charges and brought before him, the said Page, for examination thereon.

Afterwards, to-wit: on April 3d, A. D. 1877, at said county of Mower, the said Lafayette French, as such county attorney, in pursuance of the said order and direction, did prefer to the said Page as such judge, a criminal complaint, of which a copy is hereunto annexed and made a part of these articles, and marked exhibit "A."

Afterwards, to-wit: on April 17th, A. D. 1877, the said Page as such judge, at the said county of Mower, notwithstanding he well knew the contents of the said complaint so preferred to him; and notwithstanding he was then well aware that the said complaint did not set forth facts showing that the said Ingmundson had committed any public offense, maliciously and with the intent and purposes toward the said Ingmundson aforesaid, issued his warrant upon the said complaint, of which a copy is hereunto annexed, marked exhibit "B," and caused the said Ingmundson to be arrested and brought before himself, the said Page, for examination at the said county of Mower.

Afterwards, to-wit, on April 24th, A. D. 1877, at the said county of Mower, the said Page as such judge, did examine into said charges set forth in the said complaint and warrant against the said Ingmundson, and to that end examined as witnesses, one Soren Halalson, and one D. B. Coleman; but notwithstanding that it did not appear from the evidence adduced upon the said examination, or otherwise, that the said Ingmundson had committed any public offense whatever, the said Page, as such judge, at said county of Mower, to-wit, on the day last aforesaid, maliciously and erroneously, and with the intent and purposes toward the said Ingmundson aforesaid, ordered and determined that the said Ingmundson be held for his appearance at the next general term of the district court for the said county of Mower, and fixed the bail of the said Ingmundson for such appearance at the sum of one thousand dollars, which bail, afterwards and on the same day, was given by the said Ingmundson.

During the said proceeding against the said Ingmundson, in which he was held to bail as aforesaid, the said Page, as such judge, maliciously and without provocation spoke to and treated the said Ingmundson in an insulting and unbecoming manner, and in particular, accused the said Ingmundson of having in other places and upon other occasions talked of himself, the said Page, in a derogatory way.

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

ARTICLE VII.

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

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

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

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

ARTICLE VIII.

Heretofore, to-wit, on May, 31, A. D. 1877, at said county of Mower, the said Sherman Page being judge as aforesaid, he, the said Sherman Page, as such judge, wrongfully, maliciously and unlawfully, and with intent thereby to injure and oppress one David H. Stimpson, then and still a resident of said county of Mower, issued a warrant under his hand for the arrest and detention in custody of him, the said Stimpson; of which warrant a copy is hereunto annexed, marked exhibit "C."

Prior to the issuance of the said warrant the said Stimpson had not been guilty of any contempt of court as he, the said Page, at the time when the said warrant was so issued, well knew, and no complaint, affidavit, or other legal evidence of the said Stimpson ever having been guilty of any contempt of court, had ever been presented to or laid before him, the said Page, as such judge.

After the issuance of said warrant, to-wit, on June 1, A. D. 1877, the said Page, as such judge, wrongfully, and maliciously, and unlawfully, and with the intent thereby to injure and oppress him, the said Stimpson, caused the sheriff of said county to arrest him, the said Stimpson, and bring him into custody before him, the said Page, as such judge, at said Mower county, for the examination into the charges in said warrant set forth, and then and there, further, wrongfully, maliciously and unlawfully, caused and required the said Stimpson to be and appear before him, the said Page, as such judge, from time to time to answer the charges contained in said warrant, and to give bail for such appearance, in the sum of five hundred dollars; and the said malicious and unlawful proceedings against the said Stimpson, were kept pending by the said Page, as such judge, until July 2, A. D. 1877, when they

were finally terminated by the said Stimpson, being fully acquitted by him, the said Page, as such judge, of the charges in such warrant contained.

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

ARTICLE IX.

During the progress of the said proceedings against the said Stimpson, in the last preceding article herein set forth before him, the said Page, sitting as such judge, he, the said Page, as such judge, publicly and in the presence and hearing of a large number of persons in attendance upon such proceedings, behaved and demeaned himself in a malicious, scandalous, unlawful, arbitrary and oppressive manner, in the following particulars among others:

I. The said Page, during the progress of such proceedings, required a large number of persons to attend before himself, at his chambers in said Mower county, as witnesses in said proceedings on behalf of said prosecution, on pretense that he desired to examine said witnesses as to the charges against said Stimpson, in the said warrant set forth; whereas in truth, he, the said Page, as such judge, maliciously and unlawfully required the attendance of such persons in order that he might then and there compel them to testify as to matters wholly irrelevant to said charges, and concerning what persons, other than the said Stimpson had done, said, written and published concerning himself, the said Page.

Among the persons so required to attend before the said Page, as such judge, for the purpose aforesaid, were Lafayette French and R. I. Smith; and the said persons upon so attending before him, the said Page, as such judge, were severally required by him, the said Page, as such judge, to testify as to matters wholly irrelevant to the charges against said Stimpson, as he, the said Page, then and there well knew; and in particular the said French, was then and there, by the said Page, as such judge, wrongfully and unlawfully required to testify, among other irrelevant matters, as to whether he had sent certain communications ot the "Pioneer Press," a newspaper published in the city of St. Paul, in this State, as to whether he had been retained as an attorney for the publishers of said newspaper in a certain litigation then pending between the said Page and the publishers of said newspaper, and as to whether he had been paid any fees in such litigation, and as to whether any meetings had been held in his law office with a view of circulating a petition to the said Page, asking him to resign his said office of judge, and as to what persons were present at such meetings, and as to what such persons then and there said and did; and the said Page, as said judge, then and there, wrongfully and maliciously required the said R. I. Smith to testify, among other irrelevant matters, as to whether he had ever signed a petition to the said Page, asking him to resign his said office of judge, and as to whether he, the said Smith, knew of him, the said Page, doing improper acts in his official capacity as such judge.

The said Page during the progress of such proceedings, maliciously and wrongfully conducted and demeaned himself toward the counsel for the said Stimpson therein, George M. Cameron, Esq., an attorney of the courts of this State, in an unlawful, arbitrary and insulting manner, and in particular as follows:

The said Page, as such judge, then and there asked of one Chapman, a witness in such proceedings on behalf of the prosecution the following question: "Now, sir, don't you know that A. A. Harwood wrote that petition and handed it to you to print?" or words to that effect. Whereupon the said Cameron as counsel for thes aid Stimpson in said proceedings, objected to such question on the ground that the same was wholly irrelevant to the matter under investigation, and that the whole of said proceedings were unauthorized by law and without precedent.

But the said Page, as such judge, then and there maliciously and unlawfully overruled said objection, saying, "I can't listen to objections, I am running this thing," or words to that effect.

The said Page, during the progress before him of said proceedings as such judge, wrongfully and maliciously, and in a loud and angry tone of voice, publicly and in the hearing of all persons in attendance upon the said proceedings, declared of and concerning certain inhabitants of the said county of Mower, and in particular of and concerning A. A. Harwood and the said I. Ingmundson, both of whom were then and always well reputed among the inhabitants of said county as good and law-abiding citizens; that they, the said Harwood and Ingmundson, were worse than the Younger brothers (thereby meaning certain prisoners by the name of Younger, then and now imprisoned in the penetentiary of this State for having been guilty of murder and other heinous crimes, as was then publicly known throughout this State), and that they the said Ingmundson and Harwood deserved to be in the penitentiary, and that he, the said judge, could put them there if he saw fit, or words to that effect.

By which acts done and performed on the part of him, the said Page, he then and there became and was guilty of corrupt conduct in office and of misdemeanors in office.

ARTICLE X.

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

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

And the House of Representatives by protestation, saving to themselves the liberty of exhibiting at any time hereafter any future articles or other accusation or impeachment against the said Sherman Page,

and also of replying to his answers which he shall make unto the said articles, or any of them, and of offering proof to all and every of the aforesaid articles, and to all and every other articles, impeachment or accusation which shall be exhibited by them as the case shall require, do demand that the said Sherman Page may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials and judgments may be thereupon had and given as are agreeable to law and justice.

Signed on behalf of the House of Representatives.

C. A. GILMAN,
Speaker.

Attest: MARK D. FLOWER,
Chief Clerk.

EXHIBIT "A."

STATE OF MINNESOTA, } ss.
COUNTY OF MOWER. }

To Sherman Page, Judge of the District Court in and for the county of Mower and State of Minnesota:

Lafayette French makes complaint, and being duly examined on oath says that I. Ingmundson did, on the 30th day of December, A. D. 1875, in said county of Mower, being then and there county treasurer of said county of Mower, duly qualified and acting as such, did then and there take and receive of the town treasurer of the town of Clayton, a town duly organized under the laws of this State, and one of the towns of said county, a certain town order for the payment of the sum of one hundred and fourteen dollars and fifty-two cents, payable to a person unknown to this affiant. That the said I. Ingmundson did then and there pay the said treasurer of the said town of Clayton the sum of one hundred dollars and fifty-two cents for and upon said order out of the funds belonging to said town of Clayton, then and there in his possession and control by virtue of his said office. That the said order had previously been paid by the treasurer of said town. That the said I. Ingmundson afterwards and in his settlement with said town held the said order as a voucher and receipt for moneys paid out by him for and not belonging to said town and then and there demanded of said town that they take and receive said order as a receipt and voucher for the amount named therein as having been paid by him, the said Ingmundson, for and on behalf of said town, and then and there refused to pay said town the sum of one hundred and fourteen dollars and fifty-two cents of the funds and moneys belonging to said town by reason of holding said order as aforesaid, whereby the said town was compelled to pay and did pay the sum named in said order twice.

That on the 20th day of March, A. D. 1877, the said I. Ingmundson, being then and there county treasurer of said county, as aforesaid, did

receive, by his deputy, from a resident and taxpayer (whose name is unknown to this affiant) a certain order issued by said town of Marshall—a town duly organized, and being one of the towns of said county—for the payment of the sum of fifty dollars, and then and there paying therefor the sum of forty dollars in money, and giving such person a tax receipt covering his said taxes, to the amount of ten dollars. That the said I. Ingmundson, did at the same time and place, receive of another resident and taxpayer of said town of Marshall, a certain town order issued by said town of Marshall, for the payment of the sum of fifty-two dollars, and then and there giving to said person holding said order, a tax receipt therefor, on general taxes on real estate, a portion of which were delinquent, to the extent of said order, and in payment of said tax, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Minnesota; and prays that the said I. Ingmundson may be arrested and dealt with according to law.

LAFAYETTE FRENCH.

Subscribed and sworn to before me this 3d day of April, A. D. 1877.

SHERMAN PAGE,
Judge District Court.

EXHIBIT "B."

STATE OF MINNESOTA, } ss.
COUNTY OF MOWER. }

The State of Minnesota to any Sheriff in the State of Minnesota:

WHEREAS, Lafayette French has this day complained in writing to me on oath that I. Ingmundson did on the 30th day of December, A. D. 1875, in said county of Mower, being then and there county treasurer of said county of Mower, duly qualified and acting as such, did then and there take and receive of the town treasurer of the town of Clayton, a town duly organized under the laws of this State and one of the towns of said county, a certain town order for the payment of the sum of one hundred and fourteen dollars and fifty-two cents, payable to a person unknown to this affiant.

That the said I. Ingmundson did then and there pay the said treasurer of the said town of Clayton the sum of one hundred dollars and fifty-two cents for and upon said order out of the funds belonging to said town of Clayton then and there in his possession and control by virtue of his said office. That the said order had previously been paid by the treasurer of said town. That the said I. Ingmundson afterward, and in his settlement with said town, held the said order as a voucher and receipt for moneys paid out by him for and belonging to said town and then and there demanded of the said town that they take and receive said order as a receipt and voucher for the amount named therein as having been paid by him, the said Ingmundson, for and on behalf of

said town and then and there refused to pay said town the sum of one hundred and fourteen dollars and fifty-two cents of the funds and moneys belonging to said town by reason of holding said order as aforesaid, whereby the said town was compelled to pay and did pay the sum named in said order twice. That on the 20th day of March, A. D. 1877, the said I. Ingmundson, being then and there county treasurer of said county as aforesaid, did receive, by his deputy, from a resident and tax-payer (whose name is unknown to this affiant) a certain town order issued by said town of Marshall, a town duly organized and being one of the towns of said county, for the payment of the sum of fifty dollars, and then and there paying therefor the sum of forty dollars in money and giving such person a tax receipt covering his said taxes to the amount of ten dollars. That the said I. Ingmundson did, at the same time and place, receive of another resident and tax-payer of said town of Marshall a certain town order, issued by said town of Marshall for the payment of the sum of fifty-two dollars, and then and there giving to said person holding said order a tax receipt therefor on general taxes on real estate, a portion of which was delinquent, to the extent of said order and in payment of said tax. Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Minnesota.

And prayed that the said I. Ingmundson might be arrested and dealt with according to law; now, therefore, you are commanded forthwith to apprehend the said I. Ingmundson and bring him before me to be dealt with according to law.

Witness my hand this seventeeth day of of April, 1877.

SHERMAN PAGE,
Judge District Court,
Tenth District, Minn.

STATE OF MINNESOTA, } ss.
COUNTY OF MOWER. }

By virtue of the within writ I did, on the 17th day of April, A. D. 1877, at the city of Austin, in said county, arrest the within named I. Ingmundson, and have him in custody before the court.

R. O. HALL,
Sheriff.

April 17th, 1877.

EXHIBIT "C."

STATE OF MINNESOTA, } ss.
COUNTY OF MOWER. }

The State of Minnesota to the Sheriff of said County:

Whereas, information has been given to the undersigned, judge of the tenth judicial district of the State of Minnesota, that one David H. Stimson, a deputy sheriff of said county, recently, and more particularly during the months of March, April and May, A. D. 1877, while such deputy, and while engaged in the discharge of his official duties, and while a term of the district court was in session in said county, and while he was in attendance at said court, as such officer, and at divers other times and places during said months did write, print, circulate

and publish of, and concerning the judge of said court, and concerning his official acts, certain false and malicious statements, to the effect, and in substance, that the said judge was and is corrupt in his said office, and has by misconduct disgraced the judiciary of the State.

Now, therefore, you are hereby commanded, forthwith to apprehend the said Stimson, and bring him before me at my chambers, in the city of Austin in said county, to show cause, if any he have, why he should not be punished for contempt, and why he should not be held to answer for his said offense; and you will detain the said Stimson in custody until the time of hearing.

Given under my hand, the 31st day of May, A. D. 1877.

SHERMAN PAGE,
Judge Dist. Court 10th Dist. Minn.

STATE OF MINNESOTA, } ss.
County of Mower. }

I hereby certify that I did arrest the within named defendant, David H. Stimson, and have him in custody before the court.

June 1, 1877.

R. O. HALL,
Sheriff.

Mr. Armstrong offered the following resolution,

Which was adopted:

Resolved, That the Senate will proceed to organize as a High Court of Impeachment, to consider the impeachment of Sherman Page, Judge of the Tenth Judicial District of Minnesota, Tuesday, March 5th, 1878, at 11 A. M., at which time the oath or affirmation required by the constitution for the trial of the impeachment, be administered by the President of the Senate, as the presiding officer thereof sitting as a court of impeachment, and to each member of the Senate, so that the Senate, sitting as aforesaid, will at the time aforesaid, receive the managers of the House of Representatives, and

Ordered, That the Secretary lay this resolution before the House of Representatives.

Mr. Edgerton offered the following resolution, which was adopted:

Resolved, That a committee of three be appointed to invite one of the Judges of the Supreme Court to meet the Senate March 5th, 1878, at 11 o'clock A. M., for the purpose of administering the proper oaths for the organization of the Senate as a High Court of Impeachment.

The President announced that he had appointed as committee on resolution of Senator Edgerton:

Senators Edgerton, Goodrich and Macdonald.

FOURTH DAY.

TUESDAY, MARCH 5, 1878.

IN SENATE.

The hour of 11 o'clock having arrived, the impeachment of Sherman Page, the special order for that hour, was taken up.

Mr. Gilfillan C. D. presented the following communication:

To the Honorable the Senate of the State of Minnesota:

We have the honor to appear as counsel for the Hon. Sherman Page, against whom articles of impeachment have been preferred by the Honorable the House of Representatives, and we respectfully request that our appearance may be entered upon the journal of the Senate.

C. K. DAVIS,
J. A. LOVELY,
J. W. LOSEY.

Mr. Gilfillan C. D. moved that the names of Messrs. C. K. Davis, J. A. Lovely and J. W. Losey be entered upon the journal as counsel for Sherman Page.

Which motion prevailed.

Mr. Armstrong moved that the order of administering oaths be first to the President, then to the Senators and others.

Which motion prevailed.

Mr. Doran moved a call of the Senate.

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

Messrs. Ahrens, Armstrong, Bailey, Clement, Deuel, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Morton, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, Smith and Waite.

Mr. Nelson moved that further proceedings under the call be dispensed with.

Which motion prevailed.

Mr. Armstrong offered the following resolution, which was adopted:

Resolved, That the President of the Senate and four Senators, to be appointed by the President, constitute a committee whose duty it shall be to nominate all officers of the High Court of Impeachment.

Mr. Campbell, chairman of the managers for the House, appeared at the bar of the Senate, and announced that the House was under a call and the managers were unable to be present.

Mr. Armstrong moved that the orgauization of the impeachment court be postponed, and made the special order for 2 o'clock P. M.

Which motion prevailed.

AFTERNOON SESSION.

ST. PAUL, 2 P. M., TUESSDAY, March 5th, 1878.

ORGANIZATION OF THE HIGH COURT OF IMPEACHMENT.

The Senate was called to order by the President.

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

Messrs. Ahrens, Bonniwell, Clement, Clough, Doran, Drew, Edgerton, Edwards, Gilfillan C. D., Gilfillan John B., Goodrich, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Morton, Page, Pillsbury, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

The special order, the matter of the organization of the Senate as a High Court of Impeachment, was taken up.

The following oath was duly administered by Chief Justice James Gilfillan, to the President:

You do solemnly swear that in the matter of the impeachment of Sherman Page, judge of the district court for the 10th judicial district, for the State of Minnesota, you will do justice according to law and evidence, so help you God.

The secretary called the roll and the following Senators in response thereto, appeared:

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Deuel, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan J. B., Goodrich, Hersey, Houlton, Lienau, Macdonald, McClure, McHench, NcNelly, Mealey, Morehouse, Morrison, Morton, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

And Chief Justice James Gilfillan administered to each of them the following oath:

You do solemnly swear that in the matter of the impeachment of Sherman Page, judge of the district court for the tenth judicial district, for the State of Minnesota, you will do justice according to law and evidence, so help you God.

When the name of G. W. Clough was called, the counsel for Mr. Page presented the following communication:

To the Honorable the Senate of Minnesota:

And now comes Sherman Page by his counsel, and challenges the Hon. G. W. Clough and objects to his participation in the trial of this respondent, and assigns as grounds of such challenge and objection, actual bias and prejudice entertained by said Senator against this respondent and the forming and expressing opinions against the respondent as to his guilt, which disqualify him from trying impartially the issues in this proceeding.

All of which the respondent is ready to verify.

C. K. DAVIS,
J. A. LOVELY,
J. W. LOSEY.

Mr. Gilfillan J. B., moved that the matter of swearing Mr. G. W. Clough as a member of the court of impeachment be made the special order for Wednesday, at 12 o'clock M.

Which motion prevailed.

Mr. Gilfillan J. B., moved that a committee of three be appointed to present rules for the government of the court of impeachment.

Which motion prevailed.

The President announced as committee on motion of Mr. Gilfillan, Messrs. Gilfillan John B., Nelson and Waite.

On motion the court adjourned until twelve o'clock M., Wednesday, March 6th.

FIFTH DAY.

WEDNESDAY, MARCH 6, 1878.

THE SENATE AS A HIGH COURT OF IMPEACHMENT.

The hour of 12 M. having arrived, Mr. Nelson moved that the Senate resolve itself into a court of impeachment.

Which motion prevailed.

On motion of Mr. Nelson the following oath was administered to Senators Donnelly and Henry by the President:

You do solemnly swear that in the matter of impeachment of Sherman Page, Judge of the District Court for the 10th Judicial District in the State of Minnesota, you will do justice according to law and evidence, so help you God.

RULES OF SENATE SITTING AS A HIGH COURT OF IMPEACHMENT.

Mr. Gilfillan J. B., made the following report:

The committee appointed by the President of the Senate to prepare and submit rules for the government of the High Court of Impeachment, do most respectfully report the following:

A writ of summons shall issue to the accused, reciting the articles of impeachment and notifying him to appear before the Senate at a day and place to be fixed by the Senate, which writ shall be substantially in the following form:

STATE OF MINNESOTA, SS.

The Senate of Minnesota to————, Greeting:

WHEREAS, The House of Representatives of the State of Minnesota, did on the————day of————, exhibit to the Senate, articles of impeachment against you, the said ——— ————, in words following, to-wit:

[Here insert the articles.]

and did demand that you, the said ———, should pe put to answer the accusation as set forth in said articles, and that such proceeding, examinations, trials and judgments might be thereupon had as agreeable to law and justice. You the said ————, are therefore hereby summoned to be and appear before the Senate of the State of Minnesota at their chamber in St. Paul, on the —— day of ———, then and there to answer to the said articles of impeachment, and then and there to abide by, obey and perform such orders and judgments as the Senate of the

State of Minnesota shall make in the premises according to the Constitution and laws of the State of Minnesota.

Hereof fail not.

Witness: ——— ———,

Lieutenant Governor of the State of Minnesota, and President of the Senate thereof.

At St. Paul, this ——— day of ———, in the year of our Lord ———.

Which summons shall be signed by the presiding officer and attested by the Secretary of the Senate, and shall be served by the Sergeant-at-Arms to the Senate, or by such other person as the Senate may specially appoint for that purpose, who shall serve the same pursuant to the directions given in the form next following:

2. A precept shall be endorsed on said writ of summons substantially in the following form:

STATE OF MINNESOTA, SS.

The State of Minnesota to ——— ———, *Greeting:*

You are hereby commanded to deliver and leave with ———if to be found, a true and attested copy of the within writ of summons, together with a copy of this precept, showing him both, or in case he cannot with convenience be found, you are to leave true and attested copies of the said summons and precept at his usual place of residence, and whichsoever way you perform the service, let it be done at least ——— before the appearance day mentioned in said writ or summons.

Fail not, and make return of this writ of summons and precept, with your proceedings thereon endorsed, on or before the appearance day mentioned in said writ of summons.

Witness: ——— ———,

Lieutenant Governor of the State of Minnesota, and President of the Senate thereof.

At St. Paul, this ——— day of ———, in the year of our Lord ———.

Attest: ——— ———, Secretary.

Which precept shall be signed by the presiding officer and attested by the Secretary of the Senate.

Subpœnas shall be issued by the Secretary of the Senate upon the application of the managers of impeachment, or of the party impeached, or of his counsel, returnable at such time as may be fixed in the subpœna.

Such subpœna shall be substantially in the following form:

STATE OF MINNESOTA,—SS.

The Senate of Minnesota to ——— ———, *Greeting*:

You, and each of you, are hereby commanded to appear before the Senate of the State of Minnesota, on the ——— day of ———, at the Senate Chamber in St. Paul, then and there to testify your knowledge in the cause which is before the Senate, in which the House of Representatives have impeached ———. Fail not.

Witness. ———————

Lieutenant Governor of the State of Minnesota, and President of the Senate thereof.

At St. Paul this ——— day of ———, in the year of our Lord ———; which shall be signed by the Secretary of the Senate.

The form of direction for the service of subpœna shall be as follows:

THE SENATE OF THE STATE OF MINNESOTA, ss:

To the Sergeant-at-Arms of the Senate, or any of his Assistants.

You are hereby commanded to serve and return the within subpœna according to law.

Dated at St. Paul, this —— day of ——, in the year of our Lord ——.

————,
Secretary of the Senate.

The committee further recommed the adoption of the following resolutions.

Resolved, 1. That the Senate, sitting for the trial of a party impeached, sits as a court with the necessary powers to properly perform and complete its duties,

2. That for such purpose, it can meet and adjourn at its pleasure, regulate its own manner of procedure, whether the same be in conformity with precedents, or otherwise.

3. That this court, once organized within the sixty days limited by the Constitution, can proceed as such court until its duties are completed, regardless of the expiration or non expiration of said sixty days to which the Legislature is limited for the purpose of legislation.

4. That no extra session of the Legislature is requisite in order to enable the said court to proceed as such with the trial of articles of impeachment.

5. That the House of Representatives can clothe the managers with ample powers to meet all emergencies in matters of practice; and even if they are not thus clothed, and they should assume such powers, the court could or could not allow said managers to exercise them, as they might determine; and from their decision there would be no appeal.

6. That in all the proceedings of said court, however, it should follow the precedents of like cases in other States and countries.

7. That the Secretary of the Senate be requested to notify the House of the adoption of the report offered by the Senate special committee on rules for the government of the Senate sitting as a court of impeachment.

8. That the Clerk of the Senate, sitting as a Court of Impeachment, be directed to keep, prepare and publish a journal of the proceedings of the court of impeachment.

9. That the rules of the Senate so far as the same may be applicable, and not inconsistent with such other rules already adopted by the Senate, shall govern in the proceedings upon the trial of this impeachment.

The presiding officer shall have power to issue, by himself, or by the Secretary all orders, mandates, writs and precepts authorized by the rules of the Senate sitting as a Court of Impeachment, and to make and enforce such other regulations and orders in the premises, as the Senate may authorize or provide.

The Senate, sitting as aforesaid, shall have power to compel duly tendance of witnesses, to enforce obedience to its orders, writs, precepts and judgments; to preserve order, and

summary way, contempts of, and disobedience to, its authority, orders, mandates, writs, precepts or judgments, and to make all lawful orders, rules and regulations which it may deem essential or conducive to the ends of justice. And the Sergeant-at-Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute and carry into effect the lawful orders, mandates, writs and precepts of the Senate.

Counsel for the parties shall be admitted to appear and be heard upon impeachment.

All motions made by the parties or their counsel, shall be addressed to the presiding officer, and if he or any Senator shall require it, they shall be committed to writing, and read at the Secretary's desk.

If the Senate shall at any time fail to sit for the consideration of articles of impeachment on the day or hour fixed therefor, the Senate may by an order, to be adopted without debate, fix a day and hour for resuming such consideration.

Upon the filing by the respondent of a plea or answer to any article of impeachment exhibited by the House of Representatives controverting the matters in such articles set forth, or any of the same, the cause shall be deemed at issue as to such articles, without any replication to such plea or answer by or on the part of the House of Representatives, and without any formal joinder of issue, and upon the filing by the respondent of a demurrer to any such article, issue of law shall be deemed to be fully joined therein without any formal joinder in demurrer, by or on the part of the House of Representatives.

The committee further recommend that the above rules, if adopted, be ordered printed, and a copy furnished to each member of the Senate, and to each of the managers, and to each of the counsel for the respondent.

Mr. Gilfillan J. B. offered the following, and moved its adoption:

Ordered, That a summons do issue, as required by the rules of proceedure and practice in the Senate, when sitting on the trial of impeachments, to Sherman Page, returnable on Thursday, the 7th day of March, instant, at 8 o'clock in the afternoon.

Which motion prevailed.

Mr. Gilfillan J. B. moved that the vote by which the order was anopted, be reconsidered.

Which motion prevailed.

The question recurring on the adoption of the motion of Mr. Gilfillan J B., it prevailed.

Mr Armstrong moved that the Court of Impeachment adjourn until Thursday evening, at 8 o'clock.

Which motion prevailed.

PROCEEDINGS IN SENATE—ELECTION OF OFFICERS.

On resuming the regular order of business,

The President made the following announcement:

I am instructed by the committee appointed by the Senate, under a resolution of Senator Armstrong, to select such officers as may be deemed necessary to the Senate sitting as a High Court of Impeachment, to report the following names for election by the Senate:

which shall C. W. Johnson.

The form oic reporter, G. N. Hillman.

Sergeant-at-arms, M. Anderson.
Assistant Sergeant-at-arms, G. M. Tousley.
Also directed to appoint Myron Mullen as page.

J. B. WAKEFIELD,
President of the Senate.

Mr. Macdonald moved that the report be adopted.

Which motion prevailed.

The question being taken on the election of Chas. W. Johnson, of Minneapolis, for clerk of the court, and

The roll being called, the following Senators voted for Chas. W. Johnson for clerk of the court:

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

Mr. Johnson having received all the votes cast, was declared duly elected.

The question being taken on the election of Mr. Hillman for stenogrphic reporter, and

The roll being called, the following Senators voted for Mr. Hillman for stenographic reporter:

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

Mr. Hillman having received all the votes cast, was declared duly elected.

The question being taken on the election of Mr. M. Anderson for sergeant-at-arms, and

The roll being called, the following Senators voted for Mr. Anderson for sergeant-at-arms:

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

Mr. Anderson having received all the votes cast, was declared duly elected.

The question being taken on the election of Mr. Tousley for assistant sergeant-at-arms, and

The roll being called, the following Senators voted for Mr. Tousely for assistant sergeant-at-arms:

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

Mr. Tousley having received all the votes cast, was declared duly elected.

AFTERNOON SESSION.

ST. PAUL, WEDNESDAY, March 6, 1878.

The Senate was called to order by the President.

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

Messrs. Ahrens, Bailey, Clement, Deuel, Donnelly, Doran, Drew, Edwards, Finseth, Gilfillan C. D., Goodrich, Henry, Hersey, Macdonald, McClure, McHench, McNelly, Morehouse, Morrison, Nelson, Page, Remore, Rice, Shaleen, Waite, Waldron and Wheat.

PROCEEDINGS AS A HIGH COURT OF IMPEACHMENT—ELECTION OF OFFICERS.

On motion, the Senate resolved itself into a court of impeachment.

The court then on motion, proceeded to elect its officers, and Mr. Chas. W. Johnson was nominated for chief clerk of the high court of impeachment.

Those who voted for Mr. Johnson were—

Messrs. Ahrens, Bailey, Bonniwell, Clement, Deuel, Donnelly, Doran, Drew, Gilfillan C. D., Goodrich, Henry, Hersey, Macdonald, McClure, McHench, McNelly, Morehouse, Morrison, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, Smith, Swanstrom, Waldron and Wheat.

Mr. Johnson having received all the votes cast, was declared elected.

Mr. M. Anderson was nominated for sergeant-at-arms.

Those who voted for Mr. Anderson were—

Messrs. Ahrens, Bailey, Clement, Deuel, Donnelly, Doran, Drew, Edwards, Finseth, Gilfillan C. D., Goodrich, Henry, Hersey, McClure, McHench, McNelly, Morehouse, Morrison, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

Mr. Anderson having received all the votes cast, was declared elected sergeant-at-arms.

Mr. Geo M. Tousley was nominated assistant sergeant-at-arms.

Those who voted for Mr. Tousley were—

Messrs. Ahrens, Bonniwell, Clement, Deuel, Donnelly, Doran, Drew, Edwards, Gilfillan C. D., Goodrich, Henry, Hersey, Houlton, Macdonald, McClure, McHench, McNelly, Morrison, Nelson, Page, Pillsbury, Remore, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

Mr. A. A. Langhoug received the votes of Messrs. Finseth and Rice.

Mr. Tousley having received a majority of all the votes cast, was declared elected assistant sergeant-at-arms.

Mr. G. N. Hillman was nominated for stenographic reporter.

Those who voted for Mr. Hillman were—

Messrs. Ahrens, Bailey, Bonniwell, Clement, Clough, Deuel, Donnelly, Doran, Drew, Edwards, Finseth, Gilfillan C. D., Goodrich, Henry, Houlton, Macdonald, McClure, McHench, McNelly, Morrison, Nelson, Page, Pillsbury, Remore, Rice, Shaleen, Smith, Swanstrom, Waldron and Wheat.

Mr. Hillman having received all the votes cast, was declared elected.

The following oath was administered to the officers:

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

Mr. Clough, as a Senator from Mower county, arose in his place and demanded to be sworn as a member of the Court of Impeachment.

Mr. Bonniwell moved that Mr. Clough be sworn, and

The motion prevailed,

And the usual oath applying to members of the Court of Impeachment was administered by the President, to Geo. W. Clough, Senator from Mower county.

On motion, the court adjourned.

THURSDAY, March 7, 1878.

IN COURT OF IMPEACHMENT.

The hour of 8 o'clock P. M. having arrived, Mr. C. D. Gilfillan moved that the Senate resolve itself into a High Court of Impeachment.

Which motion prevailed.

Mr. Campbell, manager, announced that summons had been served and returned.

Mr. C. K. Davis sent up the following, which was read:

To the Honorable the Senate of the State of Minnesota:

In obedience to the summons requiring me to appear and answer articles of impeachment presented by the House of Representatives, to your Honorable body, I have the honor to name as my attorneys, C. K. Davis, J. W. Losey and J. A. Lovely, Esquires, who are authorized to appear and answer for me, and in my name to accept service of all process and papers, and to do all things requisite in the premises in my behalf.

Very respectfully,

Your obedient Servant,

Dated March 7, 1878. SHERMAN PAGE.

Mr. Armstrong moved that the return of the Sergeant-at-arms be read.

Which motion prevailed, and the return was read by the clerk.

Mr. Nelson moved the adoption of the following:

Ordered, That the respondent, Sherman Page, be allowed twenty days to file his answer with the Secretary (or clerk).

Which was adopted.

Mr. Wheat offered the following resolution, which was adopted:

Resolved, That the process of subpœna for witnesses on behalf of the respondent, shall be issued by the Secretary and be served by the Sergeant-at-arms.

Mr. Gilfillan J. B. offered the following, and moved its adoption:

Ordered, That the Chief Clerk have printed forthwith a sufficient number of copies of the articles of impeachment, for the use of the Senators, managers and counsel, and that he also have printed an equal number of copies of the answer or plea of the respondent to such articles, as soon as conveniently may be after such plea or answer has been filed.

Which motion prevailed.

Mr. Edgerton offered the following:

Resolved, That when the court adjourn, it adjourn to meet at the capitol on the 15th day of May, A. D. 1878, at 12 o'clock M.

Mr. McClure offered the following amendment:

Amend by striking out the 15th of May and insert the 5th day of June, 1878.

Mr. Gilfillan J. B. offered the following amendment to the amendment:

Amend by striking out 5th day of June and inserting the 5th day of July.

Which was lost.

Mr. Gilfillan C. D. offered the following amendment to the amendment:

Strike out the 5th day of June and insert 10th day of May.

Which was lost.

Mr. Nelson offered the following amendment to the amendment:

Resolved, That this court, when it adjourns, do adjourn until the 4th Wednesday in May, 1878, at 12 o'clock, noon, at this chamber, at which time the court will proceed with the trial of the articles of impeachment.

Which was as adopted.

The question being taken on the adoption of the amendment as amended,

It was adopted.

Mr. Donnelly moved that the court adjourn.

Mr. Nelson moved to amend, that the court take a recess until Friday, at 10 o'clock A. M.

Which motion prevailed.

The Senate then proceeded to the regular order of business.

SEVENTH DAY.

FRIDAY, March 8, 1878.

IN COURT OF IMPEACHMENT.

The hour of 10 o'clock having arrived, the Senate resolved itself into a High Court of Impeachment, the special order.

Mr. Gilfillan J. B. offered the following, and moved its adoption:

Ordered, That upon application of the managers of the House of Representatives, or upon that of counsel for respondent, subpœnas for witnesses issue, and be served by the Sergeant-at-Arms or his assistant, or by any person authorized to serve subpœnas in suits at law, whether the Senate, sitting in a court of impeachment, be in session at the time or not.

Which motion prevailed.

Mr. Mead, on behalf of the managers, offered the following, which was read and placed on file:

To the Honorable the Senate of the State of Minnesota, sitting as a court of impeachment:

The House of Representatives of the State of Minnesota has this day adopted the following resolution, to-wit:

Resolved, That the board of managers, selected by this House, to prosecute articles of impeachment against Sherman Page, judge of the tenth judicial district, be and they are hereby authorized and empowered to appear at the bar of the Senate, sitting as a court of impeachment, and prosecute the said impeachment as well when the House is not in session as when the same is in session.

Resolved, further, That the said board of managers be and the same hereby are invested with all the powers of tbis House, in the prosecution of such impeachment, necessary for the due and effectual prosecution of the same, to be exercised as well when the House is not in session as when the same is in session.

Witness my hand at the Hall of the House of Representatives of the State of Minnesota, on the 7th day of March, A. D. 1878.

C. A. GILMAN,
Speaker.

Attest:
MARK D. FLOWER;
Chief Clerk.

Mr. Nelson moved that the High Court of Impeachment do now adjourn.

Which motion prevailed.

Adjourned.

Attest:

CHAS. W. JOHNSON,
Secretary of the Senate and Clerk of the Court of Impeachment.

APPENDIX "A."

SUMMONS AND PRECEPT OF THE SENATE.

STATE OF MINNESOTA—ss.

The State of Minnesota to the Hon. Sherman Page, Judge of the Tenth Judicial District of the State of Minnesota, GREETING:

WHEREAS, The House of Representatives of the State of Minnesota, did, on the fourth day of March, A. D. 1878, exhibit to the Senate articles of impeachment against you, the said Sherman Page, Judge as aforesaid, in the words following, to wit:

[Articles omitted—see pp. 6–21, ante.]

And did demand that you, the said Sherman Page, judge as aforesaid, should be put to answer the accusation as set forth in said articles, and that such proceedings, examinations, trials and judgments may be thereupon had as agreeable to law and justice. You, the said Sherman Page, judge as aforesaid, are therefore hereby summoned to be and appear before the Senate of the State of Minnesota at their chamber in St. Paul, on the seventh day of March, A. D. 1878, at 8 o'clock in the afternoon, then and there to answer to the said articles of impeachment, and then and there to abide by, obey and perform such orders and judgments as the Senate of the State of Minnesota shall make in the premises according to the constitution and laws of the State of Minnesota. Hereof fail not.

Witness: J. B. WAKEFIELD,

Lieutenant Governor of the State of Minnesota and President of the Senate thereof.

At St. Paul, this sixth day of March, in the year of our Lord 1878.

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

STATE OF MINNESOTA, } ss.

The Senate of the State of Minnesota to the Sergeant-at-Arms of the Senate of the State of Minnesota, GREETING:

You are hereby commanded to deliver and leave with Hon. Sherman Page, judge of the tenth judicial district of the State of Minnesota, if to be found a true and attested copy of the within writ of summons, together with a copy of this precept, showing him both, or in case he cannot with convenience be found, you are to leave true and attested

copies of said summons and precept at his usual place of residence; and whichever way you perform the service, let it be done at least——— ———before the appearance day mentioned in said writ of summons.

Fail not, and make return of this writ of summons and precept, with your proceedings thereon endorsed, on or before the appearance day mentioned in said writ of summons.

Witness:

J. B. WAKEFIELD,
Lieutenant Governor of the State of Minnesota, and President of the Senate thereof.

At St. Paul this sixth day of March, in the year of our Lord, 1878.

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

STATE OF MINNESOTA, } ss.

I, Michael Anderson, sergeant-at-arms for the Senate of the State of Minnesota, sitting as a court of impeachment for the trial of Sherman Page, judge of the tenth judicial district, upon the impeachment of the House of Representatives, of said State, do hereby certify and return, that at Austin, in the county of Mower, in this State, at 8 o'clock in the forenoon on the 7th day of March A. D. 1878, I served the within writ of summons upon the said Sherman Page, personally, by then and there delivering to, and leaving with him, the said Sherman Page, a duly authenticated copy of the said summons, and of the precept thereupon endorsed.

Witness my hand, on this 7th day of March, A. D. 1878.

MICHAEL ANDERSON,
Sergeant-at-Arms of the Senate of the State of Minnesota sitting as a Court of impeachment.

IN THE MATTER OF THE IMPEACHMENT OF HON. SHERMAN PAGE, JUDGE OF THE DISTRICT COURT FOR THE TENTH JUDICIAL DISTRICT.

ANSWER OF RESPONDENT.

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

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

I.

That the House of Representatives of the State of Minnesota have never, in any form or manner, impeached the respondent for corrupt conduct in office, or for any crimes or misdemeanors in office, or for any cause or offense whatever; that the said House of Representatives never adopted the said alleged or any other articles of impeachment of or against the respondent; that the said House of Representatives never adopted any resolution or order, or have in any way directed that this respondent be impeached for any cause, act or omission; that all and singular the proceedings of and before the Senate of the State of Minnesota, sitting as a court of impeachment herein, have been and are wholly without jurisdiction for the reasons above stated, and for other good and sufficient reasons, all of which this respondent is ready to maintain and prove at such times and in such manner and form as the Honorable Senate shall direct.

II.

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

FIRST.

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

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

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

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

And this respondent further alleges on his information and belief, that said defendant was not in fact ready for his trial on said indictment at said term, and had made no preparation whatever therefor for trial, and was advised by his said counsel that he could not then safely proceed to trial for want of such preparation. That said Mollison has never, at any time, been desirous that his trial take place, but, on the contrary, has desired its postponement, in the hope that by delay he might avoid his trial; that he has been present in court either by himself or his said attorney, at several general and adjourned terms, since the time of his arraignment, but has never indicated his readiness for trial, nor moved in said cause in any manner whatsoever, but has consented that the same be continued from term to term.

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

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

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

After said adjourned term respondent was wholly unable to procure the attendance of any other judge, at any of the general terms of said

court, held in said county, although he made repeated efforts so to do, and said cause remained on the the calendar and was continued from term to term by consent of the said defendant, until another adjourned for the trial of said cause among others. Hon. D. A. Dickerson, judge of the Sixth District, was present and presided at said term, and was ready and willing to hear all cases wherein the parties were ready for trial, and for that purpose to order a jury if necessary.

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

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

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

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

SECOND.

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

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

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

He avers that when the defendants were arraigned on said indictments, to-wit: in September, A. D. 1874, each of them, by their counsel demurred to the indictments, and the hearing of the issues raised thereby was postponed, by consent of the State and the defendants, until the term of

court held in said county in March, A. D. 1875. That no issues of fact were ever joined in said cases by plea or otherwise, and no witnesses were ever required by the State or the defendant for the trial thereof. That the cases were again continued over said March term by stipulation of the State and the defendant, with the understanding that the demurrer should be argued and determined in vacation. That previous to, and at said March term, well knowing that no witnesses would be required in the determination of an issue of law, and with the design to make unnecessary expense to the public, and to furnish employment to said Riley, confederated with said Riley to that end, defendants unlawfully procured a large number of subpœnas to be issued for witnesses in said cases, all of whom resided at or near the city of Austin where the court was then in session, and the attendance of whom could have been secured within a few hours in case said demurrers had been overruled and defendants required to plead and go to trial at said term. That the clerk of said court, without authority, issued said subpœnas, and when respondent learned that the same had been issued he immediately, in open court reminded the clerk of his mistake, and duly ordered that no part of the expenses or costs of issuing and serving said subpœnas be paid by said county. That afterwards, and at the session of the board of county commissioners of said county, held in the month of January, A. D. 1876, the said Thomas Riley, well knowing all the aforesaid facts, presented a bill of fees to said commissioners, for serving said subpœenas, and at the request of said board respondent made a statement to said board of the aforesaid facts connected with the transaction, and during the converaation expressed and stated that the court had ordered that the bill should not be paid by the county.

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

Respondent further says: That while he was in the presence of said commissioners he conducted himself in a courteous and becoming manner, and used no harsh, angry or threatening language, but simply stated the facts in the case, and he avers that in doing so he was not actuated by malice or ill-will towards said Riley, nor any desire to deprive him of compensation for his services; but that he acted in the faithful discharge of his duty, as well as in the exercise of a legal right to prevent the allowance of an illegal claim. Furthermore, he is confident in the opinion that his conduct in the premises, was not justly censurable nor improper. In expressing an opinion to said board that the bill before them ought not to be paid by the county, he simply reported a decision previously made in open court relative to the same matter. This decision was made and rendered in good faith, this respondent then and still believing that it was strictly in accordance with the laws of the State.

And respondent expressly denies that while he was before said Board of county commissioners, or at any other time, he was informed or knew that it was the purpose of said Thomas Riley to bring an action against the county to recover the amount of said bill in case the same should be disallowed by said commissioners: but he admits that an action was commenced before a Justice of the Peace, for that purpose, as stated in said article, and which finally came into the District Court by appeal on questions of both law and fact. He avers that while said action was there pending the attorneys for the parties, with full knowledge of all that had been said and done by respondent, relative to said

claim as hereinafter stated, made written stipulation that the case should be tried by respondent, without a jury, and he avers that in pursuance of said stipulation said action was brought to trial before the respondent in vacation, and that after a careful examination of the law and all the facts in the case, judgment was duly rendered reversing the decision of said justice and in favor of the county. That at that time respondent was of the opinion and fully believed that said judgment was correct; but if to this honorable court it shall appear that there was error in said judgment, respondent respectfully urges that he ought not to suffer for an error of judgment in the decision of a legal question.

Respondent further says: That in all matters set forth in said article he has acted in good faith and with a just and proper regard for the rights and interests of the parties under the law, and no act has been prompted, inspired, influenced or modified by malicious or unkind feelings towards any person, and denies that in manner or form as stated in said article, or otherwise, he is guilty of any misconduct in office or crime or misdemeanor, and, save and except as hereinbefore stated, he denies severally and specifically each and every averment in the said article contained.

THIRD.

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

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

At the adjourned term of court aforesaid, which was appointed and held for the trial of only one jury case, to-wit: The State of Minnesota vs. W. D. Jaynes, no other jury case was expected to be tried and no other was tried. On or about the commencement of said term, respondent, as was his duty, prescribed by law, determined that the services of only one special deputy would be required, besides the services of the sheriff, for the proper transaction of the business of the term, and so notified said sheriff, and that thereupon said sheriff appointed and employed as such deputy one F. W. Allen, of said county, who was a competent, experienced and reliable man for such service, and who was thereupon constantly in attendance upon court during said term, and performed all the services necessary or required and paid therefor by the county upon the order of the court. Respondent further alleges: That he did not authorize the appointment or employment of said Mandeville as special deputy or otherwise, at said term of court, and his services were not necessary for the proper discharge of the business of the term. The sheriff of the county was in attendance at said term, and was paid therefor by the county the fees allowed by law, and that if said Mandeville performed any labor in or about the court room during said term, it was at the special instance and request of said sheriff, and without authority from the court, and if he was recognized during said term as an officer, of which respondent has no recollection, it was during the absence of the sheriff, and with the understanding and belief of the respondent that he was a general deputy left in the court room to attend to the duties of the sheriff in his absence.

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

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

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

Respondent denies that on any of the occasions specified in said article, or at any other time, he used towards said Mandeville the language therein set forth, or language of like import or effect; and denies that his conduct connected with this matter, or any of his acts in refusing to make the aforesaid order, or otherwise, were for the purpose of depriving said Mandeville of his pay for services rendered, or on account of any hostility or malice towards him; but, on the contrary, he avers that he was actuated wholly by an honest purpose to observe the law and to discharge his official duties in a faithful and impartial manner. That at all times when requested to make an order for the pay of said Mandeville, respondent has treated him in a courteous and becoming manner, and has used no harsh or improper language towards him; but has always, on such occasions, informed him of the aforesaid reasons why he had no authority to make such order.

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

FOURTH.

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

In answer to the allegations in this article, respondent admits that an execution issued as therein stated, but he avers that the same was issued in a criminal action, to collect a fine of a definite and specified amount, imposed on one Dwight Weller, the defendant in said action, and that at the time the said execution was issued, D. H. Stimpson was a deputy sheriff of said county of Mower, and authorized to serve legal process; but respondent alleges that said Stimpson did not perform any act whatsoever under and by virtue of said execution, for which he was

entitled to any compensation or fees under the laws of the State; that he did not levy on any property by virtue thereof, did not collect any money nor return said execution unsatisfied, but the money which he had in possession, and from which he deducted and retained the sum of five and 50 100 dollars, under the pretext that he was entitled to that amount as legal fees, was not in fact collected by him, nor any part thereof, but the same was paid by the said Weller to one Lafayette French, the county attorney of said county of Mower, to be applied by him in part payment of said fine, and was by said French unlawfully paid to said Stimpson, for the purpose of enabling him to retain said amount as fees. That by the laws of the State it was the duty of said French to have paid said money into the treasury of said county, instead of giving it to the person holding said execution.

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

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

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

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

And save and except, as hereinbefore admitted, the respondent denies severally and specifically each and every averment in the said article contained.

FIFTH.

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

That on the evening of the 30th day of May, A. D. 1874, a riot occurred in the city of Austin, in the said county of Mower; that George Baird, the person named and described in said article, was then sheriff of said county, and was present at said riot, with several of his deputies; that several hundred persons had assembled — great excitement prevailed—danger of personal violence was imminent, and actual breaches of the peace had occurred in the presence of said sheriff—and that he made no effort to disperse the said rioters, nor to preserve the peace; that thereupon the mayor of said city, the aldermen and other officers in the lawful discharge of their duty, ordered said sheriff to exercise the powers conferred on him by law, and disperse the persons engaged in said riot, and prevent public disturbance; but that the said Baird, through cowardice, intimidation and fear of personal violence, refused and neglected to obey said officers, and did not obey them, and refused and neglected to disperse said rioters, or to preserve the peace, but was completely overcome with fear, and utterly inefficient as a peace officer in their presence. That immediately thereafter, and on the evening of the day next following said riot, the same being Sunday, there being in said city a state of intense public excitement, and great apprehension as to the safety of citizens and property, on account of the desperate character of the rioters, and the well known inefficiency of said sheriff, a large number of said citizens assembled in a private house, to devise means of protection; that said Baird was present at said meeting, and after admitting his personal inability to enforce the law, proceeded to appoint a large number of said citizens as his deputies, to aid in protecting life and property in said city, and in executing the laws of the State.

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

The respondent had left his home on that day to attend a term of court in Fillmore county, and was then holding court; that his family were alone, and became greatly alarmed; that said Baird, whose residence was only a few rods distant, knew all of these facts at the time, but wilfully neglected his duties; made no efforts whatever to prevent disturbances, nor to protect the lives and property of citizens. That a dispatch was immediately sent to respondent, then holding court at Preston, Fillmore county, informing him of what had occurred in his absence, of apprehended danger, and requesting protection; and that thereupon, as was his duty in the premises, and in violation of no law, but for the sole purpose of preserving the public peace, and preventing further disturbance and breaches of the peace, respondent wrote the order and letter to said sheriff which are set forth in said article, and sent

the same to him by mail. That these communications were made in the explicit form adopted, because the said sheriff had previously neglected to discharge duties of a similar character to those therein enjoined, and such neglect, becoming well known, had greatly encouraged said rioters.

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

SIXTH.

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

The respondent further answering said article, denies that at or during the session of the district court held in said county of Mower, in the month of September, A.D. 1876, he instructed the grand jury then empanneled, that he had been informed, or understood, that irregularities existed in the office of the county treasurer, or made use of language to that effect, and denies that said jury did investigate the manner in which the business of said office was conducted to any extent, except as hereinafter stated, and avers that he did instruct said jury as required by law, to investigate the official misconduct of all public officers within the county, and called their attention especially to certain alleged defalcations by the treasurer of the town of Clayton, in said county, which the jury investigated, and found an indictment against said treasurer of the town of Clayton, for the crime of embezzlement, but the said jury did not examine the books, records, papers and vouchers belonging to the county treasurer's office sufficiently to derive any reliable information therefrom, but said examination was so superficial and incomplete, was limited to so short a time, and conducted in a manner so illy adapted to the purpose, that said jurors in fact knew nothing more of the real state of affairs in said office, when they finished their investigations, than when they commenced their examination; and that when they made the report set forth in said article, they well knew that it was not warranted by any facts disclosed on said investigation.

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

Subsequent to said September term of court, and prior to the term held in said county in the month of March, A.D. 1877, great public dissatisfaction then existing among the citizens of said county with the aforesaid action of the said grand jury, respondent duly received information from residents and officers of the said town of Clayton that the

county treasurer had refused to pay to the treasurer of said town the money in his hands belonging to said town, on the legal aad proper warrant being presented therefor, and after proper and legal demand made, on the pretext that he, the said county treasurer, held an order against said town, not taken for taxes, but received from a former town treasurer after the same had been paid, and after said treasurer had defaulted. Information had also been received of a great number of irregularities, violations of law and embezzlements by officers and others in said town.

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

That through his influence and the influence of his personal friends, some of whom were members of the said jury, an effort was made to postpone and finally to prevent a thorough or any investigation of said officer by said grand jury, and to shield and to protect said Ingmundson from investigations. That for this purpose said jurors postponed investigation, in disregard of said instructions and their duty, until a late period in the session, and until all of the business necessary to be transacted ought to have been completed. That they refused to be guided by the law as given them by the court, disregarded and denounced the instruction given them, and some of them publicly denounced the court in an angry and abusive manner for having directed their attention to said county treasurer. That, disregarding their high duties and sacred obligations, a number of said jurors unlawfully and maliciously combined together to resist the enforcement of law, and to prevent the administration of justice and the punishment of crime, and that in furtherance of said purpose and in disregard of the law and instructions of the court, the jury called said treasurer before them while they were in session at two different times, when the subject of his misconduct was under consideration, and permitted and required him to make lengthy statements as to the affairs in his office. Said jurors having been previously informed by the court and well knowing that this

proceeding would be fatal to any indictment that might be found against said officer.

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

That at the commencement of and during said term of court, the attention of the grand jury was called to a large number of criminal matters and irregularities in the conduct of public officers, all of which with the exception of said treasurer, were promptly and thoroughly investigated and acted upon as required by law.

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

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

Being informed of the aforesaid misconduct of said jury, of their unnecessary and unreasonable delay in the investigation of so important a

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

Respondent further avers that said complaint and warrant set forth sufficient facts to constitute a public offense, and that at the examination, or at any time, the accused did not object to the sufficiency of said complaint or warrant, nor was the attention of respondent directed or called to any defects therein, and if any did exist he was not aware of them. That said Ingmundson, by his counsel, G. M. Cameron, Esq., an attorney at law, waived an examination, when he appeared, and offered to give bond for his appearance at the next term of the District Court, but respondent deemed it his duty to proceed in the form and manner prescribed by the statute in such case made and provided, and that thereupon the county attorney caused witnesses to be subpœned and examined. From the testimony given it appeared that an offence had been committed, and the accused was held to bail for his appearance at the next term of the District Court. During said examination, and at all times, said defendant and his counsel were treated by respondent in a courteous and considerate manner

And respondent further alleges that at no time during said March term of court, while the official acts of said Ingmundson were being investigated, nor while said examination was taking place, nor at any other time, were his official acts in any way influenced, modified or controlled by malice or ill-will, or other improper or unkind feelings towards said Ingmundson, or by any desire to injure or degrade, or bring him into disrepute among the people of the said county or State, but that in all things done concerning said case, he was prompted and influenced solely by a desire to discharge his official duties in a faithful manner, and to promote the public welfare by an impartial and proper exercise of his duty as a judge. Respondent was and still is of the opinion that all of his acts were lawful and proper, and understands that the laws of the State make it the duty of all district judges to require grand juries to investigate the misconduct of all public officers, and requires said juries to be governed by the law as given in charge by the court, and if in any material or important matter said juries refuse to act or are negligent in this regard, it becomes a further duty of the court to in-

terpose in the interest of justice, and to that end may require the proper officers to institute such legal proceedings as are necessary.

And further answering said article, respondent says that for a long time previous to the said term of court, in the month of March, A. D. 1877, the public business of said county had been so unlawfully and irregularly managed that in consequence thereof the county had been put to a great trouble and expense in the employment of competent experts to examine the accounts of officers and had been involved in expensive and protracted litigation to recover funds which had been embezzled, and all of which might have been avoided if the grand juries empaneled and sworn at the various terms of court holden in said county had discharged their duties faithfully, that certain towns in said county had then recently sustained heavy losses on account of defalcations and embezzlements of their officers, some of whom were then under indictment and had absconded and forfeited their bail in order to escape prosecution.

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

Among the many disreputable acts of said treasurer which should be received as evidence of his desire to evade the law, as well as of the necessity then existing for a full investigation of his official conduct respondent, on his information and belief, alleges the following: That while the Grand Jury were engaged in the investigation of the affairs of his office, he secured communication with certain members of said jury, through the intervention of friends, and otherwise, and was thus kept informed from day to day as to what transpired in the jury-room— what position members took regarding it, and how they voted. That during the same time, while he was engaged in the discharge of the duties of his office in the same building where said Court was in session, in the presence and hearing of jurors and other citizens, he cursed and swore in the most disgraceful manner on account of the investigation that was being had, and indulged himself in the most abusive language of and concerning the judge then presiding at said term, and used every means in his power, by misrepresentation of the facts and otherwise, to create prejudice against the officers and jurors who were in favor of such investigation. That he pursued this conduct for several months after said term of Court, to such an extent that hardly a citizen of said county could enter his office without being insulted by some offensive remarks, or compelled to listen to a lengthy and abusive harangue concerning said officers. That he falsely, and without any cause whatever, except that they had discharged their duty in the investigation of his office, assumed that the court, the jurors and all others who did not espouse and advocate his cause, were his personal enemies, and he immediately assumed towards all such persons an attitude of hostility.

That he seemed to be informed as to the individual acts of all of the

grand jurors, and towards those whom he charged with voting or expressing themselves as grand jurors against him, he has ever since manifested bitter feelings of hostility, and refused to recognize them, while towards others his conduct has been of the opposite character.

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

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

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

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

SEVENTH.

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

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

Respondent then believed and still believes that, knowing the misconduct of said jury as hereinbefore set forth, it would have been a gross neglect of his duty to have discharged them without first reminding them that such misconduct was not sanctioned by law nor by the rules and practice of courts of justice. Many of said jurors, as he is informed and believes, when they came into court to be discharged, were greatly angered and excited on account of the bitter partisan discussions and wrangle which they had among themselves concerning the Ingmundson

case, and were in no suitable frame of mind to observe, recollect or correctly judge of the tenor or substance of the remarks made to them by the court. Moreover, the feelings of some of them at that time towards the respondent were exceedingly bitter and hostile, and the colorings and interpretation given to his remarks were mainly drawn from the disposition of their own minds. And save and except as hereinbefore admitted, this respondent denies severally and specifically each and every averment in said article contained.

EIGHTH.

In answer to the matters set forth in the eighth and ninth articles of impeachment, respondent denies each and every statement of fact or conclusion therein contained, except as hereinafter admitted or answered, and alleges the following facts:

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

"*To S. Page, Judge of the District Court, Tenth Judicial District, Minnesota:*

"SIR—Knowing you, and believing that your prejudices are stronger than your sense of honor, that your determination to rule is more ardent than your desire to do right; that you will sacrifice private character, individual interests, and the public good to gratify your malice; that you are influenced by your ungovernable passions to abuse the power with which your position invests you, to make it a means of oppression rather than of administering justice, that you have disgraced the judiciary of the State and the voters by whose suffrages you were elected; therefore, we the undersigned citizens of Mower county, hereby request you to resign the office of judge of the district court, one which you hold in violation of the spirit of the constitution if not of its express terms."

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

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

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

That at such examination the accused was represented by counsel and was furnished every opportunity to make a thorough defense; that adjournments were had from time to time, but not at any time without the consent of the accused. That early in the examination it appeared that the publication with which Stimpson was charged was the joint production of several individuals, including said Stimpson, who, to gratify their malice, had organized a conspiracy at, or immediately after said March term of court, to bring respondent as such judge and said court into disrepute and thus divert public attention from their own offenses, and thus as a groundwork for their unlawful confederation they had availed themselves of the hatred and malice entertained by the county treasurer, by members of the grand jury, and by said Stimpson, all of whom were induced to believe by said evil disposed persons that they had suffered great wrongs during said term of court. That from the witnesses examined respondent learned, for the first time, that two petitions of an essentially different character had been put in circulation by said persons, and both of which it appeared had been in the possession of Stimpson, but one of which he claimed was not published or circulated.

That in order to ascertain the facts as to the guilt or innocence of the accused it become and was necessary to examine several witnesses, most of whom were personal friends of the accused and had been more or less connected with him in composing and circulating said libel, and from their sympathy and interest in his behalf were extremely unwilling to disclose the facts. That all the questions put to said witnesses were proper and legal questions, and that no witness was compelled under his valid objection to answer any question, and only one witness, viz.: A. A Harwood, declined to answer on the ground that he might criminate himself, and he was not required to answer. No objection was made by any witness to any question on the ground of its irrelevancy or incompetency. Respondent submits that courts in such examinations are vested with discretionary powers to be exercised prudently in the interests of justice, and are not liable as for misconduct except for a criminal abuse of such discretion. And respondent avers that all questions propounded on such examination were pertinent and necessary as bearing either on facts established on the credibility of the witnesses, and were not propounded for the purpose of annoying or injuring said witnesses, but solely for the purpose of arriving at the truth relative to the matter then under consideration.

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

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

He denies that during said examination, or pending the same, he held conversation with said Stimpson, or with any other person, except as to the subject matter under consideration and the testimony given; and denies that he used any of the language set forth and alleged in said ninth article to have been used by him on said occasion, but avers that he did, after said examination had been adjourned, and again after the same was concluded and defendant discharged, have a conversation with said Stimpson, during which he, said Stimpson, expressed regret at the associations he had formed since he had been in Austin, and alleged that he had been led into difficulty by the influence of bad men.

Believing him to be sincere in his assertions respondent addressed him in a kind and friendly manner, and advised him to shun the society of such men, but did not use the names of any individuals. This conversation was introduced and sought by Stimpson himself, and at its conclusion he expressed himself as well satisfied with what he had done, and so said.

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

NINTH.

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

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

SHERMAN PAGE.

C. K. DAVIS,
J. A. LOVELY,
J. W. LOSEY,

Counsel for Respondent.

Filed March 26, 1878.

CHAS. W. JOHNSON,
Secretary of the Senate, and clerk of the Court of Impeachment.

APPENDIX "B."

NOTE.—The following abstract of proceedings in the House of Representatives was furnished by Mark D. Flower, chief clerk of the House of Representatives.

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

PROCEEDINGS RELATING TO THE IMPEACHMENT OF HON SHERMAN PAGE, IN THE HOUSE OF REPRESENTATIVES.

On Tuesday, January 22, 1878, Mr. Sanborn offered the petition of P. T. McIntyre and others, asking for an investigation of the conduct of Hon. Sherman Page, judge of the tenth judicial district of this State, which was read, and is as follows:

AUSTIN, MINN., January 18, 1878.

To the Honorable the House of Representatives, of the State of Minnesota:

MR. SPEAKER AND GENTLEMEN:—The undersigned, your informants and petitioners, respectfully request your attention to the following statements of, and concerning the acts of the Hon. Sherman Page, Judge of the 10th Judicial District of Minnesota:

First. At the general election in the autumn of A. D. 1872, Sherman Page, then and ever since a resident of the city of Austin, in the county of Mower, was elected to the office of Judge of the District Court of said 10th Judicial District, the duties of which office he entered upon in January, A. D. 1873, and he has continued in the occupancy of said office until the present time, and he is now acting as such judge, his term of office not expiring until the 1st day of January, A. D. 1880.

Second. Soon after his induction into office, he began to manifest traits of character incompatible with the dignity and sacredness of the high position to which he had been called by the suffrage of the people, and from that time until the present, he has continued to disappoint the reasonable expectations of the public, and to disregard the claims of justice, in the administration of his official duties.

Third. Among the many official acts which he has committed, that are improper, disreputable and illegal, and that show him to be actuated by corrupt motives in the performance thereof, we instance these, viz.:

Fourth. At the general term of court held in this county in September, 1873, he procured the indictment of C. H. Davidson and H. O. Bassford, newspaper publishers of the city of Austin, for publishing a communication written by one D. S. B. Mollison, concerning said Page, which he alleges was libelous. That he caused the said indicted persons to be arraigned before himself, sitting as judge, and required them to plead. That he made one order whereby the trial of said persons

was adjourned for the term, requiring each of the defendants to recognize in the exhorbitant and oppressive sum of $2,500, for their appearance at the next term of the court. Said Page never procured the attendance of any judge for the trial of said defendants, but compelled them to appear at each succeeding term to answer to their names upon the call of the calendar, only to be forced to acquiesce in another adjournment, and another order to appear at the next term. This course was pursued by him continually for, and during the period of four years, or until the spring term in 1877, at which time said indictments were dismissed in pursuance of an agreement on his part, viz.: that they should publish retraction or apology.

Fifth. At the same time that Messrs. Davidson & Bassford were indicted, upon his own complaint, Page procured the indictment of the said Mollison, the author of the communication alledged to contain libelous matter, arraigned him and fixed his bonds at the sum of $2,500. Since that time said Mollison has been compelled to attend at every session of the court held in this county, but has never been able to have his case tried, by reason of Page's neglect to get a judge to sit for that purpose.

At the last term of the court held in this county, the bondsmen of said Mollison, at his request, appeared in court and surrendered him, and demanded thereupon the cancellation of their bond, which was granted. From that time until now, said Mollison has been at large with the knowledge and acquiescence of said Page. All of the aforesaid acts of said Page were done maliciously, and for the purpose of oppressing the said Davidson & Bassford and the said Mollison.

Sixth. In the spring of 1874, there occurred here what Page called the "whisky riot." At that time Page was on the streets, and pretending to act under the authority of his office as judge, gave directions to the sheriff and orders to other persons, in a manner calculated to increase the tumult, and to precipitate violence. Several persons, to whom such orders were given, refused to obey. Whereupon, a few days subsequently, said Page drew up complaints against them, got some one to sign and make oath to them, had them arrested, brought before himself, and by himself they were bound over for their appearance at the next term of the court.

After said persons had been bound over, said Page told the county attorney that he wanted him to be very careful in drawing the bills of indictment in the cases of the alleged rioters, and sometime before the sitting of court, said Page called upon the county attorney and requested permission to see the indictments which had been framed in those cases. Upon their being handed to him, he put them in his pocket, took them away and kept them several days. When he returned them he informed the county attorney that they were sufficiently formal and accurate.

All of which acts were prompted by corrupt and malicious motives towards said parties.

Seventh. During the spring and early summer of 1874, the said Page was in the habit of meeting with the temperance committee (so called), and of advising them concerning the law applicable to liquor venders and the forms of procedure.

Within the same period he went to Hon R. S. Smith, then acting as a justice of the peace in and for the city of Austin, and before whom

several cases were pending against saloon keepers, for an alleged violation of the so called "Inebriate Asylum Law", and told said Smith that he ought to be very careful in making his decisions in said cases, as they would no doubt be appealed, and that he (Page) wanted to be able in case of appeal, to sustain his (Smith's) rulings.

Soon after this, and before the trial of said cases, or any of them, said Page prepared an opinion in writing upon the law governing said cases, and presented the same to said Smith for his use and guidance, as such justice in the trial and decision of said cases

When said cases came on for hearing, said Smith applied to them the law as laid down in the said written opinion of said Page, and all the parties defendant were convicted and fined.

Afterwards said cases were appealed to the District Court, on questions of law, and the decision of said Justice Smith were affirmed by said Page as judge.

Eighth. In January, 1875, he sought to prevent the allowance by the board of county commissioners of fees due respectively to Geo. Baird, ex-sheriff, and to Thomas Riley, constable. For this purpose he went before the county commissioners, and told them that the bills of said Baird and Riley contained illegal charges, that they should not allow the same, that if they did, he would prosecute them.

The commissioners told said Page that the county attorney had instructed them that the charges alluded to were just and proper, that they constituted a legal and valid claim against the county, and that the same could be enforced by legal process.

Said Page denied the legality of said charges, made abusive and insulting remarks to said commissioners, and to the county attorney, when the board were in open and public session.

In consequence of the violent opposition and threats of said Page, said commissioners disallowed in part the bill of said Baird, and in whole the bill of said Riley. That thereafter, upon his threatening to sue the county, said commissioners allowed nearly all of said Baird's bill, he consenting to a small loss rather than suffer the costs of a lawsuit and its inevitable delay. Said Riley sued the county before a justice of the peace, recovered judgment for the full amount of his bill. An appeal was taken to the district court and the decision reversed by said Page, in accordance with the pre-determined judgment which he had given to the county board.

All of which acts of said Page were done with malice toward said Baird and Riley, and for the purpose of making them trouble and expense.

Ninth. Prior to his election as judge, and while he was associated with one E. O. Wheeler of this city, in the practice of the law, he made a charge in favor of the firm against one T. W. Woodward for services. The claim not having been settled, an action was brought against said Woodard and in favor of Page & Wheeler to enforce its collection. Although this was several months after Page became judge, he went into the court room, conducted the case in which he was jointly inteested with said Wheeler, obtained a judgment in his own favor, and Woodard, the defendant, in due time took an appeal to the district court. The appellant gave it no further attention, knowing that it could not be tried legally by Page as judge, because he was a party plaintiff in the case.

At the term of court next succeeding the trial before the justice, and while Page was presiding as judge, Mr. Wheeler appeared and made a motion to have the case entered upon the calendar and to affirm the judgment of the court below, which said motion Judge Page entertained, heard argument upon, and granted. He then made an order affirming said judgment, which the clerk entered, and upon which execution was issued against the goods and chattels of said Woodard, and thus the whole amount of judgment and costs were collected: All of which acts on the part of said Page, were promoted through malice toward said Woodard.

Tenth. In June, 1875, one C. D. West was appointed as "turnkey" at the jail. During the same month he took part in a caucus, affiliating with the party that was opposed to Page. In September the sheriff was notified by the judge that Mr. West must not be continued as such "turnkey" or jailor, and on the 11th day of October following he (Page) filed in the clerk's office an order dismissing said West, which said order he dated October 4th, or one week earlier than the date of the filing. When he made an order upon which said West might draw his pay, he allowed him compensation only until the 4th, although he had served until the 11th, or seven days more than the order for payment covered. Against this treatment said West remonstrated, but without effect.

Soon after the county commissioners met, Mr. West presenetd to them a bill for the amount due him in excess of that fixed by Page's order—for seven days' service for which Page had refused to allow him any pay.

Thinking the claim to be a just one, the board allowed it, whereupon Page went to the board, told them that matter was not within their province. That *he* had acted upon it. That his action was final and that they must revoke their order of allowance or he would prosecute them.

Intimidated by his threat and uncertain as to their duty, the order was revoked, and although that action was taken fully two and one-half years ago, Page, although frequently requested, has never allowed said West any other or further compensation.

In this transaction, the said Page was actuated by malice toward said West,

Eleventh. At a session of the District Court, held in January, 1876, Page presiding, the sheriff appointed one W. T. Mandeville to act as a court deputy. During the first two days of the term, said Mandeville was the only deputy in attendance, and as such he obeyed the directions and executed commands of the judge, and during six consecutive days was on duty constantly, and so known to be, and he was daily recognized by such judge as such deputy. At the close of the said term, said Mandeville went to said judge and requested an order for the amount due him in payment of his services. Thereupon, in an angry manner, and in a violent and abusive tone, he demanded of said Mandeville that he should tell him (Page) "what political dirty work he (Mandeville) had done for the sheriff that he had appointed him deputy." And said Page then and there refused to give him an order, and said Mandeville has not received anything whatever for his services.

Twelfth. While sitting as judge in the trial of a criminal action, said Page wrote upon a scrap of paper, calling the attention of one of the counsel employed in the case to certain points, suggesting that he dis-

cuss them to the jury, and he did the same with a corrupt and malicious motive, intending to prejudice the rights of the party on trial:

Upon the coming into court of the grand jury at the opening of the term holden in the fall of 1876, said Page presiding as judge told the grand jury that he had heard that there were irregularities in the management and practice of the county treasurer, and directed them to make a thorough examination of the facts, and to take such action as to them should seem best. After making an investigation as they had been commanded to do, said grand jury made the following commendatory report of, and concerning the said county treasurer and the management of his said office, to-wit:

"This jury find in this investigation nothing irregular, nor any appearance of wrong doing in any of the affairs of the county treasurer.
(Signed)

"E. R. CAMPBELL,
"Clerk of the Grand Jury."

Notwithstanding the action of the grand jury above quoted, said Page at the March term following, upon empanneling the grand jury, delivered to them a lengthy speech and charge, in which he alleged there was corruption in office of the county treasurer, that said office was being run in the interest of certain persons for political purposes, and that the treasurer was guilty of gross violations of law, for which he ought to be indicted; and, if they should find the facts as he had stated, it would be their bounden duty to indict him.

Thereupon the said jury retired, and after making an exhaustive investigation of the acts of said treasurer, they, after the transaction of other business, notified the Court that there was nothing further requiring their notice. Said Page then asked whether or not they had investigated the case of Ingmundson, the county treasurer. They replied in the affirmative. Said Page then in an angry, excited and abusive manner, repeated the alleged acts of said Ingmundson, and insisted that they constituted an indictable offense, and told said jury it was their sworn duty to indict him, if they so found the facts, and directed a further consideration of the case. After they had again carefully investigated the case, the jury came into court, and again told the court that they had completed their business, and, as, before, he delivered to them another charge, denunciatory and abusive in its character, and ordered them back to their rooms. This was repeated not less than four or five times, and at each appearance he became more angry and abusive.

After he had held said jury five days, with the purpose of compelling the indictment of said Ingmundson, he gave them a lecture, telling them that they had violated their oaths, that they were guilty of perjury, that they had attemted to put themselves between a criminal and his punishment, that they had connived at the commission of crime, and they were unworthy to be the guardians of public interests, and then and there he told them that they would not be permitted to thwart the purposes for which grand juries were created, and, turning to the county attorney, in open court, ordered him to make complaint before him, (Page) against said Ingmundson, and prosecute him on the matters investigated by said grand jury. That said complaint was made in accordance with the order of the said Page, and upon it Page caused a warrant to be issued, and Ingmundson arrested and brought before Page

for examination, after which he held him for his appearance in the sum of $1,000. All of which was done for the sole purpose of gratifying his spite and malice toward said Ingmundson.

Thirteenth. The same Thomas Riley hereinbefore mentioned, was, during the year A. D. 1876, deputy sheriff of said county of Mower.

At a term of the district court held in this county in the month of September, 1876, said Riley was subpœnaed to appear at said term of court and give evidence in a certain case then pending. Not knowing the time at which it would be taken up, and having in his hands an execution which required his immediate attention, said Riley went into the country for the purpose of making an important levy. While he was absent the said case in which he had been required to give evidence was called. When Page learned that Riley had gone into the country, he ordered an attachment to be issued for his arrest, and although he returned to the city on the evening of the same day of his departure, he was seized upon the process of the court, brought before Page, and fined ten dollars and costs for contempt, to gratify his malice toward said Riley.

Fourteenth. Previously to the March term of the court, 1878, one D. H. Stimson, then being a deputy sheriff, had realized a certain sum of money (less than the whole amount) upon an execution duly issued and in his hands for collection. The excess of such money over and above his fees, said Stimson had paid to the clerk of the court. Page hearing of the transaction, called the attention of the grand jury, then in session, to the case, and instructed them that it was one requiring their action. The jury investigated it and fully exhonorated Stimson. Judge Page called Stimson up in open court in the presence of the grand jury that had exhonerated him, told him that he was guilty of withholding money that did not belong to him, that he ought to be punished for it. He then ordered said Stimson to pay to the clerk the remaining sum of money which he had collected on said execution and held as his fees, and then and there in an abusive manner, stated to said Stimson, that as that was his first offense, he would let him off, but if he heard of his repeating the act, he would prosecute him to the extent of the law. That said command was unjust and oppressive and made vindictively, and to gratify a malicious feeling which he cherished against said Stimson.

Fifteenth. The conduct of said Page as judge having been brought to the notice of the general public, through the circulation of petitions asking him to resign his office, and through the newspapers of the State, containing severe criticisms upon his official conduct. Said Page sought to prevent a further circulation of said petitions, and the facts therein set forth; he made complaint and issued his warrant, and caused the arrest of one D. H. Stimson, deputy sheriff, charging him with contempt of court, and that he had circulated one of the aforesaid petitions, asking the said Page to resign his office as judge. Upon the examination of said Stimson, before himself as judge, said Page summoned a large number of witnesses, whom in spite of their own protests, and of the urgent objections of counsel for said Stimson, said Page compelled them to tell not only what they knew about Stimson's connection with said petition, but what each had himself done in relation thereto. After continuing this inquisition during two days, said Page arbitrarily adjourned the further hearing for the period of two weeks, and in the *interim* required said Stimson to give a bond in the sum of $1,000, for his appearance on adjournment day.

At the expiration of the two weeks said Page, again, on his own motion, adjourned the case for the further period of one week, still keeping Stimson under bonds. The next day set for trial having arrived, said Page ordered a third adjournment, at which time said Stimson was discharged. That after said Page had concluded the examination of witnesses, for upwards of an hour, in an angry and excited manner, he denounced affiant, and used toward him insulting language, and then and there stated that the persons who got up said petition were no better than the Younger brothers; that they should be looking through bars in their cell; that he would put them where they would have a steady boarding-place—(meaning he could and would send them to the penitentiary)—that it was not so much him (Stimson) that he (Page) was after as it was Harwood, Ingmundson, French and others, whom he alleged ought to be in the State prison, and he might see fit to put them there. That said conduct of Page was corrupt and oppressive, and done for the purpose of oppressing said Stimson, and obtaining better facilities for continuing his persecution of said Ingmundson, French and others.

Sixteenth. In August, 1877, after the appearance of certain articles in the public newspapers of the state, criticising the judicial acts of said Page, he instituted an investigation of the charges made against him, at the hands of the bar of his district. At the meeting of the committee of the bar, upwards of thirty affidavits of reputable persons of this county sustaining said charges, were presented to said committee. Shortly afterward said Page went to a large number of said persons, who had made said affidavits, and sought by threats of prosecution, to procure from said persons retractions of the statements in their affidavits, although he was told by said parties that the statements in their said affidavit were true.

Seventeenth. On the second day of July he served upon Lafayette French, Esq., county attorney a long list of charges, accompanying said charges with an order requiring said French to appear at a term of court, to be holden at Albert Lea, and show cause why he should not be debarred.

After an examination upon charges preferred by himself and tried by himself, as attorney, before himself as judge, he made an order suspending said French from practice, until the last day of the next succeeding term of the supreme court, and thus, besides the humiliation and disgrace inevitable to the defendant, he deprived him for the period of three months of the right to practice his profession, and that too, by a proceeding so completely at variance with the requirements of law and the practice of the courts, that the supreme court refused to recognize Page's transactions in the premises, as in any sense a legal proceeding. That said proceeding was commenced, and said French debarred by said Page through malice on the part of said Page.

Eighteenth. At the term of court held in this county in September, 1877, although several persons were under bonds (and to prevent the forfeiture of his bail one of them had travelled not less than 700 miles), said Page discharged the grand jury, and so prevented the accused parties from having a speedy trial, and required them to appear at the next term of said court. That in said proceeding said Page was actuated by malice towards said accused parties.

Nineteenth. It has been the custom of Mr. Page, as judge, to ill-treat and abuse attorneys, and officers of his court in this county, and to

subject them to every conceivable humiliation, and to bring them into contempt before the people who disagree with him politically, and who are not willing to be used by him in the advancement of his own plans and purposes.

Twentieth. Aside from the foregoing, Mr. Page as a man is tyrannical, vindictive and oppressive; hating his enemies with an intense hatred, which is never forgotten and never to be reconciled. These are his natural traits of character.

Believing the said Sherman Page guilty of crimes and misdemeanors, and of corrupt conduct in office as such judge, we respectfully ask your honorable body to investigate the foregoing charges, and that said Sherman Page be impeached and removed from said office.

P. T. McIntyre, Co. Auditor, George Baird, H. W. Elms, W. T. Wilkins, Ormanzo Allen, L. G. Bassford, Geo. E. Wilbour, P. O. French, S. N. Griffith, H. Hunz, J. Schwan, Ira Jones, F. Kirchof, Chas. W. Boehmer, G. Schlender, J. A. Bates. W. P. Van Valkenburgh, C. W. Cutler, J. N. Wheat, M. D., C. A. Pooler, D. Strock, M. D., Peter Nelson, S. Johnson, T. Marthinson, J. J. Konberg, P. Quinrey.

On motion of Mr. Sanborn, it was ordered that the said petition relating to the conduct of Sherman Page, as the judge of the district court for the tenth judicial district, be referred to the judiciary committee; that said committee be instructed to examine into the truth of the charges in such petition contained, and report them to the House with all convenient speed; and to that end, that the said committee have power to send for persons and papers, and to examine witnesses under oath.

Page of journal 54.

FRIDAY, FEB. 22d, 1878.

Proceedings of the House in Secret Session.

SPECIAL ORDER.

The Speaker announced that the special order for the House was the consideration of the resolutions of the committee on judiciary, in relation to the impeachment of Hon. Sherman Page.

Mr. Campbell S. L., moved that during the consideration of matters relating to the impeachment of Judge Sherman Page, the House sit with closed doors.

The motion prevailed, and the reporters and lobby retired from the hall

Mr. Lewis moved a call of the House,

Which was ordered, and

The clerk called the roll.

On motion of Mr. Chandler, further proceedings under the call were dispensed with.

On motion of Mr. Campbell S. L., the report of the committee and the testimony with the resolution, was taken from the table for consideration at this time.

Mr. Chandler moved the adoption of the resolution as follows:

Resolved, That the Hon. Sherman Page, judge of the tenth judicial district of the State of Minnesota, be impeached for corrupt conduct in office and for crimes and misdemeanors.

Mr. Feller moved that the House proceed to consider the evidence taken and returned by the committee, at this time.

Mr. Bowler moved that the evidence in the Page impeachment case be re-committed to the judiciary committee, with instructions to select from said evidence such portions as they deem material to enable the House to determine as to the truth of such specifications as they unanimously find to be true within the meaning of the laws of the State of Minnesota relating to impeachment, and that such selections from said evidence be printed and laid upon the desks of members.

Which was lost.

Mr. Campbell W. M., offered the following substitute for Mr. Bowler's motion:

That whenever any member of the House desires any portion of the testimony read, it shall be so read, but whenever a majority of the House shall deem the reading of such testimony immaterial, it shall be discontinued.

The substitute was adopted.

Mr. Denison moved that the House take up the charges and specifications found to be true by the judiciary committee, and that the testimony relating thereto be read, and that the testimony not relating thereto be not read. That each charge in the petition of McIntyre and others be considered *seriatum*, the evidence briefly stated by the chairman of the judiciary committee, and that the House take action upon each charge.

Which did not prevail.

Mr. Mead offered the following resolution:

Resolved that the House now proceed to the consideration of the charges, specifications and evidence reported by the judiciary committee concerning the impeachment of Judge Page.

Which resolution was adopted.

Mr. Campbell S. L., moved that the specifications be read to the House, and that when specifications were reached upon which the House desired testimony, that the clerk shall then read such testimony to the House.

Which was adopted, and

The clerk proceeded to read the first specification which was read and considered, but nothing done in relation thereto, as no evidence had been submitted regarding the same.

The second specification was then read and considered.

Mr. Rice called for the reading of the third specification.

Which was read and considered, and

On motion of Mr. Rice, the testimony relating thereto was read.

Mr. Campbell S. L. called for the reading of the fourth specification.

Which was read and considered.

Mr. Mead moved that until the cause of Judge Page is disposed of the sergeant at-arms be instructed to keep the doors closed, and that he admit no person to the Hall of the House.

Which motion prevailed.

On motion of Mr. Rawson, the House took a recess until 2:30 o'clock P. M.

AFTERNOON SESSION.

The House met at 2.30 o'clock and was called to order by the Speaker.

A quorum present.

Mr. Ladd moved that the libel and the retraction of Messrs. Mollison and Davidson, in regard to Judge Page, be read to the House by the clerk of the judiciary committee.

Which motion prevailed.

Mr. Mead called for the reading of the evidence of Lafayette French.

Which was read and considered.

Mr. Ladd called for the reading of the retraction of Davidson and Bassford.

Which was read to the House and considered.

Mr. Ladd then called for the reading of the testimony of Gordon E. Cole.

Which was read and considered.

Mr. Mead offered the following resolution:

Resolved, That this House will not hear any testimony, except that offered by the prosecution, concerning impeachment of Judge Page.

Mr. Ladd offered the following substitute:

Resolved, That the House proceed to debate the resolution for the impeachment of Judge Page, taking the report of the committee as the basis of the debate, with the privilege of reference to and comment on the evidence; and if there be dispute as to the evidence the reporter shall read his minutes upon the question in dispute.

Mr. West J. P. arose to a point of order, stating that the amendment related only to new matter, and was not an amendment.

The Speaker stated that the point of order was not well taken.

Mr. Hicks moved that the resolution and the amendment lie on the table.

Which motion prevailed.

By direction of the House the clerk then continued the reading of the testimony, and the evidence of Judge Page was read to the House.

Mr. Wiley moved that the rules be suspended, and that the further reading of the evidence be dispensed with.

The question being taken on the motion to suspend the rules, and the yeas and nays being ordered, there were yeas 27 and nays 51, as follows:

Those who voted in the affirmative were—

Messrs. Anderson, Barthel, Bishop, Bowler, Brainerd, Chandler, Clark, Dilley, Bresbach M. R., Fiddes, Fowler, Fulton, Geib, Huntley, Lange, Larkin, McBroom, Mills, Pinney, Rawson, Reaney, Richardson, Sanborn, Stanley, Warner, Winant and Wiley.

Those who voted in the negative were—

Messrs. Allred, Bohan, Buffum, Bye, Campbell W. M., Colby, Crandall, Currie, Day, Denison, Dressbach G. B., Edson, Emmel, Emmons, Evenson, Fanning, Feller, Fetzner, Ghostley, Giles, Gilman, Hall, Harvey, Hazelton, Hicks, Hinds, Holland, Holton, Hyslop, Johnson, Keenan, Klossner, Ladd, Langemo, Lewis, Lutz, McCrea, Mead, Mosher, Muir, Perrin, Peterson, Purdie, Putnam, Rice, Rieland, Robinson, Sabin, Thompson J., Thompson J. W. and Mr. Speaker.

And so the motion was lost.

Mr. Hicks moved that the reporters of the press be admitted to seats in the House.

Mr. Robinson moved the previous question, which was not ordered.

Mr. Chandler moved that when the House adjourn, it adjourn until next Monday at 3 o'clock P. M.

On motion of Mr Campbell W. M., the House took a recess until 7:30 o'clock P. M.

EVENING SESSION.

The House met at 7:30 o'clock P. M., and was called to order by the Speaker.

A quorum present.

The Speaker stated that the business before the House was the consideration of the question of the impeachment of Hon. Sherman Page.

By direction of the House the reading of the evidence was continued.

Mr. Ladd called for the reading of the testimony of E. O. Wheeler.

Which was not ordered.

The testimony of F. A. Elder was read to the House in relation to the seventh specification.

The eighth specification and the findings of the judiciary committee were read to the House by the clerk.

The evidence in relation to the said specification was then read to the House

On motion of Mr. Hicks, the House adjourned to 8 o'clock to-morrow morning.

MARK D. FLOWER,
Chief Clerk House of Representatives.

SATURDAY, Feb. 23, 1878.

The House having resolved itself into secret session for the further consideration of matters pertaining to the impeachment of Judge Page.

Mr. Campbell moved that when the House adjourn it be to next Monday at 3 o'clock P. M.

Mr. Bowler offered to amend, to adjourn to Monday at the usual hour.

Which motion prevailed.

Mr. Muir moved to reconsider the vote by which the House resolved to proceed with the consideration of the question of impeachment.

Which motion was lost.

Mr. Purdie moved that the reporters of the press be admitted to the House.

Mr. Robinson moved that the motion be laid upon the table.

Which motion prevailed.

The reading of the testimony of Lafayette French in relation to the eighth specification was read and considered.

The testimony of Judge Page in relation to the eighth specification was read and considered.

The testimony of Thos. Riley on the eighth specification was read and considered.

Mr. Manderville's testimony for the prosecution in relation to the ninth specification was read and considered.

Sheriff Hall's testimony in relation to the ninth specification, was then read and considered.

The evidence in regard to specification twelfth, was read and considered.

Mr. Dresbach G. B. moved that the House take a recess until 2:30 o'clock P. M.

Which motion did not prevail.

The testimony of Mr. Connor and W. L. Stiles was read to the House and considered.

On motion of Mr. Morse, the House adjourned.

MONDAY, FEBRUARY 25, 1878.

EVENING SESSION.

The House met at 8 o'clock P. M., and was called to order by the Speaker.

A quorum present.

Mr. Edson moved that the reporters of the press be admitted to the House, and that a committee of three be appointed to invite them and arrange with them as to what part of the proceedings of the House they shall be allowed to publish.

The motion did not prevail.

The Speaker announced that the special order of the House was the consideration of the matter of the impeachment of Judge Page.

Mr. Stiles called for the further reading of the testimony of William Stiles, and the same was read to the House and considered.

In relation to the eleventh specification, I. Ingmundson's testimony was read and considered.

On motion of Mr. Edson, the House adjourned.

MARK D. FLOWER,
Chief Clerk House of Representatives.

WEDNESDAY, FEBRUARY 27, 1878.

The House having resolved itself into secret session for the further consideration of the evidence relating to the impeachment of Judge Sherman Page,

Mr. Edson moved that the members debating the question of said impeachment be limited to fifteen minutes, and that no member be allowed to speak more than once.

Mr. Campbell W. M. moved to amend by allowing members of the judiciary committee, what time they need to speak, and that the members of the House, other than the judiciary committee, be limited to ten minutes, and not allowed to speak more than once.

The motion, as amended, prevailed.

Mr. Feller moved that all those who desire to speak shall do so without delay, and that the chairman of the judiciary committee shall close the debate.

Mr. Feller moved the previous question, which was seconded by a majority.

The Speaker then announced:

Shall the main question be now put?

The question being taken upon the adoption of the motion,

It was adopted.

On motion of Mr. McDermott, the House took a recess until eight o'clock P. M.

EVENING SESSION.

The House met at 8 o'clock P. M., and was called to order by the Speaker.

A quorum present.

The House resumed the consideration of the impeachment of Judge Page.

Mr. Richardson moved a call of the House.

Which was ordered, and the clerk called the roll.

The Speaker directed the clerk to furnish the sergeant-at-arms with a list of the absentees.

On motion of Mr. Muir, further proceedings under the call were dispensed with.

The Speaker stated that the question before the House was the following resolution of the judiciary committee:

Resolved, That the Hon. Sherman Page, judge of the tenth judicial district, of the State of Minnesota, be impeached for corrupt conduct in office and for crimes and misdemeanors.

Mr. McDermott moved a call of the House,

Which was ordered, and the clerk called the roll.

On motion of Mr. Hicks, further proceedings under the call were dispensed with.

Mr. Sanborn moved the previous question, which was seconded by a majority.

The Speaker announced, shall the main question be now put?

Mr. Bohan made the following request:

I request to be excused from voting, for the reason that the majority of the House has refused to allow all the evidence given on the principal charges to be read before the House, and for the further reason that the majority of this House has by a temporary rule given the supporters of the resolution an undue advantage in this debate.

Mr. Campbell W. M. moved that Mr. Bohan be excused from voting.

Which motion was lost.

The question being taken upon the adoption of the resolution, and

The yeas and nays being ordered, there were yeas 71, and nays 30, as follows:

Those who voted in the affirmative were—

Messrs. Allred, Anderson, Barthel, Bishop, Brainerd, Buffum, Button, Campbell S. L., Campbell W. M., Chandler, Christensen, Christo-

pherson, Cole, Crandall, Currie, Cowing, Day, Dilley, Dresbach M. R., Edson, Emmel, Feller, Fetzner, Fiddes, Fulton, Gieb, Gilman, Gunvalson, Harvey, Hinds, Holland, Holton, Huntley, Hyland, Klossner, Lange, Langemo, Larkin, Lewis, Lien, McBroom, McCrea, McDermott, Mead, Mills, Morse, Mosher, Perrin, Peterson, Pinney, Putnam, Rawson, Reaney, Rice, Richter, Richardson, Rieland, Robinson, Sabin, Sanborn, Stanley, Stone, Thompson J. W., Truwe, Warner, West J. P. West S. M., Wickey, Wiley and Mr. Speaker.

Those who voted in the negative were—

Messrs. Bohan, Bowler, Burnap, Bye, Clark, Colby, Colvill, Denison, Emmons, Evenson, Fanning, Fowler, Ghostly, Hall, Haselton, Hicks, Hyslop, Johnson, Keenan, Ladd, Lutz, Miller, Muir, Null, Purdie, Rahilly, Stacy, Tompkins J., and Williams.

And so the resolution was adopted.

Mr. West J. P., offered the following resolution,

Which was adopted.

Resolved, That a committee of five be appointed by the Speaker to go the Senate, and at the bar thereof, in the name of the House of Representatives, and of all the people of the State of Minnesota, to impeach Sherman Page, judge of the 10th judicial district, State of Minnesota, of corrupt conduct and of crimes and misdemeanors in office, and acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same, and that the committee also demand that the Senate take order for the appearance of said Sherman Page to answer said impeachment.

On motion the House adjourned.

MARK D. FLOWER,
Chief Clerk House of Representatives,

Appendix to Journal of the House, pages 551 to 556.

THURSDAY, February 28, 1878.

The Speaker appointed as special committee to inform the Senate that the House had passed a resolution impeaching the Hon. Sherman Page, judge of the tenth judicial district.

Messrs. West J. P., Bowler, Edson, Brainerd and Richardson.

Journal of the House, page 332.

FRIDAY, March 1st, 1878.

Mr. Campbell S. L., offered the following, resolution, which was adopted:

Resolved, That a board of managers, seven in number, be appointed from the members of this House, to conduct, on behalf of the House, the impeachment proceedings against the Hon Sherman Page, judge of the tenth judicial district, that, of said board of managers, the Speaker be one, and the remainder appointed by the Speaker; and that the said board of managers be instructed to prepare and report to this House, articles of impeachment against the said judge.

Journal of the House, page 362.

SATURDAY, March 2, 1878.

The Speaker announced the following gentlemen as the managers in the matter of the impeachment of Sherman Page, judge of the tenth judicial district:

Messrs. Campbell S. L., Mead, West J. P., Hinds, Morse, and Feller.

Journal of the House, Page 383.

MONDAY, March 4, 1878.

Mr. Campbell S. L., from the committee on impeachment of Sherman Page, judge of the tenth judicial district reported articles of impeachment against the said Sherman Page, and the said articles were read and duly adopted.

House Journal, page 397.

MONDAY, March 4, 1878.

Mr. Campbell S. L., offered the following resolution:

Resolved, That the managers on the part of the House of Representatives, in the matter of the impeachment of Sherman Page, a judge of the tenth judicial district of the State of Minnesota, be, and are hereby authorized to appoint a clerk and messenger, to be paid for their services at the rates allowed by law, to like officers of the House during the time that they are employed; and that the members have power to send for persons and papers.

House Journal, page 409.

EIGHTH DAY.

ST. PAUL, WEDNESDAY, MAY 22, 1878.

The Senate of the State of Minnesota, sitting as a Court of Impeachment for the trial of Hon. Sherman Page, Judge of the District court for the Tenth Judicial District, met in the Senate chamber at twelve o'clock noon this day, pursuant to adjournment on the eight day of March, 1878.

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

Messrs. Bailey Bonniwell, Clement, Clough, Deuel, Donnelly, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Henry, Hersey, Houlton, Langdon, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morrison, Nelson, Pillsbury, Remore, Rice, Shaleen, Smith, Swanstrom, Waldron and Wheat.

The Senate, sitting for the trial of Sherman Page, Judge of the District Court for the Tenth Judicial District, upon articles of impeachment exhibited against him by the House of Representatives, the sergeant-at-arms having made proclamation.

The managers appointed by the House of Representatives, to conduct the trial, to-wit:

Hon. S. L. Campbell, Hon. C. A. Gilman, Hon. W. H. Mead, and Hon. J. P. West, entered the Senate chamber and took the seats assigned them.

Hon. Sherman Page, accompanied by his counsel Hon. C. K. Davis; J. W. Losey and J. A. Lovely, appeared at the bar of the Senate and took the seats assigned them.

HON. R. B. LANGDON SWORN.

Hon. R. B. Langdon, Senator from the twenty-seventh senatorial district, appeared, and the following oath was administered to him by the President and which he subscribed:

"I do solemnly swear that in the matter of the impeachment of Sherman Page, Judge of the District Court for the Tenth Judicial District, in the State of Minnesota, I will do justice according to law and the evidence, so help me God."

GEORGE M. TOUSLEY SWORN.

George M. Tousley having been duly elected assistant sergeant-at-arms appeared, and the following oath was administered to him by the President, and which he subscribed:

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

OBJECTION TO GEO. W. CLOUGH.

Hon. C. K. Davis, of counsel for respondent, presented the following objection, which was read by the clerk, and ordered filed:

IN THE SENATE OF MINNESOTA.

In the matter of the Impeachment of Sherman Page:

And now comes the respondent and says that he objects to Senator Clough of Mower county, being one of the judges on this cause, or to his voting or deciding on any question to be involved therein, and he, this respondent, assigns the following grounds of objection:

First. That the said Senator, long, before the institution of these proceedings, formed and expressed an opinion which he still entertains and has expressed since these proceedings were instituted, relative to the question at issue.

Second. That he was one of the grand jury mentioned in articles VI. and VII. of the articles of impeachment.

Third. Because he was nominated and was elected to his seat in the Senate of this State under pledges expressed and implied that he would, as a Senator, labor and vote for the impeachment of this respondent.

Fourth. Because during his candidacy for the office of Senator he stated, in regard to the events alleged in articles VI. and VII., of the articles of impeachment, in a letter printed over his signature, in a pub-

lic newspaper, published in Mower county, which newspaper containing said letter. was largely circulated, in said county, among its electors, for the purpose of persuading them to vote for him for his office of Senator, that "Page grossly abused the grand jury," and that he, the said Senator, felt "it would not have been a breach of the peace if the jury had gone in a body and kicked him from the bench."

Fifth. Because in many other instances and in regard to all the articles of impeachment, the said Senator has, by verbal statements and written declarations, expressed an opinion relative to the question at issue under said articles.

Sixth. Because he is one of the prosecutors of said articles.

Seventh. Because he was examined as one of the witnesses in support of said articles before the House of Representatives, and that his testimony was necessary and material for that purpose.

All of which he is ready to verify.

Wherefore, the respondent moves that the said Senator be excluded from being one of the judges in this cause, and from voting or deciding upon any question to be involved therein.

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

Mr. Gilfillan C. D. offered the following resolution, which was adopted:

Resolved, That a committee of five be appointed to report upon the compensation to be allowed the stenographer for taking down the proceedings of the court and preparing them for the printer, and also to prescribe whether all of the proceedings shall be taken down, or only the questions and answers from the witnesses, objections of counsel and managers, and the rulings of the court.

The President appointed Senators Gilfillan C. D., Nelson, Pillsbury, Smith and Drew as such committee.

Mr. Edgerton offered the following resolution, which was adopted:

Resolved, That a committee of five be appointed to report such additional rules as may be necessary for the government of the Senate sitting as a Court of Impeachment.

The President appointed Senators Edgerton, Donnelly, McClure, Langdon and Macdonald as such committee.

On motion of Senator Nelson, the Senate adjourned.

Attest:

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

NINTH DAY.

ST. PAUL, THURSDAY, MAY 23, 1878.

The Senate was called to order by the President.

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

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

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

The Sergeant-at-arms having made proclamation,

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

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

The Journal of proceedings of the Senate, sitting for the trial of Sherman Page upon articles of impeachment, for Wednesday, May 22, was read and adopted.

HON. S. A. HALL SWORN.

Hon. S. A. Hall, Senator from the twenty-seventh senatorial district, appeared, and the oath for members of the court was administered to him by the President, and subscribed by him.

JAY STONE, ASSISTANT STENOGRAPHER, SWORN.

Jay Stone, having been duly appointed assistant stenographer, appeared and took the oath of office, adminstered to other officers of the court.

REPORT OF COMMITTEE ON ADDITIONAL RULES.

Mr. Edgerton, from the committee appointed to report such additional rules for the government of the Senate, sitting as a court of impeachment, as should be necessary, respectfully report the following additional rules:

XXIV.

The presiding officer of the Senate shall direct all necessary preparations in the Senate chamber, and the presiding officer on the trial shall direct all the forms of proceeding while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for.

And the presiding officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand on the judgment ot the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance, submit any such question to a vote of the members of the Senate.

Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by any member of the court present, or requested by the presiding officer, when the same shall be taken.

XXV.

The hour of the day at which the court shall sit upon the trial of an impeachment shall be (unless otherwise ordered), ten o'clock A. M., and when the hour for such sitting shall arrive, the presiding officer of the court shall so announce, and thereupon the presiding officer upon such trial, shall cause proclamation to be made, and the business of the trial shall proceed.

XXVI.

The clerk of the court shall keep and cause to be published, daily, for the use of of the court, a full and complete minute and record of all proceedings had in the trial, including all motions and the vote thereon, all objections to the evidence and the rulings thereon, a verbatim report of all the testimony taken on the trial, all arguments of counsel or managers, either on the final question or on any interlocutory question, and the remarks of members of the court in eplanation of their votes.

XXVII.

Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side.

XXVIII.

If a Senator is called as a witness he shall be sworn and give his testimony standing in his place.

XXIX.

If a Senator wishes a question to be put to a witness, or to offer a motion or order, (except a motion to adjourn) it shall be reduced to writing, and put by the presiding officer.

XXX.

All preliminary or interlocutory questions and all motions, shall be argued for not exceeding twenty minutes on each side, unless the Senate shall by order extend the time.

XXXI.

The case on each side shall be opened by one person. The final argument on the merits may be made by two persons on each side, (unless otherwise ordered by the Senate, upon application for that purpose) and the argument shall be opened and closed on the part of the House of Representatives.

XXXII.

On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two thirds of the members present, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two thirds of the members present, the Senate shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the Secretary of State.

XXXIII.

In taking the votes of the Senate on the articles of impeachment, the presiding officer shall call each Senator by his name, and upon each article propose the following question in the manner following. "Mr.———— how say you, is the respondent Sherman Page Judge of the Tenth Judicial District, guilty or not guilty, as charged in the————article of impeachment?" Whereupon each Senator shall rise in his place and answer "guilty," or "not guilty."

XXXIV.

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 not more than fifteen minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by some member present.

XXXV.

Witnesses shall be sworn in the following form, namely: "You —— do solemnly swear (or affirm as the case may be) that the evidence you shall give in the case now depending between the State of Minnesota, and Sherman Page, Judge of the Tenth Judicial District, shall be the whole truth and nothing but the truth; so help you God"—which oath shall be administered by the presiding officer of the court.

XXXVI.

If the Senate shall at any time fail to sit for the consideration of articles of impeachment on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.

XXXVII.

The Governor and other State officers, judges of the Supreme and District Courts, and reporters of the daily press, shall be admitted to the floor of the Senate, and no others, except members and officers of the court, the managers, the respondent and his counsel, shall be admitted, except such as have cards of admission, signed by the President of the Senate as provided for in rule 34.

XXXVIII.

The President of the Court shall issue to the managers ten tickets of admission to the floor of the Senate, and to the respondent the same number, and to each member of the court, two tickets of admission.

REPORT ON THE RECORDS.

Mr. Gilfillan C. D. presented the following report:

Your committee to whom was referred the duties and labor to be required of the stenographer and his compensation therefor, would respectfully report that in the opinion of your committee, the stenographer should take down all the proceedings of the court, except documentary evidence filed in the court; and that they have agreed with the stenographer that his compensation for such labor and transcribing the short hand notes and preparing a copy for the clerk, ready for the public printer, and when printed comparing and revising the proof, the sum of twenty-eight cents per folio of one hundred words; all assistants and clerks employed in the discharge of such duties to be paid by the stenographer.

C. D. GILFILLAN,
KNUTE NELSON,
C. A. PILLSBURY,
WM. S. DREW,
C. H. SMITH,
Senate Committee.

Mr. Pillsbury offered the following resolution, which was adopted:

Resolved, That a committee of three on accounts, be appointed to whom shall be referred all claims for expenses arising out of the impeachment trial.

Mr. Rice offered the following resolution:

Resolved, that the Sergeant-at-Arms be and is hereby authorized to employ an Assistant Sergeant-at-Arms, said assistant to be allowed the same compensation and the same manner as the Sergeant-at Arms.

On motion the resolution was referred to the committee on nomination of officers.

The President announced the next business in order to be the consideration of the challenge interposed by the respondent on yesterday to Senator Geo. W. Clough.

On motion of Senator Edgerton the argument on each side on this question was limited to one hour.

Governor DAVIS. Mr. President: The objections to the Senator of Mower county were tendered yesterday, and I have not heard in what shape the learned managers propose to meet them; whether they intend to traverse them by demurrer to their sufficiency, or to traverse them as to their truth, thereby raising an issue of fact.

Manager CAMPBELL. I would say, Mr. President, that we propose to traverse them both ways. We first raise the question, that the learned counsel on the other side has no right to challenge a Senator here; that is viritually a demurrer. If overruled in that then we shall deny the truthfulness of their allegations. I suppose it is not necessary to interpose a formal demurrer in writing, but that is our position. We deny, first, your right to challenge; and, second, we deny the truthfulness as far as most of them are concerned. We might admit a few.

Gov. DAVIS. Mr. President: With the understanding that if the Senate, upon consideration of the legal questions raised by the demurrer of the learned managers, conclude to sustain its right to make this court as other courts are and ought to be, and in that event to put us upon the trial of the issue of fact thereafter, I proceed to address myself, now, to the consideration of the principle involved in this challenge. It is a matter, Senators, upon which the public and the respondent can rightfully congratulate themselves, that the importance and solemnity of this occasion, not only to him, but to the public at large, has called so large and full a Senate from the exigencies and pressing demands of private business to the consideration of this case. For the first time in our history the Senate of the State of Minnesota has met with the certainty, probably, that the trial of the issues of fact raised by articles of impeachment, will be proceeded with to its final consmumation. To attempt to emphasize by description the importance and dignity of this proceeding would be an unnecessary prelude, and I shall, therefore, now proceed to attempt to demonstrate both upon principle and authority, not only that the Senator from Mower county has no right in equity and good conscience to sit as a judge in this case, if the articles of challenge are true, but also to demonstrate upon principle and authority that not only by its very inherent constitution, but also under its delegated powers, this body has the same right that any other court has to purge itself of everything which savors of partiality, prejudication, bias, or any of those causes which contravene the ancient maxim "that no man shall be a judge in his own cause or the cause which he prosecutes." In order to bring the questions to which I am to speak more definitely to your minds and to your consciences, I wish to call the attention of the Senators to the fact that the demurrer for the purposes of this discussion admits the truth, the substantial and exact truth, of every averment which we have propounded here, for the exclusion of the Senator from Mower, and I will take the liberty of reading our objections in order to enlighten my argument and enforce the points that I shall make.

IN THE SENATE OF MINNESOTA.

In the matter of the Impeachment of Sherman Page:

And now comes the respondent and says that he objects to Senator Clough of Mower county, being one of the judges on this cause, or to his voting or deciding on any question to be involved therein, and he, this respondent, assigns the following grounds of objection:

First. That the said Senator, long before the institution of these proceedings, formed and expressed an opinion which he stills entertains and has expressed since these proceedings were instituted, relative to the questions at issue.

Second. That he was one of the grand jury mentioned in articles VI. and VII. of the articles of impeachment.

Third. Because he was nominated and was elected to his seat in the Senate of this State under pledges expressed and implied that he would, as a Senator, labor and vote for the impeachment of this respondent.

Fourth. Because during his candidacy for the office of Senator he stated, in regard to the events alleged in articles VI. and VII., of the articles of impeachment, in a letter printed over his signature, in a public newspaper published in Mower county, which newspaper containing said letter, was largely circulated, in said county, among its electors, for the purpose of persuading them to vote for him for his office of Senator, that "Page grossly abused the grand jury," and that he, the said Senator, felt "it would not have been a breach of the peace if the jury had gone in a body and kicked him from the bench."

Fifth. Because in many other instances and in regard to all the articles of impeachment, the said Senator has, by verbal statements and written declarations, expressed an opinion relative to the questions at issue under said articles.

Sixth. Because he is one of the prosecutors of said articles.

Seventh. Because he was examined as one of the witnesses in support of said articles before the House of Representatives, and that his testimony was necessary and material for that purpose.

All of which he is ready to verify.

Wherefore the respondent moves that the said Senator be excluded from being one of the judges in this cause, and from voting or deciding upon any question to be involved therein.

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

It must be very manifest, may it please the Senate, that these allegations thus admitted for the purpose of bringing the question of principle before you for your consideration; raise a question second in importance to nothing which can transpire in this case, even your decision upon the final result. I understand the attitude which the learned managers feel it to be their duty to take is this: That notwithstanding all these facts for the purpose of this branch of the discussion are true, in manner and form as there stated, there is a lack of power, competency and capacity in this Senate, under the rules of its constitution and orgauization, to say that it alone, of all the courts of the land lacks the power and capacity to purge itself of the counsels and perhaps the final and decisive vote of

one who, upon principle, would be incapacitated to sit in any other court, either as judge or juror.

May it please the Senate; this Senate has a constitutional right to try this respondent.

He has a constitutional right to be tried by this body; and both that power and that right find their origin in the clause of the constitution, which gives the Senate the power to sit as a court for the trial of impeachments in the cases provided for by the constitution.

But, may it please the Senate, that instrument under which we have our political being as a State, must be considered in all its parts. It not only gives to the Senate the power to try and the respondent the right to be tried by the Senate, but it also by large and general provisions surrounds him with other rights, and imposes upon this Senate, and upon all courts, many duties which it is your province and duty to consider and enforce in the present instance,

The bill of rights provides that

"No member of this State shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers."

It also provides that "No person shall be held to answer for a criminal offence unless on the presentment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army and navy, or in the militia when in actual service in time of war or public danger, and no person for the same offence shall be put twice in jeopardy of punishment, nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law."

It ordains that every person is entitled to certain remedies in the law, for all injuries or wrongs which he may receive to his person, property, or character. He ought to obtain justice "freely and without purchase, completely and without denial, promptly and without delay, conformably to the laws."

It is provided by section 4, of article 4 of the constitution, "that each House may determine the rules of its proceedings, and with the concurrence of two-thirds, expel a member."

Now, from these constitutional provisions construed together, considered in the light of the institutions in which we live, and the occasions from which they were derived, it must be apparent that the bill of rights is intended in its large and general terms, as a very bulwark of the constitution itself. It guarantees to every citizen of the State certain general rights, and to secure those rights, every other provision of the constitution must be construed in subordination. These rights it is the duty of every department of the government to enforce. And one of the most important of these guarantees is that the respondent in this case is entitled to a speedy and impartial trial, "promptly and without delay, conformably to the laws." It is no mere assumption on our part that this Senate has the power to secure these guarantees under the admissions of this challenge. We assert and it is admitte that the Senator is elected, and is here, for purposes of conviction; that he has expressed an opinion against the innocence of the respondent; that he was one of the grand

jury whom the defendant is charged to have offended, that he has paraded that opinion in public print, as an argument why he should be elected to his seat; that he was a prosecuting witness before the House of Representatives, and if necessary he will be here, to rise in his place in the triple capacity of witness, judge and executioner. That all this is true the demurrer to the challenge admits, for the purposes of this discussion. Will this trial then be that impartial investigation, which the constitution of this State has guaranteed to every one? Was it ever heard that a grand juror could prosecute in secret sessions, and sit in judgment as a petit juror? The meanest litigant before a justice of the peace can remove the cause by an affidavit of prejudice or bias where the title to a hog is in question. You cannot take up a volume of our Supreme Court reports, in which you do not find that some justice of that court has declined to sit in a case with which he has been connected as counsel, or with some of the parties, to which he may be bound by ties of relationship, or in which he may have some remote or even speculative pecuniary interest.

If the position of the managers is correct, by what right has any member of this court the power to absolve himself from voting upon a measure by which his own pecuniary interest is to be promoted?

But it is objected that this challenge does not lie, because express warrant therefor is not found in the constitution itself. It is not to be forgotten that such instruments are framed in large and general terms, and that from the very necessities of the case, are not expressed with that particularity which accurately covers every case that may arise. They are replete with implied powers, which confer upon the various departments of the government the authority to legislate, execute and judge, as the case may be, to any extent necessary to put in full operation the theory upon which they are founded. Upon this principle, history teaches us that the expansions of legislative power have been most enormous. From the time the foundations of the federal constitution were laid, the Supreme Court of the United States has steadily vindicated and upheld doubtful acts of legislative power, upon the ground that, although not expressly authorized by the constitution itself, still they were necessary to carry it into force and effect. Upon these grounds the United States Bank was upheld, and so was the legal tender financial system of the country. From the time the government began to exercise its functions, such has been the practice and the principles we ask this court now to adopt. It is its right, it is its duty to say, that it can so organize itself as to give the respondent every guarantee which the constitution, in all its provisions, confers upon every citizen of the State.

Section 3 of article 4 provides that "each house shall be the judge of the election, competency, and eligibility of its own members." And it is in this provision that we find expressly granted the power of which we now invoke the exercise. A member may be ineligible to hold his office at all. It may be that although generally competent and eligible, there may arise specific instances, temporary and exceptional in their character, which *pro tempore*, will render him incompetent and ineligible to exercise his functions. I shall demonstrate from authority, and, I think, by irrefragable reasoning, upon right and principle, that parliamentary bodies have, for all time, exercised the right of excluding their members from acting, in cases where, by reason of bias, interest in the subject matter, pecuniarily or otherwise, or consanguinity, participa-

tion in the proceedings would be in contravention of the laws of decency and the principles of public policy.

And the Senator from Mower has, by his own act, disqualified himself from judging in this case. He has, by his own act, deprived the respondent of an impartial trial here, so far as the Senator is concerned.

In the note to page 123 of Jefferson's Manual, under the head of Impeachment, it is laid down "that the Lords cannot impeach any of themselves, because they are the judges." Whether this reason is historically correct or not, matters not. It is enough for the purposes of this discussion that it is abstractly a sufficient one. Nor is the position which we have assumed unsupported by specific authority. It is sustained by authority almost as powerfully as it is by principle. But in the consideration of authorities upon this question, then, it is not to be forgotten that precedents in impeachment cases are almost invariably tainted by partisan considerations. Public opinion always enters into them, and they cannot be relied upon with the certainty which we of the profession feel when we cite the decisions of courts into which those feelings have not entered. But this is to be said of those precedents: that we are at liberty to extract from them the better reason, as consecrated by the weight and sanction of individual names which have been passed by history into the reverential regard of posterity.

The first instance which I find in our parliamentary history in which this question was raised, was in the trial of Judge Pickering of New Hampshire, in 1803, before the Senate of the United States. It was a bitterly partisan era. The public sentiment of this country was divided politically, by social disruption and by feuds of all characters, and the ties which held the Union together were subjected to a very severe strain. The Senate was bitterly partisan, and Judge Pickering was accused of high crimes and misdemeanors before that tribunal. By the time the Senate entered upon his trial, three members of the House of Representatives, which preferred the articles of impeachment had become Senators of the United States. When the cause was called for hearing, one of the most revered statesmen our country has ever produced—a man whose name has probably passed into more universal respect than that of any statesmen of the second generation of those who wielded our destinies; whose life from its beginning to its very latest day, when he fell into the arms of death in the midst of the conscript fathers of the republic, was intimately connected with every function of this government—John Quincy Adams moved in the United States Senate, for the reasons which I am now advancing, that these Senators, who as representatives, had participated in prefering the articles of impeachment, should not be permitted to sit in judgment upon the respondent. The report is conflicting as to what become of that resolution. While in one place it states in explicit terms that the resolution was sustained, it also shows that these Senators voted. But whatever was in fact the decision of the Senate upon that question, for the purposes of precedent in this case and as warrant for our position, I invoke the name of Mr. Adams as connected with that resolution, and in its spirit I appeal for the exercise of that right to-day, which he most undoubtedly felt the Senate of the United States then possessed.

The same question came up in the trial of President Johnson. If President Johnson had been impeached, Senator Wade would have become President of the United States. As the ceremony of swearing the Senators proceeded, it struck two very eminent men, and one of them a very great lawyer who had the confidence of all parties in this country, that it would be a most anomalous proceeding, wholly unwarranted by the spirit and letter of the constitution, were the Senator from Ohio allowed to judge in the case by the decision of which he might profit so greatly. These gentlemen were persuaded that the Senate had the power to protect itself against such a reproach as this.

Mr. Hendricks, of Indiana, rising in his place, stated: "Before the Senator just called, takes the oath, I wish to submit to the presiding officer and to the Senate a question. The Senator just called is the presiding officer of this body, and under the constitution and laws, will become the President of the United States, should the proceeding in this impeachment, now to be tried, be sustained. The constitution provides that in such a case the possible successor cannot even preside in the body during the trial. I submit for the consideration of the presiding officer and of the Senate, whether being a Senator representing a State, it is competent for him, notwithstanding that, to take the oath and become thereby a part of the court? I submit that upon two grounds;

"First. The ground that the constitution does not allow him to preside during these deliberations, because of his possible succession, and,

"Second. The parliamentary or legal ground that he is interested, in view of his possible connection with the office, in the result of the proceedings. He is not competent to sit as a member of the court."

The other Senator of whom I have spoken, was Reverdy Johnson, one of the most eminent constitutional lawyers of our time. And he put upon the record of the United States Senate his protest and opinion, neither of which could have been lightly entertained by him, portions of which I will read:

"Mr. JOHNSON. Mr. President, the question is a purely legal one, and is to be decided upon principle. I have no doubt that the honorable member from Ohio will, as far as he may be able under the temptations to which he may be subjected unknowingly to himself, decide upon the issues which are involved in the impeachment trial with as much impartiality as any of us.

"It is not, therefore any objection to the honorable members which induces me to say a word to the Senate on the subject. The general rule, we all know, is applicable to a jury as well as to a court—that no one should serve in either tribunal who has a clear interest in the result of the trial.

"The honorable member from Ohio, [Mr. Sherman] and the honorable member from Michigan, [Mr. Howard] tell us that the constitution provides that the court in this instance is to consist of the Senators of the several States.

"That is true, but that does not prove that a Senator may not be in a situation which should exclude him from the privilege of being a member of the court. The constitution of the United States provides that the Supreme Court shall consist of a chief justice and associates justices; the law from time to time has regulated their number, but I never heard

it questioned that, although by the constitution and the laws, because within the jurisdiction of that tribunal are to be by them, a judge would not be permitted to sit in a case in which he had a direct interest. It by no means follows, therefore, that because the honorable member from Ohio, [Mr. Wade] is a Senator and as such entitled to be a member of this court, he is not as liable to the objection of interest in the result which, your honor, the Chief Justice of the Supreme Court would be liable to, in a case before your high tribunal, in which you had a direct interest in the possible result."

"This is as the honorable member from Ohio, Mr. Sherman, says the only tribunal to try such a case as is now before us. That is true. But if the honorable member and the Senate will look in the 65th number of Fereralist, they will find why it was that the court was so constituted when the President is to be on trial, as it is constituted by the constitution. It was because of the manner in which impeachments are tried in the mother country. There they are tried in the House of Lords, and I have a recollection, not now distinct, (I did not know the question would be raised to-day, or I should have refreshed my recollection) that when the case of the Senator from New Jersey, the Hon. Mr. Stockton, who had been received as a Senator on this floor upon his credentials, and it was proposed to exclude him, which required a majority vote. The honorable member from Massachuseets, Mr. Sumner, and I think several other members, but particularily the honorable member from Massachusetts, in order to satisfy the Senate that Mr. Stockton had no right to vote in his own case, quoted many cases in the House of Lords in which it had been held that a member of the House of Lords was not competent to decide in a case in which he had an interest. It was upon the authority of those cases, as well as upon the general ground which runs through the whole of our jurisprudence and the jurisprudence of the mother country, and as found in the nature of things, that Mr. Stockton was denied the privilege of voting in his own case."

"I submit then, and certainly without the slightest feeling of disrespect for the honorable member from Ohio, that it is due to the cause of impartial justice, it is due to the character of the Senate in its management of the proceeding, that there should not be established a precedent which may in the end produce excitement, and bring into disrepute the Senate itself."

That consummate parliamentarian had no doubt of the power of the Senate of the United States, of which he was a member. His opinion is one of the results of ripened experience and of long familiarity with constitutional law, in all of its bearings upon questions of public and private rights. I am not aware under what considerations of management or tactics, the resolutions of Mr. Hendricks were withdrawn. It may be they were withdrawn for the sentimental reason of courtesy. It may be that they were withdrawn because it was certain that they would meet with no mercy, nor with just consideration in the minds of some infuriated partisans. It may be that they were withdrawn in the fear that if pressed, they would stir up enmities against the President, which it would be best to avoid. It may be that they were withdrawn, in the hope that the Senator from Ohio would refrain from voting under their admonition. I do not propose to enter into the reasons for their suffocation. It is enough for my purpose in this discussion, that the aged statesman, and ripe lawyer, and the pure man, protested, in

the name of constitutional law and abstract justice, against the competency of the Senator from Ohio. No Senator rose in his place to gainsay that argument upon principle or authority. It was stolidly asserted, however, by partisans that because that Senator, in their opinion, had the brute physical power to vote, that there was no protection against its exercise.

The Senate frequently acts in its judicial capacity. A gentleman presents himself with his credentials, and takes his seat. He assumes the functions of his office, but his title thereto is put in contest. A claimant prosecutes, and he defends. The issue is made on similar grounds as those here, and on those issues of law and fact the Senate in its judicial character proceeds to determine. There is no provision in the constitution of this State, that a Senator holding a contested seat shall not vote in his own behalf, and yet for the glory of public decency the perpetration of such an act has never been attempted in this Senate. When such questions are under deliberation, the Senator whose seat is in controvesy retires beyond the bar, and the Secretary under the inspiration of decorum, does not call his name, and yet in the constitution, as I have remarked, there is no provision that he shall not vote.

But suppose that a Senator, the title to whose office hangs trembling in the balance, should arrest the roll-call and demand the right to answer to his name, to record his judgment in such a case. Under the coercion of such an act of effrontery the Senate would look for means to defend itself. And it would defend itself. But he might shake his credentials in their faces. He might vociterate that no provision in the constitution prevents him from voting. He might exclaim: "If I don't vote, the people of my county are without representation upon this vital issue." He might say, with sullen doggedness, "I am here, I have the power, my voice is my own, and I will give it." He would say these things in vain. The constitutional provisions which I have cited would become vivid in your eyes. You would see at once that you have power to punish for a contempt, and that such a proceeding would be a contempt most outrageous in its character. It would demonstrate to you, with unerring certainty, that you had a right to expel a member, and you would expel such a man for contumaciousness in such behavior. You would be persuaded without argument, of your right to judge of the eligibility of such a man. And no false delicacy, no shivering fear that the constitution would be about to undergo compound comminuted fracture at your hands, would prevent you from making the body which you compose respected and respectable in the sight of your constituencies.

A member is accused of bribery. Under the light of evidence he is covered all over with the pollutions of his corruptions. He is shunned by all, and his presence is felt as a disgrace. And yet if the position of the management is true, there is no provision of the constitution which enables ths Senate to prevent him from voting for his own exculpation. I beg leave to call the attention of the Senators to a case directly in point. It was in the State of Tennessee, and upon the impeachment of Judge Frazier. The identical question which we are now considering arose, and it passed without compromise directly to final adjudication. *There* was a Senate which had no doubt of its power in such cases. *There* was a Senate in which resolutions are not withdrawn, or journals confused.

Mr. Frazier was a judge of the State of Tennessee, and had committed offenses that demanded his impeachment, and articles were preferred. His brother was a member of the Senate. He was sworn, and he committed the act of inexpressible indecency of insisting that he would sit upon the trial. Day after day he held his seat with the stolidity of a graven image, lusting for an opportunity to vote. None of the considerations which coerce knavish men to acts of public decency affected him. He was biased, prejudiced, committed, and everybody knew it. The effluvium of the position finally became so rank, that the Senate determined to relieve itself from the contamination which any decision aided by such a man would forever attach to its name, and so the managers moved in plain, bold terms that Mr. Frazier be debarred from sitting in the cause. The case was ably argued. The want of precedent was invoked against that which was unprecedented. The Senate of Tennessee did what this Senate ought to do. They made a precedent in the following language:

"The President announced the question before the court to be as follows, to-wit: 'Shall the motion, made by the managers on the part of the House of Representatives, to exclude the Senator from Knox and Roane, (Mr. Frazier,) from sitting as a member of the court, on the grounds of relationship and bias, to the respondent now on trial, be sustained?' And the motion was sustained, and the member from Knox and Roane, Mr. Frazier, was excluded from serving as a member of the court."

This decision commends to our respect the character and calibre of the men who composed the Senate of the State of Tennessee. They were not deluded by any arguments advanced against their power to organize themselves into a court, whose judgments men could respect.

The elementary works sustain the position which we occupy.

I cite upon the general point again, Jefferson's Manual, page 85, in which it is stated that "where the private interests of a member are concerned in a bill or question, he is to withdraw, and where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man the right to be a judge in his own cause, it is for the honor of the House that this rule of immemorial observance, should be strictly adhered to."

2 *Hats.*, 119, 121; 6 *Grey*, 368.

So in Mr. Cushing's work upon the law and practice of legislative assemblages; the principles to be deduced from sections 1838, 1839, 1840, 1841, 1843, 1846 and 1848 are that a member interested in any question, must withdraw while the vote is being taken, and that in cases where they vote frequently their votes have been disallowed after the discovery of the fraud. But it may be said in opposition to these priciples and these authorities, that they are cases of consanguinity or of pecuniary interest. But in all times the reason for the exclusion of a pledged and biased judge, from the trial of a cause, has been the powerful and controlling one of prejudice. If our constitution does not permit this court to exclude the Senator, for the reasons which we have advanced, it certainly would not permit the exclusion of a brother of the respondent, were he here insisting upon his right to act as a judge.

There is no middle ground between our position and that of the management in this respect. If their position is correct, consanguinity however near, or malice however expressed—the fact that a person is prosecutor, witness and judge—all these taken together bind and leave the Senate powerless to protect the respondent or even itself.

A similar outrage to that now threatened occurred in the trial of Queen Caroline. This was a case which involved the utmost and bitterest personal feeling. It involved the right of a queen to a throne; involved her character; involved everything which could make life dear or even tolerable for her. She was persecuted by the power of a king and court, who were bound together in one consuming desire for her disgrace. Her removal was urged by every splendid knave:

> "That crooks the pregnant hinges of the knee,
> That thrift may follow fawning,"

It was a trial wherein injustice disguised itself under the forms of law, but in which before the final act of infamy could be committed, justice returned, stripped from the pretender her stolen ermine and resumed her seat.

"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 the defense, he had heard the case in support of the bill and had read the rest of the testimony with the greatest attention; so informed, he thought himself competent to give an opinion upon the present question."

And at this point went up the sturdy English No! No!! from the House of Lords.

"He thought the Queen too 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 convenience 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 is not for him (the Marquis of Lansdown) to say that his conviction would not be conscientious, 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 like sufficient to enable a juror, a fair and impartial juror, to arrive at a fair and impartial verdict? (Hear)"

The Duke of Newcastle was biased and prejudiced, because he had heard the evidence for the prosecution and had made up his mind. He announced what his vote would be.

The Senator from Mower is admittedly biased and prejudiced, because he has heard the evidence for the prosecution, he has made up his mind, and has announced what his vote will be.

Permit me to recur again to the distinction which will be here attempted in cases of consanguinity, in cases of actual prejudice and bias. A father is not permitted from sitting in judgment upon his child. The abstract reason for this rule is not that he is his father. The prohibition arises from the fact that the relationship raises the conclusive presumption of prejudice and bias in favor of his offspring.

Some men are so constituted that they could judge their brother or their child, fairly and impartially, notwithstanding the relationship. But prejudice is different. Prejudice when once formed is conclusive. To say that prejudice exists, is to say that fair and impartial judgment cannot be. It is to say that unjust judgment has already taken place and been recorded in the mind of the tribunal.

For what is it proposed, Senators, to bring down and dishonor the respondent? For what is it proposed, to baptise him in the waters of infamy, and make him forever incompetent to hold any office of trust or profit? It is because it is charged that he has proceeded with a biased and prejudiced mind against private individuals, for the gratification of his own passion and his own prejudicated opinions.

That for which it is proposed to impeach this judge, is now made ground of challenge against this senator.

Mr. Manager CAMPBELL. Mr. President and gentlemen of the Senate: With the counsel who has just closed, I must be permitted to take issue on his first proposition, and that is, that we admit by our denial of his right to challenge, their position to be true. In other words that it stands in the nature of a demurrer. This we deny.

In cases at law before courts, the defendant has always a right to demur. It is a right that he has, and when he does demur, then he admits all the allegations in the complaint against him. In this case, gentlemen, we do not admit anything, but we deny their right to make this challenge. We deny that they have a right to challenge any member on this floor, and take the position that it is a court organized by the constitution, that each member has his constitutional rights here; and cannot be deprived of them.

I think that I make myself understood as to the particular point here, that we admit the allegations alleged in their complaint, or in their challenge. I think the Senate will see that there is a great difference between our denial of their right to make this challenge to the demur-

rer, a demurrer they have a right to make. They have an undoubted right to make a demurrer, and when they do make a demurrer, then they admit the propositions contained in the complaint.

We not only deny here, that their propositions are true, but we deny their right to present them to this Senate at all. We are not here, gentlemen of the Senate, to insist that the Senator shall be retained in his position. That is none of our business; that is a matter wholly in his own discretion, and in the discretion of the Senate. I claim, gentlemen, that under the constitution, he has his right here, and the only right this Senate would have, under the circumstances, would be to excuse him on his own motion; and not at the suggestion of the counsel for the respondent, or by action of the Senate. Let us look at this matter; and this is not a new question; and I was not aware until the counsel read from proceedings in the State of Pennsylvania, that there was any precedent sustaining the position, that you could exclude a member of the Senate for bias on the trial of an impeachment. That authority I have not had time to examine. It is an authority that I do not consider very binding upon this court.

Section 14 of article 4 of the Constitution reads as follows: "The House of Representatives shall have the sole power of impeachment, through a concurrence of a majority of all the members elected to seats therein. All impeachments shall be tried by the Senate, and when sitting for that purpose the Senators shall be upon oath or affirmation, to do justice according to law and evidence.

There is no analogy between this court and a jury called to try an individual, accused of a crime in the State courts. When the juror is called the law makes provision how that man may be challenged. He may be challenged for bias, and then the question is put to him: "Have you formed or expressed an opinion?" (Where it is implied bias.) In other cases; for consanguinity; in cases where he has been on the grand jury; the law prescribes that he may be challenged for certain reasons; but is there any provision by which a Senator can be challenged?

Let us carry that a little farther. Suppose that Senator Clough, or that the managers and Senators should say; "Here, we, and each and every one of us, have formed an opinion in this case." And as you are called up to be sworn, this question is put to you: "Have you formed or expressed an opinion in this matter?" And you answer that you have; does it excuse you, gentlemen, from sitting as a court? Suppose each and every one makes that answer here, where is your court, gentlemen? Who is to try it? Who is to decide upon this matter? If they have a right to challenge this man Clough, they have a right to challenge each and every one of you. And if he is to be precluded from sitting here, because he should answer that he had formed an opinion as to the guilt or innocence of this respondent, it might destroy this court entirely. I do not see how you are to judge. It is different in the cases cited in Cushing's Manual, and other cases. So, where it is not the law of the land, perhaps as handed down to us from England and other countries, and become a precedent in this country where a person is privately interested, where his private interest is at stake, I say the custom has made the law so strong, that a person is excluded from voting, not excluded from sitting as a Senator, but he is excluded from voting as a Senator, and that is the extent and all of it. I have taken some pains to examine the precedents in this matter, and I think that is the full extent of the law on that subject.

Now you recollect gentlemen, the Andrew Johnson case. I was suprised that my friend Governor Davis adverted to that. There was where the question was as fully argued probably, as any other question before the Senate, and the authorities were argued, and Senator Hendricks gave his opinion. He introduced the resolution.

But, gentlemen, what became of that resolution? After discussing that question thoroughly and fully, the discussion lasting some two days, Senator Hendricks withdrew his resolution, if my recollection serves me right, and Senator Wade rose in his seat and said that he was sent there by the people of Ohio to vote on all questions that came up before the Senate, and that he intended to vote upon that question, and did not know how the Senate was to prevent him. How he should vote upon the question he said he did not know until he had heard the evidence. That is the case here. If Senator Clough is prejudiced in this matter so that he could not act impartially, why, gentlemen, as he has sworn, the presumptions are that he will live up to his oath—that he will decide this matter upon the evidence, in conformity with his oath; whatever prejudices he may have, that he will throw them aside, and after the evidence is in. after the argument of counsel, then, gentlemen, he will vote understandingly and vote truthfully according to his oath. It is a matter of his own discretion, and I hardly think that any Senator here will arise in his seat and say, "I am so prejudiced in this matter that I could not conscientiously vote on the question, after the evidence is presented as to the guilt or innocence of the defendant."

Gentlemen, you can hardly pick up a trial juror throughout this country, uneducated as many of them are, you ask them the question, "Have you formed or expressed an opinion upon this matter?" but what they would answer, "Yes, we have." "Is that prejudice so strong that it would not be removed by evidence? Is it so strong that you could not, after hearing the evidence, give an impartial decision in this matter?" and ninety-nine times out of a hundred, they will tell you that they think they could give an impartial verdict.

Let me carry this matter a little further. Suppose in times of great political excitement there are political questions arising in the Senate, as there often are, you are acting not as a court but as a Senate, if you have a right to exclude a man in one case you have in another. Questions arising as they often do arise in the Senate and House of Representatives, where political issues are at stake, and you challenge every Senator on the ground that he could not give an impartial verdict, because he has made up his mind. If you can challenge them for one thing you can for another. If he would be excluded from voting because he had formed an opinion in one instance, he would be in another, and there is hardly a question that would come before the Senate to which a challenge might not be interposed to some of the Senators.

Now the counsel has read from Senator Hendricks. Let me read what the next Senator said, Senator Sherman. Let me be brief in my reading, for I hope some of the managers will followme in my discussion. I find the next Senator, after Senator Hendricks introduced his resolution, was Senator Sherman :

"Mr. PRESIDENT. This question I think is answered by the Constitution of the United States, which declares that each State shall be entitled to two Senators on this floor, and that the court or tribunal for the trial of all impeachments shall be the

Senate of the United States. My colleague is one of the Senators from the State of Ohio; he is a member of this Senate, and is therefore made one of the tribunal to try all cases of impeachment. This tribunal is not to be tested by the ordinary rules that may apply in cases at civil law; for the mere interest of the party does not exclude a person from sitting as a member of the Senate for the trial of impeachment, nor does mere affinity or relation by blood or marriage. The tribunal is constituted by the Constitution of the United States, and is composed of two Senators from each State, and Ohio is entitled to two voices upon the trial of this case.

"It seems to me, therefore, that the question ought not to be made. If this were to be tested by the rule in ordinary civil tribunals, the same objections might have been made to one other Senator, who has already taken the oath without objection, being connected, by ties of marriage, with the person accused before us. It is, therefore, perfectly clear that while the rule might exclude the Senator from Ohio, in deciding in ordinary cases, or he might retire from exercising his right to vote, that it is a question for him alone to determine. So far as the court is concerned he is entitled to be sworn as one of the triers in this case as Senator from the State of Ohio, without regard to his interest in the result of the trial. I have, as a matter of course as the colleague of the Senator, who is now proposed to be sworn, looked into this matter and I have no doubt of it.

"I was prepared to some extent for the raising of this question, though I hoped it would not be pressed. How far the Senator from Ohio, my colleague, may participate in the proceedings of impeachment, how far he shall vote when he shall vote, and upon what questions he shall vote are matters that must be left to him, and not for the tribunal or any Senator to make against him. His right as a Senator from the State of Ohio is complete and perfect, and there is no exclusion of him on account of interest, affinity, blood relationship, or for any other cause."

There was Senator Patterson sitting there, the son-in-law of President Johnson, and he was sitting there on the trial of the impeachment. So you see, gentlemen, that the rules did not apply. Now the counsel has cited from the opinion given by Representative Adams—John Quincy Adams, whose name we all revere, but he has not produced how the representatives voted after the discussion of the question.

That resolution was either withdrawn or voted down, I forget which. Now I will cite from another learned Senator from Massachusetts. I will cite only his conclusions. He made a long and conclusive argument on the question, I refer to Senator Sumner. The constitution says: "When the President of the United States is tried, the Chief Justice shall preside." This is all; and yet on this simple text the superstructure of the Senator has been reared. The constitution does not proceed to say why the chief justice shall preside, not at all, nothing of the kind.

Senators, supply the reason, and then undertake to apply it to the actual President of the Senate.

Where, sir, do they find the reason? They cannot find the reason which they now assign, in any of the contemporary authorities illustrating the constitution. They cannot find it in the debates of the National Council reported by Madison, or in any of the debates in the states at that time, nor can they find it in the Federalist. When does

that reason first come on the scene? Others may be more fortunate than I, but I have not been able to find it.

"Earlier than 1825, nearly forty years after the formation of the constitution, in the commentaries of William Rawle, we all know the character of this work, one of great respectability, and which most of us in our early days have read and studied. How does he speak of it? As follows:

"The Vice President being the President of the Senate, presides on the trial, except when the President of the United States is tried, as the Vice President succeeds to the functions and emoluments of the President of the United States, whenever a vacancy happens in the latter office. It would be inconsistent with the purity of a judge, that a person under a probable bias of such a nature should participate, and it would follow that he ought wholly to retire from the court.

* * * Unless I am much mistaken, this disposes of the objection proceeding from so many Senators, that the Senator of Ohio cannot take the oath because he may possibly succeed to the presidency; he may vote or not as he pleases, and there is no authority in the constitution, or any of its contemporary expounders to criticise it."

Now, I think Senator Sumner's reason, just that little brief item I have read, comprises the whole argument that there is in this case. Gentlemen, there were two points made in the case of Senator Wade, and one was that he was precluded from voting, having accepted the position of President of the Senate, that he was elevated above the Senate, as it were, and no longer Senator, especially upon trials of impeachment.

That was the strong constitutional ground taken by many Senators. Another was, that he being the direct successor to the president, was personally interested, and on that ground, if at all, the rules have applied under an old act of Parliament, that where persons were interested they should be excluded. Now none of that applies to Senator Clough. Not where the public were interested, but where they were privately interested; and I ask you, gentlemen, if that is not the extent of the authority, excepting in this Tennessee case, read by the counsel upon the other side.

Now the counsel has said he don't know what they did with that Pickering case.

Gov. DAVIS. I didn't say that.

Mr. Manager CAMPBELL. Well, I so understood you. If I am mistaken I am glad to be corrected. Now here is the annals of Congress; this was in 1803-4 "Early in the trial a question was raised as to the propriety of those gentlemen, viz.: Samuel Smith, Israel Smith and John Smith, of New York, who were during the last session members of the House of Representatives and voted here upon the question for impeaching Judge Pickering, sitting and voting as judges upon the trial. Mr. Smith of New York wished to be excused. Mr. S. Smith declared that he would not be influenced from his duty by any false delicacy; that he for his part felt no delicacy upon the subject. The vote he had given in the other house to impeach Judge Pickering would have no influence upon him in the court. His constituents had a right to his vote, and he would not by any act of his deprive, or consent to

deprive them of that right, but would claim and exercise it upon this as upon every other question that might be submitted to the Senate whilst he had the honor of a seat." Now there is the same result in that as there was in the Andrew Johnson case. After a full argument, Senator Hendricks withdrew his resolution.

I cite also a case in New York, in the trial of Judge Barnard, impeached for almost everything, by the House of New York. Judge Allen, one of the judges, and member of the court of impeachment, rose in his seat and said:

"I hesitate somewhat to take my seat as a member of this court personally, because I do not propose to occupy a position equivocal either to the members of the court or myself. I have not had time to look over the articles here, but have seen a synopsis of them in the newspapers, and I think some fifteen or sixteen have their foundations upon some cases in which I appeared before Judge Barnard as counsel. It seems to me I should not sit in judgment upon a judge who acted in cases in which I was interested. Others I know nothing about, so that they would not make any difference. But if I take my seat I shall certainly not have anything to do with that part of the trial, and I do not think I ought to have anything to do with it at all."

At the trial of Dorn, Senator Sanford was challenged and the challenge allowed.

"He asked to be excused, as he had acted officially, and prosecuted the respondent as a member of the Senate, from which the impeachment emanated; and it seemed to me that if that was a sufficient cause for him to be excused, I also should most certainly be excused. I would have absented myself from here, but for two reasons. The first was, that I considered it would not be courteous to the court for me to do so. And the second was that it would seem that I wanted to shirk my duty. However, I put the court now in possession of the facts, and I ask to be excused from any further attendance."

No action was taken at that time in this matter. It passed along for a few days, when the counsel on the part of Judge Barnard, interposed this challenge.

"Mr. Wm. O. Bartlett, of counsel for Judge Barnard, the respondent in this case, does not object personally to Judge Allen, but he makes one request. He bears his bosom to the shafts that may be sent from every quarter, and he says, if there is any vulnerable point, let them find it out. His only request is that he may be tried by an unprejudiced and fair court, and a court at which justice, and not prejudice, shall prevail.

"As high as this court of impeachment is when the respondent is put on his trial on charges so momentous to him, and not only to him but so momentous to all those in whose veins his blood runs, thereby he should have the benefit of all the conscientiousness which God Almighty has bestowed on every member of this court, and when certain of those members rise in their places and say they have conscientious misgivings as to whether it would be just, it would be fair to the respondent for them to sit as his judges, and as to their ability to give these matters an impartial trial they ought not to be permitted to sit. Is this court going to try the respondent fairly and justly? Is this court going to bring Judge Barnard here from New York and try him on the accusa-

tion that at some time and in some manner he has been influenced by friendship or partiality, while two of the members of this court are admitting their own bias and partiality? Will such a course be fair?

"We do not interpose any technical objections, but we do ask that justice—pure and simple justice—shall be done in this case."

Counsel upon the opposite side has appealed to your sympathy no stronger than this appeal was made here by the counsel for Judge Barnard.

"I have for Judge Peckham the highest respect, as I have for Judge Allen, but still I say they should not sit as judges in this case, after the admissions they have made; and in the case of Judge Peckham I wish to say that it will be necessary to call him as a witness on the trial, and that is an additional reason why he should not act as a member of this court of impeachment. We wish to raise no legal technicalities nor to impose any objections in regard to matters pertaining to the constitution of the court, but I appeal to the learned Judge (Grover) who has raised an objection to the excusal of Judge Allen, and for whom I have the highest respect, to consider the matter in all its bearings, and give us the benefit of his more deliberate judgment."

I have read enough gentlemen to give you the idea. The court after hearing all the arguments on each side, and retiring for consideration, the president announced this as the decision. The president said: "the chair announces the court has refused to excuse Judge Allen and Judge Peckham."

Now, gentlemen, there is a direct appeal, not alone by the managers, but a direct appeal on the part of the Senators, rising in their seats contrary to the case here, the Senator rising in his seat and saying that he is biased, that he cannot render an impartial verdict in that matter; in his opinion a judge too, one who knows what the law is, and what rules should govern evidence, rises in his seat and says that he cannot decide impartially, and still the Senators refuse to excuse him. Whether this be right or wrong, gentlemen, I leave for you to judge.

But this is not the question here; the question we raise here is not that you could not excuse the Senator if he should rise and request it; you certainly in my opinion could do so, although it would deprive his people of a representation upon this floor which they have a right to have here. If he deems it his duty to stay here and vote upon questions that his people are vitally interested in;

it is a right of his own, and in my opinion you have no constitutional right to deprive them of their voice upon this floor. I have one or two other authorities here. The trial of the Duke of Somerset for high treason in England. "In a trial for treason before the Lord High Steward the prisoner cannot challenge any of his peers for being implicated in the same treason with himself, unless they are attainted."

There is also another case in the trial of the Earl of Essex for high treason. The challenge of a peer was then disallowed. But I think we have sufficient authorities in this country to govern without reference to other authorities.

Now you take the case of that man White. Suppose it is true, suppose we should, as the counsel claims, admit that these things are true. He claims we have admitted it by our denial of his challenge. That is

a matter for you to judge, gentlemen. But suppose that it is true, is the case against Senator Clough any stronger than in the cases cited? In the one case you find the man interested in being President of the United States; that, gentlemen, is a great inducement for a man to swerve from his duty.

We are all human; we are all subject to temptations, and the Presidency of the United States is an office that is well worthy of being sought after. It is liable to warp any man's judgment; some say that it has warped our Presidents' of the past times. So in the case of White. There he had sat in the house, heard the evidence and brought the articles of impeachment. Was he not as much prejudiced as a man would be sitting upon a grand jury and knew what was said to him there by the court? And the gentleman will find, if he will examine the authorities upon the subject, that in very many—I was going to say in a majority of cases of an impeachment, Senators have been witnesses in cases. And what is the rule? There is generally this rule adopted: when a Senator is a witness he shall stand up in his place and be examined as a witness at his desk, instead of being called to the witness stand. You will find that rule adopted in most trials. Now here the Senator, long before the institution of these proceedings, formed and expressed an opinion, which he still entertained and expressed, relative to the question at issue. That is a matter of discretion on the trial of a juror whether he has formed an opinion that he could not overcome by evidence.

If the trial juror is challenged he is not sworn in; he is not a juror in that particular case until he is sworn in. After he is sworn in to try the case impartially, then he becomes a trial juror. If he is excluded, you have the opportunity to fill his place on the trial.

Can you fill Senator Clough's place here? How is that to be done? If you exclude one of the Senators, how are you going to fill his place? As Senator Clough says, "The constitution prescribes that the Senators are the triers, and who is going to give any reason why it is so or that it is not so. The strict constitutional provision may be right or it may be wrong. The counsel on the other side argues that it is wrong, but you are not here to judge whether the constitution is right or wrong." But what is the constitution? [Reading from objections.]

"Third. Because he is elected to his seat in the Senate of the State under pledges expressed and implied that he would as a Senator labor and vote for the impeachment of the respondent."

If his people demanded it, no matter what his opinion was, it is his duty to come here and do it.

But what had he to do with it? What had Senator Clough to do with the impeachment? This impeachment is brought by the people, through the House of Representatives, representing them. The Senate had nothing to do with the impeachment—they are the triers.

"Fourth. Because during his candidacy for the office of senator, he stated in regard to the events alleged in articles six and seven of the articles of impeachment, in a letter printed over his own signature, in a public newspaper published in Mower county, which paper was largely circulated among the electors for the purpose of pursuading them to vote for him, for his office of Senator, that Page grossly insulted the grand jury, and that he, the said Senator, felt that it would not have been a breach of the peace if the jury had gone in a body and kicked him from the bench."

That does not express an opinion, gentlemen, that he ought to be impeached. It states, if it states anything, if it is deemed to be true, that this Senator felt indignant at the treatment that the grand jury had received at the hands of the respondent, and that people sustained him in it in that direction.

[Reading from objections.]

"Sixth. Because he is one of the prosecutors under said article."

Gentlemen, is that true? Suppose we admit it, and at the same time who are the prosecutors here? I suppose the managers to be here representing the House of Representatives as the prosecutors in this case and not Senator Clough. I suppose him to be one of the judges and not one of the prosecutors.

[Reading from objections].

"Seventh. Because he was examined as one of the witnesses in support of said articles before the House of Representatives, and that his testimony was necessary and material for that purpose."

We admit that, gentlemen, and say that it is no cause for challenge, in which every one of you are witnesses in this case.

Now, gentlemen, I have taken more time than I intended to, because I hoped, as said, that some of my associates would follow in my wake, and present this case to you, perhaps in a different light from what I have. I agree with the counsel upon the other side that this man should have a fair and impartial trial.

We expect that he will have a fair and impartial trial, and we hope, gentlemen of the Senate, and we believe that you will give him a fair and impartial trial.

The PRESIDENT. Does the President understand the honorable Managers that they desire to be heard further? Strictly under the 26th rule, I suppose it will be necessary for the Senate to grant permission to be heard further.

Mr. Manager CAMPBELL. I had supposed, Mr. President, that under the resolution passed this morning, that the respondent be allowed one hour and the Managers one hour—that an hour would be accorded to us and that it would make no difference who occupied it.

Senator LANGDON. I move that they have all the time they desire.

The PRESIDENT. If there is no objection the honorable Managers will be heard further.

Mr. Manager GILMAN. Mr. President, there are but a few suggestions that I have to offer at this time. The counsel for the respondent has assumed one position which I believe has not been refuted, at least not at length by the Manager who has just addressed you. The learned gentleman for the respondent has assumed in his argument that this is a court. That I wish to take exception to. I hold that this is not a court in the ordinary acceptation of the term, and while I do not design at this time to discuss that point at length, I will merely make a few remarks upon it, because I am aware that the time allotted to us for the discussion of this question is limited.

Article six, section one of the constitution, reads as follows: "The judicial power of the State shall be vested in a supreme court, district

courts, courts of probate, justices of the peace, and such other courts inferior to the supreme court, as the legislature may from time to time establish by a two-thirds vote."

So far as my knowledge extends, the judicial powers of the State are set forth in that section. In another part of the constitution it is set forth, "That the House shall impeach and the Senate shall have the sole power to try impeachments," and that is about all there is of it. That is the substance, at least. The constitution has, in connection with the statutory provisions of the State, gone fully into the minutiæ of organizing the ordinary courts of the State. Regarding the matter of impeachment, very little has been said. The framers of our constitution evidently designed that the customs established by long usage elsewhere should prevail substantially here. They clearly recognized the fact that the Senate was not a judicial body, and the honorable Senators themselves, in viewing the position in which they are here, I apprehend will arrive at that same conclusion—that they are not fully a judicial body.

They are brought here to go into a different process from that for which a court is brought together. They are supreme in their rulings. There is no appeal from their decision, whatever it may be, no exceptions can be taken—no rulings they may decide upon—on any interlocutory questions, or upon any questions.

The respondent has been arraigned for high crimes and misdemeanors—for corrupt conduct in office, but still has not been placed under arrest in the ordinary way—has not been required to give bonds for his appearance here. There are very few characteristics indeed resembling those of a court of justice.

But it is not upon that that I wish to speak at length, but merely to call attention to that fact, which will probably be discussed hereafter.

The objections interposed by the counsel for the respondent propose that the Senate shall exclude from participation in this case one of their number. There are three ways in which that member of the Senate may cease to be one of this body; by expulsion (if the Senate has the power or chooses to resort to it), by death, and resignation. I apprehend that the gentlemen will search a long time before they find it within their authority to exclude him from participation in this case by any other process.

He is sought to be rejected from a seat in this tribunal by reason of having formed an opinion. That seems to be the basis of the objections, although several objections are specified, but that is the sum and substance of the matter, that he has formed an opinion. The objections do not set forth as I understand in plain and specific language, that the gentleman is prejudiced in the case, but that he has formed and expressed opinions. Well now gentlemen, let us see where that rule if adopted and put in force is liable to carry us. Where it is liable to lead, not only this Senate, but some future Senate. As has been well remarked by the gentleman preceding me, while there has yet been but one challenge interposed we do not know that the honorable gentlemen, when this question is settled may not interpose another challenge, and still another and another. They may claim that gentlemen here should respond as to whether they have formed an opinion. They compare this to a court; substantially to a jury—have referred frequently to the

status of a jury in that case. You will doubtless conclude that such a course as that will be erroneous, but let us suppose a case which may arise hereafter. We have a court in this State which is co-extensive with the State, not limited to a judicial district.

Let us suppose that sometime in the future, (which I trust and hope will never occur) when one or more members of that Supreme Court, shall so far transgress the laws of the land and the laws of decency, as to arouse an indignation among the people throughout this entire State, as to his conduct, or as to their conduct ; the transgressions shall be so flagrant and so clear and apparent that all the people, or a great majority of the people of this State, shall be brought to recognize the fact, that there is vile corruption existing there, and that immediate process be put in operation under the constitution, as this case has been put in operation under the constitution, to apply to that case which I suppose. The people become indignant; they propose to impeach these officers. They must do it through members of the House and through Senators to be elected—there is a universal sentiment, perhaps, or nearly so. They set themselves to work and they elect a Legislature—they elect a House and they elect a Senate upon that issue. It is an issue that is forced upon the people. They cannot ignore it; candidates cannot ignore it.

The question is asked, "How do you stand on that?" and the man who does not stand favorably to impeachment, to the arraignment and conviction of those officers cannot be elected. There comes here a House and a Senate with the intent and purpose to impeach. What will you do? Will the counsel for the defense arise and propose to set aside every member of that Senate who has expressed an opinion? If so, where is your tribunal? Where is your quorum? It will soon cease to exist; and, gentlemen, the greater the outrage that is perpetrated, the greater the indignation among the people, and the greater the majority that come here to seek that redress which the constitution confers upon the people, in a certain class of offenses, and therefore the greater the outrage the smaller and nearer impossible the chance for conviction, from the very fact that the members have been elected upon that issue.

The gentleman well says that the Senator from Mower county was elected upon that issue, perhaps. Admit for argument that it is so, and I don't know to the contrary, I apprehend from common rumor that such is the fact, that he was not only elected upon that issue but that it was the vital issue there; that the contest was sharp; that the lines were well defined. What is the consequence?

Is there better reason why one Senator coming here representing a small portion of the people of this State, undertaking to give them their constitutional rights in this body, should be rejected upon that ground than there is for the rejection of a majority or a quorum? Certainly a quorum of this house standing in that position—a majority will not, when they come here for that purpose set themselves outside of this house when acting here in that capacity, because they came here for that purpose legitimately. Will they, because one community has been afflicted with an officer obnoxious to them, or because they allege and think that they are so afflicted, send away a man sent here to assist in giving them that redress?

I say, shall that man be thrown out—shall that people be disfranchised? I apprehend not. Not only, gentlemen, would a body of men coming together in the ordinary way through the process of election under those circumstances, come here legitimately for the purpose of impeachment, but to my mind, the case might be so glaring and so flagrant that the Governor of this State by the authority reposed in him, would be authorized to convene an extra session, and for the very purpose to impeach—to save the people from humiliation, from disgrace: to save the State from a great public scandal. The preposterous pretension in making this demand—the unusual character of the demand made must be so apparent to this Senate that any prolonged or continued discussion will only be a waste of time here, and I will therefore close my remarks.

Mr. DAVIS. Mr. President: If I can have five or ten minutes before adjournment I will close the discussion.

Mr. Manager CAMPBELL. Governor, I wish to call your attention to one remark which you quote: it is this, that they did not pretend to have any authority for their actions. You say we must bring authorities to prove that he can sit at all. I say it is creditable to human nature that we are able to bring no authority. Why? Because it is the first case that ever occurred in England or America where a brother presents himself and insists on his seat. I think the gentleman's reading has been a little limited.

Governor DAVIS. We shall be very brief, may it please the Senate, in refuting the considerations which have been advanced by the distinguished managers who have just occupied your attention. Now let me bring this matter right back to its grounds and reasons.

First. The necessity for a trial.
Second. The necessity for an impartial one.
Thirdly. The numerous guarantees in the bill of rights and in the constitution at large of personal rights.
Fourthly. The constitution of this Senate into a court (as I shall claim), and
Fifthly. The power of each House to judge whether its members are elligible, competent or qualified.

Such is the framework upon which the argument upon our part depends. Was I not right in saying that the opposition to that argument did not grasp the ethics of this situation, but simply touched the technicalities and the difficulties of the position, and I am free to concede that difficulties there are.

My learned friend, Manager CAMPBELL, resorts to that worst of all arguments the putting of an impossible case; a case where this Senate when it convened should find that every one of its members were disqualified for some reason. A case impossible in the very nature of things, and therefore not to be invoked as precedent. The law does not compel impossibilities in this in any more than any other case; but if it were supposable, gentlemen, that for any reason, disabilities and incapacities should settle down upon this Senate and every part of it, most unquestionably this body would have no right to try this case. You, gentlemen, are the Senate of the State of Minnesota, but you will not forever be its Senate. If, by reason of any flaw in the

proceedings, you came to the conclusion that you could not constitutionally proceed; if you should conclude that you were incompetent for any well grounded legal reason, it would be your duty to adjourn, that this matter might be brought before a Senate competent to try it.

My learned friend, manager Gilman, makes a most unfortunate illustration in regard to the Supreme Court, by supposing a case which has actually happened in that tribunal. The judicial power of this State, for certain appellate purposes, is wholly confined to the Supreme Court. The want of limitations upon the capacities of its members to sit in any case is as marked as it is here, and yet recently, was there pending a case in that court where two judges were incompetent to sit, and so deemed themselves. It was a case where Judge Cornell and Judge Gilfillan had, respectively, been engaged as counsel. This very situation presented itself there. The judicial functions of the Supreme Court of this State in a very important case, were at a dead lock. The deliberations of justice were arrested for that reason; the very difficulty which my learned friend assumed might occur, did occur there. That suit stopped, and it took a constitutional amendment to empower the Governor to detail into that court, two of the district judges to meet just such exigencies, and Judge Mitchell and Judge Lord were detailed for that purpose. Their decision is on record, and it can be consulted.

My learned friend, manager Gilman, says, "that this is not a court." If it is not a court, gentlemen, in heaven's name what is it? What characteristic does it lack? You are considering charges, you subpœna witnesses, you require the respondent to plead, you establish rules, and you will proceed according to precedent so far as they are applicable. You are to pass a judgment of acquittal, which restores the respondent to his functions; or of conviction, which forever disqualifies him for holding office. You begin by deliberation, you end in a recorded judgment. There is no characteristic lacking to constitute a court. Do you sit here as the representative of any public opinion, as expressed at the ballot box? Not at all. I think my learned friend takes an entirely wrong and insufficient view of your duties. He puts the case, as I understand it, where a Senate and House of Representatives have been elected, expressly convict; he says that for that reason the House of Representatives and the Senate ought to be the mere register of the will of the people as expressed at the polls.

When that system and that view enters into our jurisprudence as a system of decision, God help the State and the liberties of every citizen therein.

Gentlemen, I hold in my hand your recorded and subscribed oath. It is not to go mousing around among your constituents or among the issues upon which you were elected to find which way in your community or in any other the desire of the people lies. This oath is as follows: "You do solemnly swear that in the matter of the impeachment of Sherman Page, Judge of the district court of the tenth judicial district of the State of Minnesota, you will do justice according to *law* and evidence." Linking that oath to the constitution which you are sworn to uphold; the rights you are sworn to protect; the duties you are bound to enforce and exemplify in your conduct; holding them up before you, I ask for the respondent at this bar an exercise of the powers of this court to give him an impartial trial by an impartial tribunal.

Senator NELSON. Mr. President: I suppose our rules contemplate that when we come to consider any question and make our decision upon it, that we should retire for deliberation—be by ourselves. Now, whether we are to do that by excluding outsiders from this chamber, or to retire to some other room in the capitol, is a question that it might be well to consider. I would suggest, in the meantime, that either the House of Representatives or the Supreme Court room, if we could get that, be prepared for the purpose of consultation, in order that when this or any other question may arise which we desire to consult upon, we can retire and consult without excluding outsiders from this chamber. I make that as a suggestion without desiring to make a motion.

Senator EDGERTON. I would suggest that in the meantime instead of taking the recess now, the Senate move when we do take a recess that it be until two or three o'clock, and that the audience can leave this hall as all public business will have ended.

Senator NELSON. Mr. President, I will make that motion. I simply made the suggestion that we now take a recess until 2 o'clock.

THE PRESIDENT. I think the Senator does not understand the suggestion of Senator Edgerton. He suggests that when the Senate take a recess that it be until two or three o'clock, but not now, that the deliberations take place now.

Senator NELSON. My idea was that we take a recess until two o'clock, and in the meantime might meet again and have either the Supreme Court room or the House of Representatives prepared.

Senator EDGERTON. I would ask the Senator if he thinks it will take long to dispose of this question.

Senator NELSON. That I cannot tell.

Senator EDGERTON. It seems to me we can dispose of it before recess, at least in this chamber, before the call of the Senate is required.

Senator NELSON. Well, Mr. President, I will withdraw my motion. I simply made it for the purpose of taking a recess. If any other action was desired, it is immaterial to me whether we meet now. I supposed, perhaps, that this was a question that Senators desired to express their views upon, that it might possibly take from an hour to two hours before we came to any conclusion about it. If such is not the case perhaps we might as well go on now.

Senator GILFILLAN J. B. Mr. President, it seems to me it will be conceded then that all we could accomplish during this morning's session would be to dispose of this question; perhaps not that—would we not then expedite matters by suggesting to the bystanders to withdraw, and enter upon the consideration of the question, and determine whether we will consider it now, and determine whether we will adjourn. I move that action.

The PRESIDENT. It is moved that the spectators withdraw from the Senate chamber. The Senate will be in order. The chair would state to the audience that the court is in secret session and they are requested to withdraw until this question is disposed of.

The Senate then went into secret session for the consideration of respondent's motion.

Pending the consideration of this motion the Senate took a recess until 3 o'clock P. M.

AFTERNOON SESSION.

On resuming, Mr. Gilfillan J. B., presented the following:

Ordered, that the motion of respondent, for the exclusion of the Senator from Mower county from being one of the judges in this cause, and from voting or deciding upon any question to be involved therein, be, and the same is hereby denied.

The order was adopted.

On resuming business in open session, the President announced that the motion of the respondent was denied.

Mr. Manager CAMPBELL. Mr. President: We now renew our motion if it is agreeable to the Senate and counsel upon the other side, to determine whether the plea to the jurisdiction should be first disposed of or not.

The PRESIDENT. That question, if it is desired, will be submitted to the Senate.

Mr. Manager CAMPBELL. Well, I would like to hear the opinion of the counsel, if there is any objection to it.

Gov. DAVIS. Mr. President, above all things, the counsel for the respondent desire not to be technical in this matter, and we are perfectly willing to submit now, for the information and consideration of the Senate, if the Senate sees fit to consider them—the views upon which the plea to the jurisdiction, was drawn.

I deem it my duty to inform Senators that at the time that plea was framed, the records and proceedings of the House of Representatives rested in the journal of the secret session. Of course we had it not at our disposal, and we were compelled to plead in the manner we did through such information as we could obtain, and upon such assumptions as we took for granted. The respondent is entirely anxious that this Senate, if it has the power and jurisdiction, shall proceed to the trial of this case upon the merits. So anxious is he for a final and judicial determination of the questions which have convened this body in this extraordinary session, that it has been a point of earnest deliberation with us, whether we should not waive the points presented by the plea to the jurisdiction. I shall make no extended argument upon them. I believe them to be entirely well taken; their force lies in their statement, and I will proceed now to indicate to the Senate what the condition of things is as developed by the journal of the House, as published as an appendix to the journal of the Senate.

The constitution of the State provides that "the House of Representatives shall have the sole power of impeachment through a concurrence of a majority of all members elected to seats therein." It also provides in another section not now immediately under my eye, that each house shall keep a journal of its proceedings. The journal of the House of Representatives, printed as an appendix to the journal of the Senate, sitting as a high court of impeachment, contains the following proceedings upon page 42:

"The Speaker stated that the question before the House was the following resolution of the judiciary committee:

"Resolved, That the Hon. Sherman Page, Judge of the Tenth Judicial District of the State of Minnesota, be impeached for corrupt conduct in office, and for crimes and misdemeanors.

"Mr. McDermott moved a call of the House, which was ordered, and the clerk called the roll."

Then after various interlocutory matters not necessary to be read, the question being taken upon the adoption of the resolution, and the yeas and nays being ordered, there were yeas 61 and nays 30 "as follows," etc.

Down to this point of course no exceptions can be taken to these proceedings.

A resolution passed in which a majority of the members elected to the House of Representatives resolved that the House, would thereafter impeach the respondent for high crimes and misdemeanors. That of course did not impeach him.

If this resolution had been brought in here and nothing else, there would have been nothing upon which you could adjudicate.

"The Speaker appointed as a special committee to inform the Senate that it had passed a resolution impeaching the Hon. Sherman Page, Judge of the Tenth Judicial District.

"Mr. Campbell S. L. offered the following resolution which was adopted:

"Resolved that the board of managers, seven in number, be appointed from the members of this House to conduct, on behalf of the House, the impeachment proceedings against Hon. Sherman Page, Judge of the Tenth Judicial District; that of said board of managers the Speaker be one, and the remainder appointed by the Speaker, and that the said board of managers be instructed to prepare and report to this House, articles of impeachment against the said judge."

Now follows the resolution, to which, in the state of the House journal, we take exceptions:

"Mr. Campbell S. L., from the committee on impeachment of Sherman Page, Judge of the Tenth Judicial District, reported articles of impeachment against the said Sherman Page, and the said articles were read and duly adopted."

We present to the consideration of the Senate the phrase "DULY ADOPTED." It is not a sufficient compliance with section 14, article 4 of the constitution, which provides that the House of Representatives shall have the sole power of impeachment through a concurrence of a majority all the members elected to seats therein. The ayes and nays were not called. The names of the Representatives voting in favor of the articles of impeachment, whatever they were, in no manner appear; it was a proceeding in the last hours of the last night of the session —

Mr. Manager MEAD, [interrupting] You are mistaken, a week before the session closed.

Governor DAVIS. I beg your pardon, that is true. It was a proceeding in which I assume that the roll was not called, because when it is called it is always set forth in the journal as called, and seems to have

been a *viva voce* adoption of certain articles of impeachment. We maintain, in all fairness, that such a record should be produced to this Senate, as to enable it to see and judicially know that the gentlemen who prosecute this matter appear here under a proper warrant to prosecute articles adopted by a majority of all the members elected to the House of Representatives.

It is not sufficient under this section of the constitution that a majority of a quorum of the House of Representatives voted to adopt the articles. It is the adoption of articles which really constitutes the impeaching process. If the House of Representatives had stopped with the adoption of a resolution that he be impeached, and had adopted no articles, why it is perfectly manifest that there would be nothing here for the court to try. Now, although the power of the House of Representatives to impeach for high crimes and misdemeanors is plenary, yet it is axiomatic as a matter of construction, when any tribunal moves in any proceeding, that the jurisdiction of that tribunal must be not presumed, but affirmatively shown; and that the mere recital that the tribunal has assumed jurisdiction where certain parliamentary forms are to be gone through with in order to vest it with that power, is not sufficient for that purpose. Now the Clerk of the House of Representatives, has entered here that the articles "were read and duly adopted."

Upon the principle of exclusion used in construing written instruments, referring to the well-known practice of legislative assemblages, it is to be presumed conclusively against this record, that the roll was not called; that the other mode of adoption of the resolution was used, namely, *viva voce* vote.

Another objection to this proceeding is this, that whatever articles were adopted they are not set forth in the journal of the House of Representatives. The report of the committee is that they have adopted certain articles of impeachment. They are not entered in the journal of the House. The report is that articles were read and duly adopted. It appears nowhere in this record what they were. A board of managers from the House of Representatives appear before this tribunal and file a certain paper which they say are articles of impeachment propounded against Sherman Page.

Going back to the record of the House, from which they derive their authority, we find nothing whatever to show whether that is an authentic document or not; in other words, gentlemen, there is no record of the House of Representatives before this court. We turn to the journal of the House of Representatives, and we find those articles are not there set up. I submit these considerations to the deliberation of the Senate.

I will call the attention of the Senate also to section five of article four of the constitution:

"The House of Representatives shall elect its presiding officer, and the Senate and House of Representatives shall elect such other officers as may be provided by law; they shall keep journals of their proceedings."

Now, what I object to is, that in the journal of the proceedings which the House of Representatives have kept, no articles of impeachment appear; and that the only record which can be brought into this House, is the certified copy thereof.

Mr. Manager WEST. I put a few suggestions in reply to the argument that has been made by the learned counsel. The position that they take is that the Hon. Sherman Page has not been impeached. In other words, that the evidence of impeachment is the articles of impeachment. They claim that when this resolution was adopted and passed by the House, and which they say and admit was regular, down to those proceedings, which reads as follows: "That the Hon. Sherman Page, judge of the 10th judicial district of the State of Minnesota, be impeached for corrupt conduct in office, and for crimes and misdemeanors," does not mean anything, that is, that the impeachment is not complete until the House or through the managers of the House, present articles of impeachment at this bar. Now I take the ground that when that resolution was passed, and the Senate was informed of its passage, that Sherman Page had been impeached.

I further take the ground that it was not necessary that those articles of impeachment should be presented to the House at all, and I refer the Senate to a precedent in the matter. I would refer them to the impeachment of Edmonds, of Michigan. You will find in the first volume a resolution was adopted by the House of Representatives, impeaching the Hon. Chas. A. Edmunds, in the precise language which the House of Representatives adopted in this matter, and the constitution reads likes ours. Now, as I said before, I claim that it was not necessary that these articles presented here, should have been presented to the House at all, and in the case that I refer to here, the managers presented the articles themselves, framed themselves; they were never presented to the House, never acted upon by the House or adopted by the House; they presented them to the Senate and signed their names to them. In this case the articles *were* presented to the House; the journal shows that they were adopted, and I wish to call the attention of the honorable gentleman and the Senate, to the fact that it is not necessary that the vote of the House, except in passages of bills, should be recorded or in case of electing United States Senator. It was not necessary that every man's name should be called and his vote recorded in this manner.

Now, if Judge Page was not impeached by this resolution, when was he impeached? When did the impeachment take place? If he was not impeached when the House passed that resolution and had informed the Senate, when did it take place? They say that it is necessary in order that the impeachment may be complete, that the articles be presented here. Now it seems to me that so far as this objection to the proceedings are concerned to the jurisdiction here, that it does not amount to anything. There can be no doubt that Judge Page was impeached when that resolution was passed. Now the record shows that the Senate was informed, and the record is as follows: that on February 28th there appeared at the bar of the Senate a committee and informed the Senate as follows:

"We appear before you, and in the name of the House of Representatives, and of the whole people of the State of Minnesota, we do impeach Sherman Page, Judge of the Tenth Judicial District, of corrupt conduct in office, and of crimes and misdemeanors in office; and we further inform the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him."

Not "that the House of Representatives will in due time exhibit particular articles of impeachment against him, and make good the same,

and likewise demand that the Senate take order for ths appearance of Sherman Page to answer said impeachment."

Now it seems to me that there can be no doubt but what Judge Page has been impeached by the House of Representatives, and when the record shows that the articles of impeachment were presented to the House, and that they have been sent to the Senate certified to by the Speaker and Clerk of the House, that he (the respondent) must show by evidence in some way that he has not been impeached, and that the articles have never been adopted. It is for them to show that it has not been done, even if their position is correct. They must show in the first place that we did not vote upon those articles, if it is necessary that the House should adopt them by a vote. It is necessary for them to show that the articles that are here filed and certified to by the Speaker and Clerk of the House of Representatives are not the articles of impeachment. With these few remarks I will leave the question.

Mr. Manager CAMPBELL. Allow me one moment. I will refer to one article here (in Barnard). Not knowing the points that will be raised by the counsel for the respondent, of course we are not prepared with our authorities, perhaps as we otherwise would be. I find in the trial of Judge Barnard in New York, this identical question arose; and in that case those articles did not appear spread upon the records. The Speaker announced the special order, being the report of the committee on judiciary on the investigation of charges against certain judges in the city of New York.

Mr. Prince moved the adoption of the resolution reported by the majority of the committee in the words following:

"Resolved, That George Barnard a justice of the Supreme court of this State, be and he hereby is impeached for mal and corrupt conduct in office," almost precisely word for word with our resolution.

"The question being taken on the adoption of said resolution it was determined in the affirmative by the following vote: ayes 93 and noes 16."

Then, on motion of Mr. Prince, a committee of three were "appointed by the Speaker to go to the Senate and at the bar thereof in the name of the assembly and of all the people of the State of New York, to impeach Geo. G. Barnard a justice of the Supreme Court of this State, for mal and corrupt conduct in office." Then a committee was appointed to prepare articles.

These articles were argued in the committee of the whole, and reported back from the committee of the whole, and the report of the committee adopted, and that is all there was to it.

After they went into the committee of the whole those articles were not spread upon the records. The articles were not signed. The question raised here was, that the articles were not signed by the Speaker, or the clerk. That is not this case. But the managers presented the articles; they were received by the Senate, and acted upon by the Senate as the articles of impeachment. Now, when the question aroseas to those being the identical articles, the Senate allowed testimony to be introduced to identify those articles, and the managers were sworn, one or two of them, to identify the articles as being the very identical articles that were presented.

More than that, these articles were manipulated and changed in a manner; and they hold here that it did not matter; that the committee were to present the articles and they did present them as we presented

the articles here. Our articles are authenticated—signed by the speaker and the clerk, and the presumption will be by this body that the House has performed its duty. Those articles were not spread upon the record at all, as the counsel will see. And the only adoption of those articles was after they passed through the committee of the whole by agreement as an adoption of the report of the committee of the whole. Now, I say we stand far better before the Senate than did the managers in the case of Judge Barnard; and I think our proceedings are not only correct, but they are formal in every respect, that we have taken step by step the necessary proceedings in order to make our proceedings legal and proper; and I think every authority will sustain us. More than that, a copy of these articles has been served upon the respondent here, and he has put in his plea, and answered to them, acknowledging that he was impeached, and that those were the articles of impeachment; and he is estopped now from setting up that they are not the articles of impeachment. It is the duty of the Senate, if the Senate should have the least doubt, to allow us to present proof that they are the identical articles adopted by the House.

GOV. DAVIS. I understand, Mr. President, that under the system of pleading, adopted without objection or exception by us in this case, where we have joined a plea to the jurisdiction with that plea to the merits that when the managers by replication put that in issue, without exception, they waive their right to take the position which my learned friend has just assumed But irrespective of any question of pleading the issue of jurisdiction can be raised at any stage of the proceedings without a plea.

Mr. Manager CAMPBELL: I admit that.

GOV. DAVIS, (continuing.) And hence it will be sufficient if we had not put in any plea, if we had called the attention of the Senate to this fact. Now the House of Representatives of the State of Minnesota has adjourned. It has delegated its functions, so far as the prosecution of this impeachment is concerned, to the eminent gentlemen who compose the board of managers. We find here certain articles purporting to be signed by the Speaker and by the clerk. If the Senate will examine the original roll of articles, it will find they are accompanied with no original resolution or certificate of the vote by which they were adopted. It is not sufficient, may it please the Senate, that any gentlemen, however eminent, bring into this body a document signed by the Speaker and clerk of the House of Representatives.

What this Senate has a right to know, and be judicially informed of, is whether the gentlemen who appear before the Senate to prosecute this matter, bring with them that upon which alone the respondent can be prosecuted—that fact which impeaches him. And here I take issue, most decidedly, with the gentleman first up, that the mere passage of the resolution impeaching the respondent, is the impeachment.

Mr. Manager WEST. (interrupting) And the information conveyed to the Senate.

GOV. DAVIS. I take the issue with the counsel that the resolution that the respondent be impeached and the information thereof by the managers to the Senate constitutes impeachment. If that were so, then there was no necessity of adopting articles. If the House has exercised its

power of impeachment by merely passing a resolution in three lines and notifying the Senate that it has done it, what is the necessity of preparing any articles of impeachment whatever? What is there to try under such a resolution as that? Taken in its proper sense it means that the House of Representatives will as they say in their message in due time proceed to consummate an intention which they have entertained and adopted, to be followed by other acts, and section 5 of article 13 is conclusive upon this point.

"No person shall be tried or impeached before he shall have been served with a copy thereof at least twenty (20) days previous to the day of trial." Now if the impeachment of the respondent was by virtue of that resolution we have never been served with a copy, although we do not make that point. "No person shall be tried on impeachment before he shall have been served with a copy thereof." "A copy of the articles," that must mean, manifestly—of that which he has to answer to—not of the resolution, or that they will impeach the respondent of high crimes and misdemeanors. "A copy thereof"—namely, the articles of impeachment. Again, "no officer shall excercise the duties of his office after he shall have been impeached and before his acquittal." Now if the construction of my learned friend is the correct one, all that the House of Representatives need do to suspend a public officer is to pass a resolution.

"Resolved that he be impeached." If that is impeachment that suspends him from office, and makes him for the time being *functus officio*. He cannot resume those duties before he is acquitted, and yet he cannot be acquitted because there are no charges upon which he can be acquitted, or to which he can answer, or which the Senate can try. And here I say in all fairness, upon all principles of construction, that no public officer is impeached until the articles against him are adopted legally and properly, and that consideration brings the mind of any person considering this question back to the elementary proposition, which I stated when I was up before. It is, before any court proceeds, the jurisdiction of that court must be affirmatively shown by the party moving. It must affirmatively appear upon the record. Nothing is presumed as to jurisdiction. In the meanest suit that is tried the service of summons must be made to appear. In admiralty the seizure of the vessel must be made to appear. In suits in the Circuit Court of the United States, the citizenship of the parties must be affirmatively made to appear, and no recital in the record will cure it.

Now we have a constitution which requires each House to keep a journal of its proceedings. We have a journal which shows that while articles were adopted, yet does not set them out. We do not seek to contradict the journal. We point out its defects; and there is nothing, I say, in evidence or law, or under the requirements of the constitutional provisions which informs the Senate judicially, I mean sitting as judges, whether the House of Representatives ever adopted this particular paper or not. Again, it must affirmatively appear that these articles were duly adopted, namely: It must appear that they were adopted by a majority of all the men elected as Representatives. Does that appear?

"The articles were read and adopted." No ayes and nays; nothing which enables us to show or state how the fact is except the defect itself.

Mr. Manager MEAD. I suppose, Mr. President, that the question involved here is partly a question of fact. I don't know whether the counsel intends to admit whether the articles upon the table are the articles of impeachment that passed the House. The view of the managers is that the burden of proof is upon the respondent; the articles filed here have the signature of the clerk and the Speaker of the House of Representatives. That paper is on file in this *court*—the original articles. Our view is that the burden of proof is upon the respondent to show that they are not the articles under this plea. Our further view is upon principle and established law, that this court will presume the records to be what they purport to be, and when a paper is filed herein, signed by the Speaker, attested by the clerk, this Court must necessarily presume that it is an official and original paper, and that everything has been done according to and in form of law.

Now we do not want these questions of fact to disturb the question of law involved. If the court will inform us upon that point we will show the identity of the paper filed in this court, passed by the House.

Gov. DAVIS. We are content upon the record, if my learned friends desire to verify from the record.

Mr. Manager CAMPBELL. We claim the burden is on you.

Mr. Manager MEAD. I desire to ask if, while the numerous questions proposed in the progress of this trial are raised, and which will necessarily consume some length of time, the managers are to retire on each occasion?

THE PRESIDENT. It is not probable that the Senate will retire on every occasion, but there may some questions arise where the managers will be requested to retire.

Senator NELSON. I move that we return into secret session to consider this question, and that will probably be all that we will dispose of this evening.

The PRESIDENT. If no objection is heard that will be considered as the sense of the Senate, and the counsel will retire.

Mr. Nelson offered the following resolution:

Resolved, That the clerk of this body be authorized to subscribe for three daily newspapers for each member of this court, including the President; for each member of the board of managers, and for the clerk and sergeant-at-arms.

Mr. Doran moved to strike out three and insert two,

Which did not prevail.

The question being taken on the resolution,

The roll being called, there were yeas 22, and nays 12, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Drew, Edgerton, Edwards, Henry, Hersey, Lienau, Macdonald, McClure, McHench, McNelly, Nelson, Remore, Shaleen, Smith, Swanstrom and Wheat.

Those who voted in the negative were—

Messrs. Deuel, Donnelly, Doran, Gilfillan C. D., Goodrich, Hall, Houlton, Mealey, Morrison, Morton, Rice and Wait.

So the resolution was adopted.

Mr. Edgerton offered the following resolution:

Resolved, That the report on mileage, adopted by the Senate at the session of 1878, be adopted as the mileage of the members of the court, and that each Senator be entitled to and receive the same per diem and mileage as during the Senate of 1878.

The question being taken on the adoption of the resolution, and

The the roll being called, there were yeas 34, and nays none as follows:

Those who voted in the affirmative were—

Messrs Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Donnelly, Doran, Drew, Edgerton, Edwards, Gilfillan C. D., Goodrich, Hall, Henry, Hersey, Houlton, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morrison, Morton, Nelson, Remore, Rice, Shaleen, Smith, Swanstrom, Waite and Wheat,

Mr. Edgerton offered the following resolution.

Which was adopted.

Resolved, That the managers and respondent be requested to dismiss from attendance upon this trial, each witness as soon as his testimony shall have been given, unless otherwise ordered by the court, as no witness will be allowed *per diem* for attendance longer than absolutely necessary.

Mr. Nelson offered the following resolution.

Which was adopted.

Resolved, That the court overrules the plea of jurisdiction interposed by the respondent.

The President appointed the following committee on accounts, in accordance with the resolution of Senator Pillsbury:

Messrs. Pillsbury, Gilfillan C. D. and Doran.

On motion the court adjourned.

Attest:

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

TENTH DAY.

ST. PAUL, FRIDAY, MAY 24, 1878.

The Senate was called to order by the President.

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

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

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

The sergeant-at-arms having made proclamation,

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

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

The President announced that the Senate in secret session yesterday, decided to overrule the respondent's plea as to jurisdiction, as appears in respondent's answer.

Mr. Manager Campbell then proceeded to open the case on behalf of the House of Representatives.

Mr. Manager CAMPBELL. Mr. President and gentlemen of the Senate: The respondent, the Hon. Sherman Page, Judge of the Tenth Judicial District, is arrainged here under impeachment in the House, for crimes and misdemeanors in office, and for corrupt conduct.

It becomes my duty on the part of the managers and at their request, to open this case to you, and to present, as far as I am able, the law and the evidence upon which we expect to make good the charges preferred in the articles of impeachment.

Courts of this nature have seldom convened, and it seems unfortunate that thus early in the history of our young and growing State we should be called upon to investigate the conduct of one of our judicial officers.

Strange, that a man who had received his position directly from the people, holding an office where there seemingly would be every inducement and every incentive to do right; to do right, with no inducements to do wrong—should have so conducted himself that there would even be a breath of suspicion against his judicial conduct, much less that after a fair and full investigation giving him every opportunity to be heard in his own defense, and to excuse his conduct, the House of Representatives should find it necessary to bring articles of impeachment

against him; to charge him with corrupt conduct in office; with arbitrary, vindictive, and oppressive treatment of the people of his district.

The managers, in entering upon this investigation, do so with no ill feeling towards this respondent, with no desire to injure or malign his character, for up to the preliminary investigation in this matter two or three of us were almost, if not entire strangers, and I say we entered upon this trial with no feelings of ill-will towards the respondent, and only a desire upon our part to do our duty faithfully, honestly, and to present to you such evidence as we have been able to collect to sustain the charges perferred by the House of Representatives; and if, gentlemen, after that evidence is presented to you your verdict will be that the respondent is not guilty, it will be much more satisfactory to the managers than will be a verdict of guilty, provided that that decision is arrived at from no fault on the part of the managers.

But let me add, gentlemen, that while we thus feel this leniency towards this respondent, we each and every one of us enter upon this investigation, fully believing that the defendant is guilty of the charges preferred against him. We believe, gentlemen, that instead of acting the prudent and the wise judge, that his conduct has been arbitrary vindictive and oppressive.

It is a notorious fact to you all, that among the people of Mower county, where the respondent resides, there is a spirit of bitter, vindictive hatred in general. That his conduct has been censured severely by the press of the State. Now, gentlemen, what are we to judge from all this? Are the people all wrong, and this defendant right? Is this a persecution on the part of the people and the press against him, or has he given rise to this censure by his conduct? And let me ask you right here, gentlemen, do you believe there was any necessity of a man occupying his position to have created all this strife and contention in the community? Do you not believe if he had been a little less vindictive and a good deal less self-willed, that all this might have been avoided, and this impeachment never have been instituted? I say, gentlemen, that we start out with the presumptions in our favor.

In times of great political excitement, wrong is often done to men in office, but in such times as these there is no political excitement; there is no reason why the people are stirred up against this man. On the contrary, it is the nature of the people of this State to sustain their judicial officers; to uphold them in their decisions; and if this man was all right, if he had conducted himself as a judge should have conducted himself, there would have been none of this strife. He would not stand here to-day impeached by the House of Representatives as a petty tyrant,—for that is what the impeachment amounts to. And if there is anything on earth that the American people will not stand it is to be tyrannized over. There is a little of the spirit of '76 left among us yet, and when a man, in position just elevated above the people and from the people, and holding that position by an accident, attempts to tyrannize over them, they will resent it. And, gentlemen, petty tyranny is the worst of all tyranny. It is well, gentlemen, that we have courts of impeachment. It is well that we have a tribunal to which the humblest citizen may appeal, and "without money and without price" obtain relief from oppression from those in power.

It was for this purpose that courts of impeachment were created.

Judge Story in his commentaries on the Constitution, says:

"The object of creating these high courts of impeachment is to reach high and potent offenders such as might escape punishment in ordinary tribunals. The notoriety of the proceedings proper, the solemn manner in which they are conducted, the deep extent to which they affect the reputation of the respondent, are all calculated to make a vivid and lasting impression on the *public* mind, and give to such prosecution a vast importance both as a check to crime and an incentive to virtue."

These courts, gentlemen, are of great antiquity; so much so that their very originality is clouded in obscurity. Our model for our courts is derived principally from Great Britain. In Great Britain the House of Commons brings the impeachment, and the House of Lords tries it. In the United States the House of Representatives brings the impeachment and the Senate tries it. In the several States the House of Representatives are the impeaching body, and the Senate are the trial jurors. The constitution of this State prescribes in substance that impeachments may be brought for corrupt conduct in office and for crimes and misdemeanors. The constitution of the United States is a little different, in that impeachments may be brought for high crimes and misdemeanors, mentioning the crimes for which they may be brought.

I anticipate, gentlemen, although there is a slight difference in the language of the constitution, that a judicial officer would be impeached for the same offenses, for the same misconduct, in the one case that he would be in the other. And what would be an impeachable offense under the laws of our State would also be an impeachable offense under the laws of the United States. What is corrupt conduct in office? What amounts to corrupt conduct in office has never been defined. No writer has attempted to define just what conduct would be impeachable. But this matter, gentlemen, is left almost entirely to the discretion of the court; to the sound, good sense of the court.

I will read you what Judge Storey says upon that subject:

"From the nature of such offenses it is impossible to fix any exact grade or measure either in the offenses or the punishments, and a very large discretion must unavoidably be vested in the court of impeachment as to both. Any attempt to define the offenses or to affix to every grade of distinction its appropriate measure of punishment would probably tend to more injustice and inconvenience than it would correct, and perhaps would prove at once inefficient and unwieldy. The discretion then, if confided at all, being peculiarly subject to abuse, and connecting itself with State parties and State animosities, it was deemed most advisable by the convention that the power of the Senate to inflict punishment should merely reach the right and qualifications to office, and thus take away the temptation in factious times to sacrifice great and good men upon the altar of party."

So you see, gentlemen, that you are a court, without being governed by any technical rules; you are a court to judge from the evidence, in your own good, sound judgment, whether certain conduct on the part of the respondent here is or is not corrupt conduct in office. In all these things, however, you will, I anticipate, be governed by the rules of common law governing the introduction of evidence and the construction of crime.

Another writer says: "The involutions and varieties of vice are too many and too artful to be anticipated by positive law, and sometimes too mysterious to be detected in any ordinary investigation. As pro-

gress is made in the inquiry, new facts are discovered, which may be properly connected with others already known, but would not alone form a subject of prosecution. On these accounts a peculiar tribunal seemed both useful and necessary—a tribunal of a liberal and comprehensive character, confined as little as possible to secret forms, enabled to continue its sessions as long as may be, and qualified to decide on strict principles of public policy."

And these we find to be the fact when we go to examine precedent. The charges against Judge Chase were, "that unmindful of the solemn duties of his office, and contrary to the sacred obligations by which he stood bound to discharge them faithfully and impartially, and without respect to persons, the said Samuel Chase, on the trial of John Fries, charged with high treason, before the Circuit Court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his official capacity, conduct himself in a manner highly arbitrary, oppressive and unjust, in delivering an opinion in writing on the question of law, on the construction of which the defense of the accused materially depended, tending to prejudice the minds of the jury against the case of John Fries, the prisoner, before counsel had been heard in his defense. In compelling the prisoner's counsel to reduce to writing and submit to the inspection of the court for their admission or rejection, all questions which the said counsel meant to propound to the above named John Taylor, the witness."

Judge Addison was impeached, tried and convicted for refusing to allow his associate to dissent from some of the propositions laid down by him in his charge to the jury. Judge Pickering, for misbehavoir and malfeasance in office, drunkenness while on the bench, and using language unbecoming the court. Judge Peck, for abuse of discretion in fining a member of the bar for comtempt of court for publishing an article reflecting, and, in the opinion of the court, prejudging the same, to be libelous or libel, to bring the administration of justice into contempt. Judge Barnard was accused of corrupt conduct in office, and the accusations are too numerous to mention here. So you see, gentlemen, it is impossible to lay down a rule by which you are to be governed. You must take the evidence, the facts and the law, and then say whether he has acted as a judge should act; whether he has violated his constitutional oath, or whether he has been a fair-minded and prudent judge. Corrupt conduct is peculiar to our statute. It may be defined as any conduct on the part of an officer showing a depraved mind, any conduct that is the opposite of good conduct—misconduct in office, not necessarily criminal, but an act done with a bad motive.

I understand that any wilful misconduct upon the part of a judge in this State under our statute is a crime, and subjects him to indictment.

I read from Bissell's statutes, page 984, section 8:

"Where any duties are 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 misdemeanor or malfeasance, is a misdemeanor, punishable by fine and imprisonment."

Discussions have often arisen in other trials as to what constituted a crime, whether it must be an indictable offense. Now, under the statutes of our State, I anticipate this question will be entirely avoided;

that if a person is guilty of wilful misconduct in office, he is guilty of a crime and subject to indictment, and I believe that to be the common law that the courts inquire into the wilful misconduct of an officer, although it is not usually done by indictment.

As to misdemeanors in office, I consider that simply bad conduct in office, misbehavior in office. Judge Spencer says: "A judicial misdemeanor consists in doing an illegal act *colore officii*, with a bad motive, or doing an act within the competency of the court, but unwarranted in a particular case from the existing facts, with a bad motive."

Wirt says: A constant usurpation of power for the purpose of oppression, or an exercise of lawful power with excessive severity, will equally expose a judge to impeachment."

Judge Storrs says: "It is a wanton and unjustifiable abuse of judicial authority, exhibiting a temper highly unbecoming a judge."

Thus, gentlemen, having briefly adverted to the law which I anticipate will govern you in your decision in this matter, I will now take up the specifications contained in the articles of impeachment. I deem it necessary to read these articles, although they were once read in your hearing. [Reading.]

ARTICLE I.

Heretofore, to-wit: at a general term of the District Court in and for the county of Mower, in the Tenth Judicial District, beginning on the third Tuesday of September, in the year 1873, the said Sherman Page, then being and acting as Judge of the District Court of the Tenth Judicial District, and then as such judge presiding at the term of court so being holden, the grand jury of the county of Mower for said term of court, found and presented to said court an indictment against one D. S. B. Mollison, by which indictment the said Mollison was accused of the offence of composing and publishing in the Austin Register, a newspaper published in the village of Austin, in the said county of Mower, a certain article or communication containing certain false and libellous statements concerning him, the said Sherman Page, as such judge. At the term of court aforesaid, and shortly after the presentation of the said indictment, and while the said Sherman Page was presiding over such court as judge, the said Mollison was arraigned before said court to answer the charges contained in said indictment, and was required by the said court to plead to said indictment, and, thereupon, he, the said Mollison, did, in due form of law, make and enter in said court his plea of not guilty to the said indictment, and to all and singular the charges therein contained, whereby all the matters and things in said indictment set forth, were fully put in issue.

At the term of court aforesaid, and after the said Mollison had made and entered his plea aforesaid, and while the said Sherman Page was presiding over said court as judge, he, the said Mollison, duly informed the said court, while the same was in open session, that he was ready to proceed with the trial of his said case at that term of court; but he, the said Sherman Page, as such judge, wrongfully and maliciously, and with intent thereby to oppress and injure him, the said D. S. B. Mollison, and solely upon the motion of himself, the said Page, as such judge, and without being moved or requested thereto by the county attorney of said county, or by the said Mollison, refused to permit the said cause to be tried at the said term of court, and continued the trial of the same until the next general term thereof, and required him, the said Molli-

son, to enter into recognizance, in the sum of fifteen hundred dollars, with sufficient sureties, to appear at the next general term of said court and answer the said indictment, and abide the order of the court therein, or, in default of such recognizance, to be committed to jail to await the action of the court in respect to said cause.

Afterwards, and at the same term of court, the said Mollison did, in obedience to said requirement of the said Sherman Page, as such judge, enter into recognizance in said court in the sum of fifteen hundred dollaes, with two sureties, to appear at the next following general term of said court, and answer the charges set forth in said indictment, and abide the order of the court therein.

Since the holding of the said term of court, in the month of September, A. D. 1873, general terms of the said court, for the said county of Mower, have been holden as follows, to-wit:

In the month of March, A. D. 1874.
In the month of September, A. D. 1874.
In the month of March, A. D. 1875.
In the month of September, A. D. 1875.
In the month of March, A. D. 1876.
In the month of September, A. D. 1876,
In the month of March, A. D. 1877.
In the month of September, A. D. 1877.

At each and every of said terms of court the said Sherman Page has acted and presided as the judge thereof, and at each of the said terms of court the said Mollison has appeared in said court, and has duly informed the court in open session, and while the said Sherman Page was presiding as such judge, that he was ready to proceed with the trial of his said cause, but he, the said Sherman Page, as such judge, wrongfully and maliciously, and with the intent thereby to injure and oppress him, the said Mollison, at each and every of the said terms of court, solely of his own motion as such judge, and without being moved thereto by the said Mollison, or by the county attorney of the said county of Mower, refused to permit such cause to be tried at such term, and continued the trial of the said cause until the then next succeeding general term of such court, and required the said Mollison to be and appear at the then next succeeding general term of said court to answer to the charges contained in the said indictment, and to abide the order of the court therein, upon pain of forfeiting his recognizance.

The said action of the said Sherman Page, as such judge, in so refusing to permit the said cause to be tried, and in so continuing the trial thereof from term to term, was done under the pretence on the part of him, the said Page, that he was unwilling to preside over the said court during the trial of the said cause, and that he desired and intended to procure some one of the other judges of the District Court of this State, to preside in the said court during the trial of said cause.

But he, the said Sherman Page, as such judge, wrongfully and maliciously, and with the intent thereby to injure and oppress him, the said Mollison, has neglected to procure, and has not procured any of the other judges of the District Court of this State to preside over any term of the District Court holden in the said County of Mower, since the presentation of the said indictment, at which a jury for the trial of causes has been in attendance.

By reason of the said wrongful, malicious and oppressive conduct of the said Sherman Page, as such judge, the said Mollison has never been

able to procure his said cause to be tried, and the same still remains pending in said court, and undetermined, although his said recognizance has never been released or discharged by the said court.

By reason of which aforesaid acts, on his part done and performed, he, the said Sherman Page, became and was guilty of corrupt conduct in his said office, and of misdemeanors in his said office.

To that the counsel for respondent interposes the following plea:

FIRST.

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

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

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

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

And this respondent further alleges on his information and belief, that said defendant was not in fact ready for his trial on said indictment at said term, and had made no preparation whatever therefor for trial, and was advised by his said counsel that he could not then safely proceed to trial for want of such preparation. That said Mollison has never, at any time, been desirous that his trial take place, but, on the contrary, has desired its postponement, in the hope that by delay he might avoid his trial; that he has been present in court either by himself or his said attorney, at several general and adjourned terms, since the time of his arraignment, but has never indicated his readiness for trial, nor moved in said cause in any manner whatsoever, but has consented that the same be continued from term to term.

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

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

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

After said adjourned term respondent was wholly unable to procure the attendance of any other judge, at any of the general terms of said

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

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

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

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

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

Gentlemen, under the constitution of this State a speedy trial is guaranteed to every person accused of crime. Now we find this man Mollison, indicted here in 1873; four years and six months elapse, and still he is not tried. The proof will be, gentlemen, that this man Mollison was there at every term of the court and ready for trial. This respondent alleges in his answer that he could not procure the attendance of judges to try this case. He further alleges there were terms of court held there, but at these terms, if I am not mistaken in the evidence, it will show that there was only one term when there was a jury, and that for a specified purpose to try a particular case, and that there was a law term without any jury. Now, it is a libel upon the courts of this State, or the judges of this State, to say that for four years and six months this judge could not procure the attendance of a judge to try this cause. The evidence will be, gentlemen, that Mr. Mollison was there in person, and that he demanded a speedy trial. The respondent says that he was there by counsel. I think that is untrue; however, I am not clear but what he did have counsel at one term, but at no time has he consented to a continuance; on the contrary, when he demanded a trial in open court, this judge turned to him, and in an arbitrary and ungentlemanly manner, says, "Not a word, sir; not a word." He not only has refused to sit and hear this case, but he has refused to give him a chance to be tried; he has refused to give him a chance to speak in court in his own defense, and more than that, we find him placing him under bail here to the amount of of $1,500 when horse thieves and forgers he has let go upon mere nominal bail, almost, $500 to $1,000 being the extent, and kept this man under bail until he went into court,

and in writing, his bail surrendered him up, gave notice to the sheriff that they would surrender this man, and the sheriff presented that paper to the judge sitting on his bench, and he paid no attention to it.

Now he says that the law prevents him from sitting in this case. I say the law does not prevent him from sitting as a judge on the trial of this case. The law says that a judge shall not sit where he is interested. Now was he interested? He says this indictment was made without his procurement or his knowledge. Of that, gentlemen, you will be the judges after you have heard the evidence. It is true it is a libel against him, but it is an indictment brought by the State and the State is the party, and the State is interested, and not the judge. It is the jury that decides upon the question of fact of whether or not it is a libel, and the judge only gives to the jury the law on the subject. He is no more interested in this than any other suit, although the defendant is indicted for a libel against the court. That is my view of the law; counsel upon the other side may take another view. It might have been well for him to procure the attendance of another judge, but one or the other he should have done. If he had any delicacy about trying this himself he should have procured the attendance of another judge. That he certainly could have done; and I ask any lawyer here if he believes the allegation that he could not procure the attendance of another judge to try this case? Why, our judges are the most courteous men in the world. They will do a favor for another judge on the asking, at any and all times, or else render an excuse that is plausible. And it is not possible, much less probable, that all of the judges had not time to attend in the trial of this cause. Why, gentlemen, last March this man was suspended from his office, and what is the result? You all know what the result was. The Governor of this State could procure a judge to sit in that case inside of thirty days; he did have his trial and was acquitted.

Now do you not believe that this man, through his vindictiveness simply against that man Mollison, having, as he supposed, dared to write an article against him—knowing from his knowledge of the law that that was not a libel upon the court—kept this man under bail, making him to appear from time to time at various terms of court. Why, in thirty days I think, (I am not positive) at least within sixty days from the time that this judge is suspended, that man Mollison has had his trial and was acquitted by a jury of that county.

The inference, gentlemen, to be drawn, and the only inference we can draw, is that he knew that there was nothing in that indictment, and that if that man Mollison was put upon his trial he would be acquitted, and he would rather hold him there under bail, and under a cloud, contrary to the oath that he has taken—and contrary to the constitution of the State of Minnesota.

Suppose this man had been unable to have got bail? Would you have been satisfied with the flimsy excuse that he could not try this case, or that he could not procure the attendance of another judge? If he had kept this man Mollison lying there in jail, gentlemen, would you have been satisfied with that flimsy excuse? If you would not under those circumstances, you certainly ought not to be now.

Article two reads as follows:

ARTICLE II.

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

While the said indictments remained pending and undetermined in said Court, and shortly prior to a general term thereof, which was held in the month of March, A. D. 1875, the said defendants in said indictments procurred to be issued by the clerk of the said Court, subpœnas requiring several persons to attend at the said term of Court so to be holden in the month of March, A. D. 1875, as witnesses on behalf of the said defendants upon the trial of the said indictments.

After the said subpœnas had so been issued, the same were placed by the said defendants in the said indictments, or by their request in the hands of one Thomas Riley for service; the said Thomas Riley then being a deputy sheriff of the said county of Mower, and by agreement before that time, only entered into between himself and the sheriff of said county, entitled to collect for his own use and benefit all fees allowed by law for such services as he should render as deputy sheriff of said county.

After the said subpœnas had been placed for service in the hands of the said Riley, he, the said Riley, duly served the same upon the persons therein named as witnesses, and his legal fees for making such services amounted altogether to the sum of forty-three and ten one hundredths dollars ($43.10.)

After the said Riley had served the said subpœnas, he presented his bill for serving the same, amounting in all to the sum last aforesaid, to the Board of County Commissioners of the said county of Mower, at a session thereof holden in the month of March, A. D. 1875, in order to have the same allowed and paid out of the county treasury of said county.

While the said Board of County Commissioners was so in session, and while said Board had the question of the allowance of said bill under consideration, the said Sherman Page, being Judge as aforesaid, appeared before said Board, and wrongfully and maliciously, and with an intent thereby to injure the said Thomas Riley, and with an intent to procure the said Board to disallow all the said bill, in an angry and threatening manner asserted to said Board that it would be illegal for said Board to allow any part of the said bill to be paid out of the county treasury of the said county, by reason whereof the said Board did wholly disallow said bill.

Afterwards, and after the said proceedings upon said indictment had terminated in favor of the said defendants therein, as has been hereinbefore stated, and at a session of the said Board of County Commissioners holden in the month of January, A. D. 1876, the said Riley again presented his bill to the said Board for allowance and payment out of the county treasury of said county; the District Court of said county not having made any order forbidding the payment of the fees of the said Riley out of such county treasury.

While the said board had the question of the allowance of the said bill under its consideration at the session of the said board last aforesaid, he, the said Page, then being judge as aforesaid, wrongfully and maliciously and with the intent thereby to injure the said Thomas Riley, by using his position as such judge to procure the said board erroneously to disallow the whole of said bill of said Riley for said services, again appeared before the said board and in an angry, arbitrary and threatening manner, pretended to the said board that the said bill for services was wholly illegal, and that no part of the same ought to be allowed by said board, and that said board could not lawfully allow any part of the same; although he, the said Page, then well knew and was then and there reminded that if the same were disallowed by said board, the said Riley would thereupon commence legal proceedings against said board to enforce the payment of said bill out of the county treasury of said county, and that such legal proceedings would probably come before the district court for Mower county, and that it would probably become the duty of him, the said Page, as such judge, to pass upon and decide the question as to whether the said bill, or any part thereof, was legally payable out of the county treasury of said Mower county.

The said board of county commissioners, in consequence of the said conduct of the said Page, at the session thereof last aforesaid, wholly disallowed said bill of said Thomas Riley.

Thereupon, to-wit: on March 22d, A. D. 1876, the said Thomas Riley duly commenced a suit against the said board of county commissioners before L. A. Griffith, Esq., one of the justices of the peace in and for the said county of Mower, to recover the amount of said bill out of the county treasury of said county.

Such proceedings in the said Justice's Court were thereupon had in said suit that thereafter, to-wit: on April 6, A. D. 1876, judgment was rendered in favor of the said Thomas Riley, and against the said Board of County Commissioners, for the sum of forty-three and ten one-hundredths dollars (43.10-100) damages, besides the plaintiff's disbursements in said suit.

Afterwards, to-wit: on April 10, 1876, the said Board of County Commissioners duly appealed from the said judgment of the said Justice of the District Court for the said County of Mower, and the return of the said Justice upon such appeal afterwards, to-wit: on April 14th, A. D. 1876, was duly filed in the said District court for said county, whereby the said District Court became fully possessed of the said cause and obtained full jurisdiction over the same and over the parties thereto

Afterwards, to-wit: on the seventeenth day of February, A. D. 1877, the issues in said cause were tried before the said Sherman Page, as judge as aforesaid, and thereupon, to-wit: on the day last aforesaid, he, the Said Sherman Page, as such judge, maliciously, and with intent to injure and oppress him, the said Thomas Riley, falsely and erroneously found, determined and decided that the issuance by the clerk of said court of the said subpœnas, so served by the said Thomas Riley, was unauthorized by law, and that at said general term of said court, held in March, A. D. 1875, the judge of said court had in open court made an order and directed that none of the costs or fees for issuing or serving said subpœnas be paid by the said county of Mower, and that he, the said Thomas Riley, was not entitled to be paid out of the county treas-

ury of the said county anything whatever for serving the said subpœnas; whereas, in fact, the issuance of said subpœnas by the clerk of said court was fully authorized by law, and the said court had never made any order directing that the fees of the said Thomas Riley, for serving the said subpœnas, should not be paid out of the county treasury of said county, and the said Riley was entitled to be paid his fees for so serving the said subpœnas out of the county treasury of said county as the said Page, as such judge, at the time of his making the said finding, determination and decision, well knew.

By reason of the said acts on the part of the said Page, the said Thomas Riley has never received any compensation whatsoever for his services in serving the said subpœnas. By reason of which aforesaid acts on his part, done and performed, he, the said Sherman Page, became and was guilty of corrupt conduct in his said office, and misdemeanor in office.

The respondent's answer to article 2 is as follows :

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

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

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

He avers that when the defendants were arraigned on said indictments, to-wit: in September, A. D. 1874, each of them, by their counsel demurred to the indictments, and the hearing of the issues raised thereby was postponed, by consent of the State and the defendants, until the term of court held in said county in March, A. D. 1875. That no issues of fact were ever joined in said cases by plea or otherwise, and no witnesses were ever required by the State or the defendant for the trial thereof. That the cases were again continued over said March term by stipulation of the State and the defendant, with the understanding that the demurrer should be argued and determined in vacation. That previous to, and at said March term, well knowing that no witnesses would be required in the determination of an issue of law, and with the design to make unnecessary expense to the public, and to furnish employment to said Riley, confederated with said Riley to that end, defendants unlawfully procured a large number of subpœnas to be issued for witnesses in said cases, all of whom resided at or near the city of Austin where the court

was then in session, and the attendance of whom could have been secured within a few hours in case said demurrers had been overruled and defendants required to plead and go to trial at said term. That the clerk of said court, without authority, issued said subpœnas, and when respondent learned that the same had been issued he immediately, in open court reminded the clerk of his mistake, and duly ordered that no part of the expenses or costs of issuing and serving said subpœnas be paid by said county. That afterwards, and at the session of the board of county commissioners of said county, held in the month of January, A. D. 1876, the said Thomas Riley, well knowing all the aforesaid facts, presented a bill of fees to said commissioners, for serving said subpœenas, and at the request of said board respondent made a statement to said board of the aforesaid facts connected with the transaction, and during the converaation expressed and stated that the court had ordered that the bill should not be paid by the county.

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

Respondent further says: That while he was in the presence of said commissioners he conducted himself in a courteous and becoming manner, and used no harsh, angry or threatening language, but simply stated the facts in the case, and he avers that in doing so he was not actuated by malice or ill-will towards said Riley, nor any desire to deprive him of compensation for his services; but that he acted in the faithful discharge of his duty, as well as in the exercise of a legal right to prevent the allowance of an illegal claim. Furthermore, he is confident in the opinion that his conduct in the premises, was not justly censurable nor improper. In expressing an opinion to said board that the bill before them ought not to be paid by the county, he simply reported a decision previously made in open court relative to the same matter. This decision was made and rendered in good faith, this respondent then and still believing that it was strictly in accordance with the laws of the State.

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

Respondent further says: That in all matters set forth in said arti-

cle he has acted in good faith and with a just and proper regard for the rights and interests of the parties under the law, and no act has been prompted, inspired, influenced or modified by malicious or unkind feelings towards any person, and denies that in manner or form as stated in said article, or otherwise, he is guilty of any misconduct in office or crime or misdemeanor, and, save and except as hereinbefore stated, he denies severally and specifically each and every averment in the said article contained.

The facts under this issue, gentlemen, are about like this: Indictments were pending against the persons named therein; they were pending on demurrer; and before the term of the court, subpœnas were issued, ordered by the attorneys for the defendants, and placed in the hands of the deputy sheriff, commanding him to summon the witnesses therein mentioned. Now, while that is admitted in the answer, they claim this being a law case simply on demurrer, that the clerk had no right to issue subpœnas until the demurrer was disposed of; and the clerk not having any right to issue the subpœnas, the sheriff, of course, had no right to serve them. This is the theory of defense; that when the law points were argued the demurrers were sustained, and that no witnesses were necessary in the case, therefore the sheriff who served these subpœnas was not entitled to his fees.

Now, gentlemen, let us look to the reasonableness of this theory. An attorney goes to the clerk and demands subpœnas in the case that is on trial and will probably come up; he exercises his judgment whether the demurrer will or not be overruled, and whether they will be prepared for trial. If the demurrers are overruled every lawyer knows that they may be forced at once to trial on the questions of fact, and attorneys have a right to exercise their own judgment in issuing subpœnas, and when he asks a subpœna of the clerk, was it ever denied in any instance? and I ask any attorney here if they ever knew an instance where a clerk, on demand of an attorney, refused to issue them? And when that subpœna is issued and placed in the hands of the deputy sheriff, what is the duty of the sheriff? To serve the papers. Is he not commanded to summon these men to be and appear at such a time? What shall he do? Shall he hold that subpœna and wait until the court tells him to serve them? Did you ever know of such an instance? Did you ever hear of such an instance?

Now they come here in their plea and say that there was a conspiracy. They charge that clerk, they charge the defendants' attorney, they charge the defendants, with wilfully making a conspiracy to extort money out of that county by issuing these subpœnas—the most absurd thing, gentlemen, that was ever known or heard of in a court of justice. The sheriff has its writ. If it is correct on its face it is his duty to serve it, and if he does not serve, if he had not served it, and that demurrer had been overruled, why that sheriff would have been hauled up before this court and punished immediately for contempt in not obeying his writ—that is what this judge would have done.

But let us follow this a little farther. He serves his subpœnas, and then he goes before the county board for his pay. Whose business is it to look after the interests of the county? Is it the business of the judge to trot before those commissioners on every little bill that goes before them? Shall he put his nose into everything that comes up in that county? What is the county attorney for? The county attorney tells them, "Gentlemen that bill is correct, and the sheriff should have his pay." Not only that. When this judge had disputed him, he wrote

to the Attorney General of this State, and the Attorney General of this State says: "That the bill is right, and he ought to have his pay."

And this judge goes there before these county commissioners, and tells them "that he doesn't care for a little man with no brains, nor for a big man with very small brains." This is the conduct, that is the gentlemanly language, you will find that he used there. He got into what you would have termed, if it had been in a bar-room, a bar-room quarrel with the county attorney, telling him he "sacrificed his party for this miserable Irishman." We shall show you gentlemen, that he had a prejudice against him. He had a prejudice against Sheriff Hall, and told him not to appoint Mr. Riley deputy sheriff, and in a threatening manner said to him, "Don't you dare to appoint him deputy sheriff." Now where is this judge? He is up there before the board of county commissioners. He says he is a taxpayer, in his answer, and as a taxpayer he is there brawling with the county attorney, before the county commissioners, telling them he has sacrificed his party for this miserable Irishman. Is that conduct becoming a judge? No, he is not a judge there, he is not an individual, he is a tax payer; he is looking after the interest of the county in saving them this miserable pittance. If that deputy sheriff served those papers, was not he entitled to pay? Would not you feel that you was in small business, any of you, gentlemen, fishing around after a deputy sheriff's little bill for serving subpœnas? No, he had taken a dislike to this man Riley, for some reason or other—I don't know whether it was Riley or Sheriff Hall—and he was determined to reach him in that way.

Let us look at this a little further, gentlemen. This bill he tells the Commissioners not to allow. The attorney tells him that if it is not allowed (and we will prove this, gentlemen, by witnesses that can't be disproved here,) he shall sue the county. To this Judge Page replies: "Let them sue. It has got to come before me, gentlemen." In substance he tells them this, for he knows that it has got to come before him, for decision, and he prejudges a case that he knows is coming before him. Is that right conduct for a judge? Gentlemen, it goes on a little further. They do sue. Mr. Riley sues the county and he gets judgment before a justice of the peace. It is too petty an affair to bring before the district court. He sues the county and gets judgment, and the county attorney knowing that he had got a good case by having it prejudged, deemed it his duty to take an appeal. We shall show you, gentlemen, that that appeal was taken upon stipulation of facts, that when it came up the county attorney stipulated the facts to be so and so, and the other attorney stipulated the facts to be so and so.

Instead of deciding on the stipulation of facts, knowing that if it went up on an appeal from his decision on that state of facts there was no cause, he deliberately takes his pen and wipes out part of those stipulations, and then after he had wiped out the material part of it, then gives a decision on a false statement of facts, made up by himself and not by the attorneys. You, gentlemen, who are attorneys here, how would you like the treatment of the judge in that case? You stipulate the facts to be so and so, and you come before a judge and he wipes out what you say to be true, makes up the case himself, makes up the evidence that he tries the case on, and then gives his decision. And we shall show you, gentlemen, that that part he wiped out was exact and true, and that he decided that cause on a false statement of facts; that he knew them to be false, and had admitted them before the county commissioners to be false.

The third article is as follows:

ARTICLE III.

At an adjourned general term of the district court for the county of Mower, held as heretofore, to wit: in the month of January, A.D. 1876, for the trial of issues of fact by jury, and at which the said Sherman Page, then being such judge, presided, one W. T. Mandeville attended upon the said court as a deputy sheriff of the said county of Mower, duly deputized by the sheriff of said county for the special and sole purpose of such attendance at such term from the beginning until the adjournment of said term, being a period of six consecutive days in all, as he, the said Sherman Page, as such judge all the time during such term well knew; which attendance as such special deputy sheriff during all the period thereof was necessary for the proper conduct of the business of said court, at which the said Sherman Page, as such judge, fully assented to, acquiesced in and approved.

At or shortly after the conclusion of the said term of clerk, to-wit: in the month of January, A.D. 1876, the said Mandeville duly applied to the said Page, as judge as aforesaid, who had not or at any time prior thereto made or filed any formal order of the said court determining or fixing the number of deputies which it would be necessary for said sheriff to have for attendance upon such term of court, for an order of direction of him, the said Page, as such judge, allowing him, the said Mandeville, compensation out of the county treasury of said county for the said services as such special deputy.

Upon such application to the said Page, as such judge, being made by the said Mandeville, he, the said Page, then and there for the purpose of insulting and humiliating him, the said Mandeville, maliciously replied and stated to him, the said Mandeville, in a loud tone of voice: "Mandeville, how did Mr. Hall (meaning the then sheriff of said county) come to appoint you deputy? What dirty work did you do to help elect him (meaning the said sheriff) to office that he should appoint you deputy?" or words to that effect; and he, the said Page, as such judge, then and there with the intent thereby to injure and oppress him, the said Mandeville, by preventing him, the said Mandeville, from being paid for his said services as such special deputy sheriff, wrongfully declined and refused to give him, the said Mandeville, any order or direction for his payment by the said county for his said services.

Afterwards, to-wit: in the year 1876, the said Sherman Page, still being judge, as aforesaid, the said Mandeville again, on several occasions, applied to him, the said Page as such judge, for an order or direction by him, the said Page, as such judge, for the payment by the said county of Mower for the said services of him, the said Mandeville, but on each and every of the said occasions the said Page, as such judge, maliciously and with intent thereby to injure and oppress him, the said Mandeville, by preventing him, the said Mandeville, from being paid for his said services as such special deputy, wrongfully declined and refused to give him, the said Mandeville, an order or direction for the payment by the said county for such services, in consequence whereof the said Mandeville has never received any payment whatever for or on account of his said services.

And the said Sherman Page as judge, as aforesaid, to further assist in carrying out his said intent and purpose toward the said Mandeville

after the conclusion of the said adjourned term of court, and after the said Mandeville had applied to him as such judge for an order or direction as aforesaid, and after he, the said Page, as such judge, had declined and refused to grant any such order or direction in favor of the said Mandeville, as aforesaid, to-wit in the month of January, A. D. 1876, made and filed with the clerk of the said court an order in writing, bearing date as of the first day of the said adjourned term of court, to-wit: the —— day of January, A. D. 1876, in which order it was set forth in substance that the said court had fixed and determined that one F. W. Allen was allowed to act as special deputy of the sheriff of said county, for attendance upon the said court at the said adjourned term thereof.

By reason of which aforesaid acts on his part done and performed, he, the said Sherman Page, became and was guilty of corrupt conduct in his said office and of misdemeanors in his said office.

The answer is:

THIRD.

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

Regarding said charges, respondent alleges the facts to be as follows: At the adjourned term of court aforesaid, which was appointed and held for the trial of only one jury case, to-wit: The State of Minnesota vs. W. D. Jaynes, no other jury case was expected to be tried and no other was tried. On or about the commencement of said term, respondent, as was his duty, prescribed by law, determined that the services of only one special deputy would be required, besides the services of the sheriff, for the proper transaction of the business of the term, and so notified said sheriff, and that thereupon said sheriff appointed and employed as such deputy one F. W. Allen, of said county, who was a competent, experienced and reliable man for such service, and who was thereupon constantly in attendance upon court during said term, and performed all the services necessary or required and paid therefor by the county upon the order of the court. Respondent further alleges: That he did not authorize the appointment or employment of said Mandeville as special deputy or otherwise, at said term of court, and his services were not necessary for the proper discharge of the business of the term. The sheriff of the county was in attendance at said term, and was paid therefor by the county the fees allowed by law, and that if said Mandeville performed any labor in or about the court room during said term, it was at the special instance and request of said sheriff, and without authority from the court, and if he was recognized during said term as an officer, of which respondent has no recollection, it was during the absence of the sheriff, and with the understanding and belief of the respondent that he was a general deputy left in the court room to attend to the duties of the sheriff in his absence.

Respondent avers that he did not recognize said Mandeville as a special deputy at said term, nor in any manner approve his employment as such, and did not know that he claimed to be acting in that capacity

until after the adjournment of said term of court; and that immediately upon being informed by said Mandeville that he had rendered services for which he claimed payment from the county, respondent declined to grant an order therefor, on the ground that said services were unnecessary and that his appointment had not been authorized.

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

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

Respondent denies that on any of the occasions specified in said article, or at any other time, he used towards said Mandeville the language therein set forth, or language of like import or effect; and denies that his conduct connected with this matter, or any of his acts in refusing to make the aforesaid order, or otherwise, were for the purpose of depriving said Mandeville of his pay for services rendered, or on account of any hostility or malice towards him; but, on the contrary, he avers that he was actuated wholly by an honest purpose to observe the law and to discharge his official duties in a faithful and impartial manner. That at all times when requested to make an order for the pay of said Mandeville, respondent has treated him in a courteous and becoming manner, and has used no harsh or improper language towards him; but has always, on such occasions, informed him of the aforesaid reasons why he had no authority to make such order.

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

Manager CAMPBELL then proceeded as follows:

In order that Senators who do not understand precisely the law, perhaps, on this subject, it is well to read the statutes in regard to this matter, so that the Senators may have a clear understanding of the issues under each and every one of these points. Now you all know that when we have a term of court, that the sheriff appoints persons to assist him. Those persons are what we call special deputies. They are selected by the sheriff, so that he may have plenty of assistance to wait upon the court, to subpœna witnesses if necessary, to wait upon the grand jury and do any work that is necessary to be done. The law requires that the judge shall prescribe the number of deputies on or before any term of court of the district:

"Every sheriff shall appoint, under his hand and seal, a sufficient number of persons as deputy sheriffs, for whose acts he shall be responsible, and whom he may remove at pleasure. Each deputy shall, before

entering on his official duties, take the oath required by law, which oath and appointment shall be filed and recorded in the registry of deeds of the proper county."

Now you see, gentlemen, what was necessary here. It was necessary for this judge to make his order and file it with the clerk, designating the number of deputies they would have at that term of court, and that the sheriff should appoint those deputies. Now the sheriff appointed two or three deputies. We shall show you that this judge made no order, but that the sheriff selected two deputies in the absence of the judge. Failing to do his duty, was it not the duty of the sheriff to provide for it? I ask you—and some of you have been judges—I ask you if two deputies was unreasonable or excessive to be in attendance upon the court? I have had some experience as a lawyer, and I have attended some courts, and I never yet attended a court where there were less than two deputies. This judge in his wise economy, in his answer, says that but one deputy was necessary. If so, we wish to ask you to say why he did not file his order saying that but one deputy should be allowed?

We shall show you still further that after that term of court was over he did make an order, which he dated back falsely. Gentlemen, he falsely dated that order back, and that order bears upon its face evidence that it was made after the court, and the filing of it was after the court. The filing on the back of it by the clerk shows that it was after the court. Now, he wanted this man Allen in as a deputy. Was it any of his business who the sheriff appointed? But Hall, the sheriff, had the *temerity*, gentlemen, the temerity in that connection to use his own judgment and appoint a man as deputy that this man, this judge, didn't like. He appointed Mandeville as one of his deputies, and he appointed him several days before he appointed Allen, or before Allen came into the court at all. He was the first man on the ground, the first man appointed by the sheriff. He was there, and on the opening of the court, he was ordered to do the work necessary around the court room, by the judge. He was there and he adjourned the court. He was seen every day during that time, building fires, letting down the windows, attending to the lights if necessary, and adjourning the court; and then when he asked for his pay, the judge wants to know "what political dirty work he has been doing for that man Hall, that he should be appointed one of the deputies." Do you think, gentlemen, that was becoming of a judge? Don't you think this conduct unbecoming a judge, to refuse to give that man his pay for his labor for six days? and not only that, but when he asked him for his pay, he insulted him. "When he asked for bread he gave him a stone."

I would mention, gentlemen, that in that order that he files we notice this one fact. When that order is presented to you, you will notice that instead of making an order when he does make it, that the order reads about like this: That Allen is to be the deputy, and that the county commissioners are to take Allen. One deputy is to be allowed, and that deputy is to be Allen. He takes the power right out of the sheriff. He does that which he knows the law will not allow him to do, and says that he is to be a deputy for six days. Now gentlemen, I wish to ask your attention (when that order is presented,) how does he know that the court is going to last six days? It is true the order bears date at the beginning of the term, but in order to oppose this man Mandeville, who by the way is a sort of relation or connection of Bassford

and Davidson, with whom Page had a law suit, I say that, in order to hit them, he wants to hit all their relations? He goes down—I don't know how far he goes down—perhaps to the tenth generation! He shuts off Mandeville by his order, dates it back and falsifies the record, and says that Allen is to act as the deputy sheriff. Gentlemen, I have read to you the law, which is so plain that I cannot err on it, that the sheriff has the power to appoint. Judge Page is not only judge, but he is also sheriff; he is clerk: he is county commissioner. He is everything in that county, and woe to the man that dares to cross his path! This, gentlemen, is a matter that I am telling you will be found true beyond a doubt, and I do not misstate in a single thing. Now, gentlemen, that conduct, to deprive a poor man that had waited on him—waited on court; is that conduct becoming a judge, to refuse to give him pay for his labor, even if he had the power?

Reading these articles is a little tedious, but I don't know how to avoid presenting the matter before you unless I read them over to you the charges and the replies.

The fourth article of impeachment charged against the respondent is as follows:

ARTICLE IV.

Heretofore, to-wit: on January 11th, A. D. 1877, a writ of execution was duly issued out of the district court for the county of Mower upon a judgment theretofore, duly rendered in said court and docketed in the office of the clerk thereof, for the recovery by the State of Minnesota from Dwight Weller, W. R. Kellogg and George F. Schofield of the sum of seventy-seven and 5-100 dollars, which writ of execution was in due form of law and was directed to the sheriff of the county of Mower and commanded him to satisfy the said judgment, with interest and his fees, out of personal property of said judgment debtors within his county; or if sufficient personal property could not be found, then out of the real property in his county belonging to the said judgment debtors on the day when the said judgment was docketed in his county, or at any time thereafter not exceeding ten years. Said writ of execution, upon the issuance of the same, was duly placed for service in the hands of one David H. Stimpson, then and ever since a deputy sheriff of said county of Mower, duly deputized by R. O. Hall, then and still sheriff of said county, and duly qualified to act as such deputy sheriff, with directions from the attorney of the said judgment creditors to enforce the same against the property of the said judgment debtors.

After the receipt by himself of said writ of execution as aforesaid, the said David H. Stimpson, as such deputy sheriff, duly proceeded to enforce the same against the said judgment debtors, and thereafter, to-wit: in the month of February, A. D. 1877, collected from the said judgment debtors therein the sum of twenty dollars. Out of the said sum so by him collected he, the said David H. Stimpson, as such deputy sheriff, afterwards, to-wit: on February, 27, A. D. 1877, paid into the hands of the clerk of the district court for said Mower county, for the use of said judgment creditor the sum of fourteen and 50-100 dollars, and retained in his possession the residue thereof, being the sum of five and 50-100 dollars as and for his fees for his said services as such deputy sheriff in and about the service of said writ of execution and the enforcement of the same against the property of the said judgment debtors and the collection of the said sum of money therein; the sum of five

and 50-100 dollars then and there being his lawful fees as such deputy sheriff for such services and he being then and there lawfully entitled, as such deputy sheriff, to retain the same out of the said moneys so by him collected.

Afterwards, to wit: at a general term of the District Court for Mower county holden in the said county in the month of March, A. D. 1877, the said Sherman Page then being judge, as aforesaid, and presiding over said court as such judge, he, the said Sherman Page, as such judge, wrongfully and maliciously, and with intent thereby to insult, humiliate, injure and oppress the said David H. Stimpson, in open court, in the presence and hearing of the Grand Jury of Mower county in attendance upon the said term of court, and in the presence and hearing of a large number of other persons in attendance upon the said term of court, threateningly and in a loud tone of voice, and without any previous notice having been in any manner given him, the said David H. Stimpson, and without any opportunity having been given him, the said David H. Stimpson, to defend his conduct in retaining his said fees out of the said moneys so by him collected, peremptorily commanded and ordered him, the said David H. Stimpson, to pay over to the clerk of said court the said sum of five and 50-100 dollars, so by him retained as his fees, forthwith, and in the presence of the said Grand Jury, and he, the said David H. Stimpson, thereupon, and in the presence of the court and of the said Grand Jury, and of a large number of other persons in attendance upon said court, being thereto compelled by the said command and order of the said Page, as such judge, did forthwith pay over the said sum to the said clerk.

And the said Page, as such judge, needlessly, and with the intent then and there further to insult and humiliate him, the said Stimpson, then and there, in the presence and hearing of the said grand jury, and of a large number of other persons in attendance upon said term of court, maliciously reprimanded and accused him, the said Stimpson, of demanding and retaining illegal fees as deputy sheriff, and then and there maliciously threatened him that if he, the said Stimpson, should thereafter take any illegal fees as such deputy sheriff, he, the said Page, as such judge, would cause him, the said Stimpson, to be severely punished therefor.

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

The answer of the respondent to these allegations is:

FOURTH.

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

In answer to the allegations in this article, respondent admits that an execution issued as therein stated, but he avers that the same was issued in a criminal action, to collect a fine of a definite and specified amount, imposed on one Dwight Weller, the defendant in said action, and that at the time the said execution was issued, D. H. Stimpson was a deputy sheriff of said county of Mower, and authorized to serve legal

process; but respondent alleges that said Stimpson did not perform any act whatsoever under and by virtue of said execution, for which he was entitled to any compensation or fees under the laws of the State; that he did not levy on any property by virtue thereof, did not collect any money nor return said execution unsatisfied, but the money which he had in possession, and from which he deducted and retained the sum of five and 50 100 dollars, under the pretext that he was entitled to that amount as legal fees, was not in fact collected by him, nor any part thereof, but the same was paid by the said Weller to one Lafayette French, the county attorney of said county of Mower, to be applied by him in part payment of said fine, and was by said French unlawfully paid to said Stimpson, for the purpose of enabling him to retain said amount as fees. That by the laws of the State it was the duty of said French to have paid said money into the treasury of said county, instead of giving it to the person holding said execution.

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

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

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

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

that when interrogated in open court, freely admitted facts as aforesaid, sufficient to show that he had retained the money unlawfully.

And save and except, as hereinbefore admitted, the respondent denies severally and specifically each and every averment in the said article contained.

I presume, gentlemen of the court, you will begin to think by this time that it is a little strange for a judge to have so much trouble with his deputy sheriffs. Now the complaint and allegations will be that judgment was obtained against a man named Welder, and the execution issued in the usual form, commanding the sheriff to collect the amount of the fine and *his fees*. This deputy sheriff, in obedience to that writ, went over once or twice—the defendant living some distance from the county seat. He went several times to see the defendant to collect this money. I think that he made a levy. I am not positive about that, but at any rate, in order to save expense to the defendant, in order to treat him as mildly as he could, and with safety to himself, he allows that gentleman to place in his possession certain property, a watch, and other things, to secure him against loss, and to bring in his money. He promised to bring in the money, in the life of the execution, and allows him to bring it in to him. Now, was there anything wrong about that? Is not that the way you would like to have an officer treat you in such a case? Instead of levying on your property, exposing it to sale, giving you all the lenity he could that was in his power, this defendant brought in the money and gave it to the county attorney, I think it was the county attorney, to hand over to the sheriff. Not finding the sheriff at home, he brought this in and handed it to the county attorney, with a request that he give it to the sheriff. The county attorney gave it to the sheriff, and the sheriff retained out of that money the sum of five dollars to pay him for all his trouble. Mind you, this was all done in the life of the execution.

We shall show you that the execution had not run out; that under that execution the sheriff was not obliged, at that time, to pay over one dollar to the county treasurer. And more than that, I think he had not collected fully the amount of the execution. Now this rumor comes to the judge that he had got $5 in his pocket; that he had not paid it in to the county treasurer; he was one of Hall's deputies. He does not like Hall, and if he didn't like Hall he didn't like any of his family, nor any of his deputies, and he reaches for him in every direction. He found out in some way—I don't know how—that there were five dollars in the pocket of that deputy, and he orders the grand jury to investigate. They do investigate, and they return, as he says, the facts into court. Now suppose they did return the facts into court, was there anything wrong about it? We shall show you, gentlemen, beyond a doubt, that the law gave that man his fees for his services; that he was entitled to these five dollars. There is no doubt about the law. He violated the law in every respect when he ordered that man to pay it over. But what does he do? Whether it was the law or not, whether he had a right to it or not, what business was it to him until it was brought to his notice judicially? But what does he do when the jury comes in with a statement of facts? In his way he says: "Sheriff Hall, have you got such a man for deputy as D. K. Stimson? If you have, let him come forward." That is the way he treats him. The man comes forward to be arraigned, fearing and trembling in his boots. He says: "You got that five dollars? Pay it over immediately to the clerk of

this court!" The man says he shelled it out without a word. Suppose he had not done it? There would have been a contempt of court there in less than no time, and the poor man would have been mulcted out of more than five dollars in defending himself against the contempt of court.

Now I ask you, I gentlemen, if you believe there was any necessity of stirring up all of this strife there in the community? If you believe there was any necessity of this man making all that harsh feeling, do you wonder when you come to learn the facts as you do here, for I state the facts as near as I can recollect them, do you wonder that the people there became indignant? What business had a judge on mere rumor stirring up all this little muss? What does he do right here in this case? He did not wait for Stimson to defend himself. That man is not presumed to know the law. Shall he stand up there and dispute the judge—an ignorant man, a deputy sheriff? Was he to stand up there and say he has the right to dispute the order of the judge right there in court, when he tells him to shell out his money in the presence of that grand jury, and then administers the whip to him: "You dare to do this again, Mr. Sheriff, and you will be punished to the extent of the law." What would a simple man do under such circumstances? What did this man do? Why he obeyed the mandates of the court, of course, not willingly—for men do not pay out money willingly—but he fears the worst consequences if he fails to do it. Now, would not a wise judge, if he knew that a deputy had acted a little irregular, advise him quietly about his errors; would he have taken occasion to humiliate the officers of the court in this way? I say it is beyond precedent, and it is something the American people will not submit to in any court of this State.

I come now to

ARTICLE V.

Heretofore to-wit: on June 2, A. D. 1874, the said Sherman Page being judge as aforesaid, as such judge, needlessly, maliciously and unlawfully, and with intent thereby to foment disturbance among the inhabitants of the said county of Mower, and in particular among the inhabitants of the village of Austin, in said county, and with the further intent thereby to insult and humiliate one George Baird, then sheriff of the said county of Mower, duly elected and qualified, and acting as such sheriff, wrote and caused to be delivered to the said Baird as sheriff of the said Mower county, at the village of Austin, in the said county of Mower, two certain orders or commands which accompanied each other, and were together delivered to the said Baird by the direction of the said Page as such judge, and which were of the tenor following, that is to say:

STATE OF MINNESOTA, }
TENTH JUDICIAL DISTRICT. }

TO GEORGE BAIRD,
Sheriff of Mower County:

You are hereby ordered and directed to disperse any noisy, tumultuous or riotous assemblage of persons numbering thirty or more, or a less number, if any of them are armed, found anywhere within the limits of your county; and for such purpose you are authorized to call

to your aid any number of persons, and arm with fire-arms any number of men not exceeding twenty-five. Such armed force to be under your charge and who will obey your orders.

In your proceedings you will be guided by the provisions of chapter 98 of the the General Laws of this State. You are especially directed to disperse in the manner above indicated any assemblage of persons whose evident design and purpose is to violate and prevent the execution of the laws of the State and the ordinances of the city of Austin.

Witness my hand this second day of June, 1874.

SHERMAN PAGE,
Judge of the District Court,
Tenth Judicial District.

PRESTON, JUNE 2d, 1874.

GEORGE BAIRD, Esq.,
Sheriff.

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

Yours truly,

S. PAGE.

Dated Preston, June 2d, 1874.

By which acts on his part he, the said Sherman Page, then and there became and was guilty of corrupt conduct in his said office, and of misdemeanors in office.

Mr. Manager CAMPBELL. I shall not read the answer.

Mr. LOVELY. We should like to have it read.

Mr. Manager CAMPBELL. Very well, I will read it.

GOV. DAVIS. We do not care to have it read judge, if you do not wish to do so.

Mr. Manager CAMPBELL. I will read it.

FIFTH.

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

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

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

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

The respondent had left his home on that day to attend a term of court in Fillmore county, and was then holding court; that his family were alone, and became greatly alarmed; that said Baird, whose residence was only a few rods distant, knew all of these facts at the time, but wilfully neglected his duties; made no efforts whatever to prevent disturbances, nor to protect the lives and property of citizens. That a dispatch was immediately sent to respondent, then holding court at Preston, Fillmore county, informing him of what had occurred in his absence, of apprehended danger, and requesting protection; and that thereupon, as was his duty in the premises, and in violation of no law, but for the sole purpose of preserving the public peace, and preventing further disturbance and breaches of the peace, respondent wrote the order and letter to said sheriff which are set forth in said article, and sent the same to him by mail. That these communications were made in the explicit form adopted, because the said sheriff had previously neglected to discharge duties of a similar character to those therein enjoined, and such neglect, becoming well known, had greatly encouraged said rioters.

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

Now, gentlemen, they admit the writing of these orders, and a judge that will write an order like that to the sheriff of the county is a terror to the community. He had moved out of Austin and had got to the town of Preston, but only his presence could protect the people of Austin from this riot, now they say there is nothing impeachable in these

things; that will be, gentlemen, for you to judge. On the preliminary examination, I admit, I did not see much in them that was criminal or, perhaps, a misdemeanor. But I did see just this, that those things are a perfect pen and ink picture of Sherman Page, the respondent in this action. Writing to a deputy sheriff on a mere rumor that there was some trouble up in Austin, he sits down and writes out an order for the sheriff to arm the people; makes him a military commander. Our statutes set forth under the title "Offenses against the public peace," as follows:

SEC. 4. If any persons who shall be so riotously and unlawfully assembled, and who have been commanded to disperse, as before provided, refuse and neglect to disperse without unnecessary delay, any two of the magistrates or officers before mentioned may require the aid of a sufficient number of persons, in arms or otherwise as may be necessary, and shall proceed in such manner as in their judgment is expedient forthwith to disperse and suppress such unlawful, riotous or tumultuous assembly, and seize and secure the persons composing the same, so they may be proceeded with according to law."

Now you see, gentlemen, the statute he refers to makes it the special duty of the sheriff, the mayor, and the magistrate in their judgment to see that the riotous assemblages are put down; but no, he hears that there is a riot there, and he presumes at once that the sheriff is not going to do his duty. He says the sheriff is a coward. He don't say a word about the mayor; but in his answer he says the sheriff is a coward. Well, he writes this order in order to give the sheriff a little backbone. If the sheriff only had that order of Sherman Page in his pocket, why, he would be the bravest man on earth. I don't know what else it was written for. Had he a right to presume that the sheriff was a coward? Had he a right to presume that the mayor would not protect the people and property of the city of Austin if there was a disturbance there? Does he, officially, know anything about it?

Mere rumor came to him somewhere over the telegraph line that there had been an assemblage in that town. He sits up there on his bench and writes an order. Now any of you can write an order with just the same propriety that he could; and then look at the language. Just look at the language he used to his officers. If he had any authority to write this, just see how it would sound: "I send you herewith an order of a positive character; rest assured you will not disobey any further order with impunity. Every good citizen of Austin ought to be ashamed of his town, and of its civil authorities."

That is an order that every lawyer knows he had no authority to write as a judge, and still he does it. I thought it was in the province of the governor of this State to make proclamations and not in the province of Judge Sherman Page, in a time of rest. What does this riot amount to? To me it looks so perfectly ridiculous for a man to attempt to do such a thing, that I have not language to express my contempt for him, especially for a person occupying the position of a judge and coming down to such dirty little things. What is this riot that he talks about? The proof will be just about this, if it gets in before you: That several ladies of the town of Austin, believing that it was their duty—and it was commendable, though perhaps a little indiscreet—at the time of the crusade movement, assembled at Zeller's saloon, and were singing temperance songs and making temperance speeches. Now I say this is commendable. Anything is commendable that attempts to put down liquor selling, although it may not be discreet. Now what

were they there for! What do our crusaders go on the street for, if not to collect the people together? That is the very identical thing they are there for, and when ladies do these things, and when gentlemen do these things they must expect that crowds around them will be a little noisy. Saloons are not always the most orderly places in the world for ladies to be. Now this was on the 30th he says in this answer, and I presume it is correct. These ladies were there singing their temperance songs, and the crowd assembled to hear them. They were all quiet, as the testimony will show, until Sherman Page comes down there raging like a mad bull, and orders the sheriff to disperse the crowd. There hadn't been the first thing done there except the cracking of jokes and all that sort of thing, as you know will always be the case in an assemblage of that kind. And the ladies must have known that such would have been the case. Mrs. Zeller is overhead making her speech. She was a lady, and though, perhaps, her actions were not exactly proper and dignified, still it was commendable. But there they were and the judge determines to disperse the crowd. He orders the sheriff to disperse them, and the sheriff quietly tells him to go home and mind his business. He is excited and makes more fuss than all the others. He orders this man and that man arrested. There is the mayor—there is the sheriff. The law makes it the duty of the sheriff and the mayor to preserve order, but the judge makes it his duty to be there. Well, now this thing passes off. The next day he goes to Preston, and there a rumor reaches him that on Monday evening, a few Germans get together and have a little beer. They march through the streets singing their German songs, and when they get opposite Sherman Page's residence, it it is said—I don't think he knew of it—they hissed, thus showing the contempt they had for him. Now that is, gentlemen, the extent of the riot, and the extent of all that was done. As to the singing of the songs in German he could not understand them, but if he could, he would have had them arrested for contempt of court! He could not arrest them for hissing at his house. He could not reach them in any other way except by writing this order to the sheriff and telling him that he (the sheriff) would not again disobey his order with impunity. I do not say, gentlemen, that there is any law in this particular. I shall leave the matter to you. Some of my associates think there is something in it—the house of representatives thought there was something in it—I do not see anything in it, except that a judge had made himself ridiculous. Certainly he had acted very indiscretly, in my opinion.

I come now to article 6:

Mr. Manager CAMPBELL. At what hour does the Senate wish to adjourn?

Mr. PRESIDENT. There is no order agreed upon, and the gentleman can go on if he so desires.

Senator NELSON. Mr. President, I would ask if the manager desires to proceed now, or whether he prefers to take a recess at this time, instead of half an hour later?

Mr. Manager CAMPBELL. I think I will be able to get through with article six before the recess.

The PRESIDENT. The manager will proceed if there is no objection.

Article six reads as follows:

ARTICLE VI.

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

Heretofore, to-wit: at a general term of the district court for the county of Mower, holden in the said county in the month of September, A. D. 1876, the said Ingmundson then being and acting as county treasurer as aforesaid, and the said Page then being judge as aforesaid and presiding over the said court as such judge, he, the said Page, as such judge, stated to the grand jury of the county of Mower, then and there in attendance upon said court, that he had been informed or that he understood that irregularities had occurred or existed in the office of county treasurer, of said county, and then and there, as such judge, instructed the said grand jury to inquire into and investigate such matter. Whereupon the said grand jury at the same term of court, did fully investigate and inquire into the manner in which the business of of the said county treasurer's office had been and was being carried on, and thereupon and at the same term of court duly reported in writing to the said court to the effect that it, the said grand jury, had made such investigation and inquiry, but that it, the said grand jury, had not been able to discover any irregularities in the conducting of the business of said office.

Afterwards, to-wit: at a general term of the District Court for the said county of Mower, holden in said county in the month of March, A. D. 1877, the said Ingmundson then being and acting as county treasurer as aforesaid, and the said Page then being judge as aforesaid, and presiding over the said court as such judge, he, the said Page, as such judge, maliciously and without probable cause, and with the intent to injure and oppress him, the said Ingmundson, and to impair his good reputation and favoras such county treassurer with the people of said Mower, county dnd to cause and procure him, the said Ingmundson, to be erroneously, and without cause, indicted or presented by the grand jury of said county for misconduct in office, at or about the first day of said term, in the course of a general charge to the graud jury of said county in attendance upon said term of court, instructed said grand jury to the effect that information had come to him, the said judge, assuch judge, of certain irregularities in the office of the county treasurer of said county; that the said court had been informed that the county treasurer of said county had received a town order from the treasurer of the town of Clayton in said county, that afterwards, when the town treasurer of said town had demanded from the said county treasurer the money which he had collected for said town. he, the said treasurer had refused to pay over such money in his hands unless the said town treasurer would receive the said town order as cash to the amount thereof, and that said grand jury should investigate such matter, and if it should find on such investigation the facts to be, as he, the said judge, had so stated, it would be warranted in finding an indictment against said county treasurer; whereupon the said grand jury retired in order to proceed with the business before it.

Afterwards, to-wit: at the same term of said court, and at or about the beginning of the second week thereof, the said Page, as such judge, maliciously, and without probable cause, and with the purposes and intents towards the said Ingmundson, aforesaid, again instructed the said grand jury touching irregularities in the office of the county treasurer of said county, and again urged the said grand jury to take action in respect thereto; whereupon the said grand jury again retired in order to proceed with the business before it.

Afterwards, to-wit: at the same term of court, and about Wednesday or Thursday of the second week of said term, the said grand jury came into court while the same was in open session, and while the said Page was presiding over the same as such judge, and presented to the said court a written paper, wherein the said grand jury reported to the court to the effect that the said grand jury resolved that it did not find any irregularities in the county treasurer's office sufficient to found a presentment upon. Thereupon the said Page, as such judge, upon reading the said report of said grand jury, maliciously, and with intents and purposes towards the said Ingmundson aforesaid, again instructed the said grand jury to the effect that the said paper or report was not such a statement as he, the said judge, wanted, that he, the said judge, did not want the conclusions of said grand jury but the facts in the said matter; and that he, the said judge, wanted said grand jury to investigate the said matter and give or report to him, the said judge, the facts. Whereupon the said grand jury again retired in order to proceed with the business before it.

Afterwards, to-wit: at the same term of court, and on the Friday or Saturday of the second week thereof, the said grand jury again came into court, and in open court presented to the court a written paper touching the manner in which the said county treasurer had conducted the business of his office, in and by which said paper the said grand jury reported to the effect that on December 30, A. D. 1875, the said Ingmundson, then being county treasurer of the said county of Mower, did take and receive from the town treasurer of the town of Clayton, one of the towns of said county of Mower, a certain town order of such town, for the paymet of the sum of one hundred fourteen 52-100 dollars, that he, the said Ingmundson, did then and there pay to the said treasurer of the said town of Clayton the sum of one hundred fourteen and 52-100 dollars for and upon such order, out of the funds belonging to said town of Clayton in his hands as such county treasurer. That the said Ingmundson afterwards and in his settlement with the said town, held the said order as a voucher and receipt for moneys paid out by him for and belonging to such town, and then and there demanded of the said town that it should take and receive said order as a receipt and voucher for the amount named therein as having been paid by said Ingmundson to the treasurer of said town, and refused to pay said town the sum of one hundred fourteen and 52-100 dollars by reason of holding the said order; that on the 20th day of March, A. D. 1877, the said Ingmundson, being the county treasurer of said county as aforesaid, did receive, by his deputy, from a resident of the town of Marshall, the same being one of the towns of said county, for the payment of the sum of fifty dollars, and then and there paying therefor the sum of forty dollars in money, and giving to such person a tax receipt covering his said taxes, to the amount of ten dollars; that the said Ingmundson did, at the same time and place, receive of another resident and tax payer of said town of

Marshall, a certain town order of said town of Marshall, for the payment the sum of fifty-two dollars, and then and there giving to said person holding said order, a tax receipt therefor on general taxes on real estate, a portion of which were delinquent, to the extent of said order, and in payment of said tax.

Upon such report last aforesaid being presented to the court by the said grand jury, the said Page, as such judge, read the same at length, and fully acquainted himself with the contents of said report, and then and there, well knowing all and singular the said contents of said report; and then and there well knowing that the matters in said report stated, did not, if true, constitute any criminal misconduct in office on the part of said Ingmundson, as such county treasurer, he, the said Page, as such judge, maliciously and with the intents and purposes toward said Ingmundson, aforesaid, then and there falsely instructed the said grand jury, that if the matters set forth in said report were substantiated by evidence, and were true, the same constituted misconduct in office and public offences, on the part of said Ingmundson, and that it would be the duty of said grand jury to find an indictment against him, the said Ingmundson, therefor; and that the said grand jury should retire to its room, and take further action upon the said matters; whereupon the said grand jury did retire to its room to further consider said matters.

The said grand jury did not make any presentment or indictment against said Ingmundson, but at or about the close of said term of court, to-wit: on Saturday of the second week thereof, the said grand jury did come into court and report to the effect that it had no further business before it and was discharged.

Afterwards, at the same term of said court and immediately after the discharge of the said grand jury, the said Page, as such judge, maliciously and with the intent thereby to injure and oppress the said Ingmundson and to impair his good fame among the people of the said county of Mower, in open court ordered and directed Lafayette French, then the county attorney of said county, to prefer to him, the said judge, a criminal offense against the said Ingmundson, charging against him, the said Ingmundson, the same matter set forth in the report of the grand jury last above mentioned as criminal offenses, and to have him, the said Ingmundson, arrested upon such charges and brought before him, the said Page, for examination thereon.

Afterwards, to-wit: on April 3d, A. D. 1877, at said county of Mower, the said Lafayette French, as such county attorney, in pursuance of the said order and direction, did prefer to the said Page as such judge, a criminal complaint, of which a copy is hereunto annexed and made a part of these articles, and marked exhibit "A."

Afterwards, to-wit: on April 17th, A. D. 1877, the said Page as such judge, at the said county of Mower, notwithstanding he well knew the contents of the said complaint so preferred to him; and notwithstanding he was then well aware that the said complaint did not set forth facts showing that the said Ingmundson had committed any public offense, maliciously and with the intent and purposes toward the said Ingmundson aforesaid, issued his warrant upon the said complaint, of which a copy is hereunto annexed, marked exhibit "B," and caused the said Ingmundson to be arrested and brought before himself, the said Page, for examination at the said county of Mower.

Afterwards, to-wit, on April 24th, A. D. 1877, at the said county of Mower, the said Page as such judge, did examine into said charges set

forth in the said complaint and warrant against the said Ingmundson, and to that end examined as witnesses, one Soren Halalson, and one D. B. Coleman; but notwithstanding that it did not appear from the evidence adduced upon the said examination, or otherwise, that the said Ingmundson had committed any public offense whatever, the said Page, as such judge, at said county of Mower, to-wit, on the day last aforesaid, maliciously and erroneously, and with the intent and purposes toward the said Ingmundson aforesaid, ordered and determined that the said Ingmundson be held for his appearance at the next general term of the district court for the said county of Mower, and fixed the bail of the said Ingmundson for such appearance at the sum of one thousand dollars, which bail, afterwards and on the same day, was given by the said Ingmundson.

During the said proceeding against the said Ingmundson, in which he was held to bail as aforesaid, the said Page, as such judge, maliciously and without provocation spoke to and treated the said Ingmundson in an insulting and unbecoming manner, and in particular, accused the said Ingmundson of having in other places and upon other occasions talked of himself, the said Page, in a derogatory way.

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

ARTICLE VII.

At the said term of the district court holden in the month of March, A. D. 1877, as stated in the last preceding article herein, and on the said occasion during said term when the said grand jury was finally discharged from attendance upon said court, the said Page, as such judge, being greatly angered and excited because the said jury had omitted to comply with his wishes, that the same should either by indictment or presentment accuse said Ingmundson of misconduct in office, in open court, and in the presence and hearing of a large number of persons in attendance upon such court, in a loud and angry tone of voice insultingly reprimanded the said grand jury for having omitted to indict or present the said Ingmundson for misconduct in office, and then and there in a loud and angry tone of voice, and in the presence and hearing of the said persons and of the said grand jurors, declared to the said grand jury, with the intent thereby to insult and abuse the grand jurors composing the same, that the facts presented to the court by the said grand jury, touching the conduct of said Ingmundson as county treasurer, constituted an indictable offense, and that in not finding an indictment against the said Ingmundson on such facts, the members of said grand jury had violated their oaths, or in language to that effect, he, the said Page, as such judge, then and there maliciously and wrongfully intending to publicly accuse the grand jurors composing such grand jury, of having committed perjury by violating the oaths which they had taken as such grand jurors.

And the said Page, as such judge, then and there, further maliciously to abuse and insult the said grand jurors, angrily and in a loud tone of voice, declared to them, and in their hearing, that it was a good thing that there was a higher power than grand juries, and that no man could stand between criminals and the execution of the law, or in language to that effect, he, the said Page, as such judge, then and there maliciously and wrongfully intending to publicly accuse the said grand jurors

of having improperly attempted to protect the said Ingmundson from being punished for criminal offenses.

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

Mr. Manager MEAD. At the request of the Manager I will read the answers:

SIXTH.

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

The respondent further answering said article, denies that at or during the session of the district court held in said county of Mower, in the month of September, A.D. 1876, he instructed the grand jury then empanneled, that he had been informed, or understood, that irregularities existed in the office of the county treasurer, or made use of language to that effect, and denies that said jury did investigate the manner in which the business of said office was conducted to any extent, except as hereinafter stated, and avers that he did instruct said jury as required by law, to investigate the official misconduct of all public officers within the county, and called their attention especially to certain alleged defalcations by the treasurer of the town of Clayton, in said county, which the jury investigated, and found an indictment against said treasurer of the town of Clayton, for the crime of embezzlement, but the said jury did not examine the books, records, papers and vouchers belonging to the county treasurer's office sufficiently to derive any reliable information therefrom, but said examination was so superficial and incomplete, was limited to so short a time, and conducted in a manner so illy adapted to the purpose, that said jurors in fact knew nothing more of the real state of affairs in said office, when they finished their investigations, than when they commenced their examination; and that when they made the report set forth in said article, they well knew that it was not warranted by any facts disclosed on said investigation.

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

Subsequent to said September term of court, and prior to the term held in said county in the month of March, A.D. 1877, great public dissatisfaction then existing among the citizens of said county with the aforesaid action of the said grand jury, respondent duly received information from residents and officers of the said town of Clayton that the

county treasurer had refused to pay to the treasurer of said town the money in his hands belonging to said town, on the legal aad proper warrant being presented therefor, and after proper and legal demand made, on the pretext that he, the said county treasurer, held an order against said town, not taken for taxes, but received from a former town treasurer after the same had been paid, and after said treasurer had defaulted. Information had also been received of a great number of irregularities, violations of law and embezzlements by officers and others in said town.

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

That through his influence and the influence of his personal friends, ome of whom were members of the said jury, an effort was made to postpone and finally to prevent a thorough or any investigation of said officer by said grand jury, and to shield and to protect said Ingmundson from investigations. That for this purpose said jurors postponed investigation, in disregard of said instructions and their duty, until a late period in the session, and until all of the business necessary to be transacted ought to have been completed. That they refused to be guided by the law as given them by the court, disregarded and denounced the instruction given them, and some of them publicly denounced the court in an angry and abusive manner for having directed their attention to said county treasurer. That, disregarding their high duties and sacred obligations, a number of said jurors unlawfully and maliciously combined together to resist the enforcement of law, and to prevent the administration of justice and the punishment of crime, and that in furtherance of said purpose and in disregard of the law and instructions of the court, the jury called said treasurer before them while they were in session at two different times, when the subject of his misconduct was under consideration, and permitted and required him to make lengthy statements as to the affairs in his office. Said jurors having been previously informed by the court and well knowing that this

proceeding would be fatal to any indictment that might be found against said officer.

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

That at the commencement of and during said term of court, the attention of the grand jury was called to a large number of criminal matters and irregularities in the conduct of public officers, all of which with the exception of said treasurer, were promptly and thoroughly investigated and acted upon as required by law.

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

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

Being informed of the aforesaid misconduct of said jury, of their unnecessary and unreasonable delay in the investigation of so important a

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

Respondent further avers that said complaint and warrant set forth sufficient facts to constitute a public offense, and that at the examination, or at any time, the accused did not object to the sufficiency of said complaint or warrant, nor was the attention of respondent directed or called to any defects therein, and if any did exist he was not aware of them. That said Ingmundson, by his counsel, G. M. Cameron, Esq., an attorney at law, waived an examination, when he appeared, and offered to give bond for his appearance at the next term of the District Court, but respondent deemed it his duty to proceed in the form and manner prescribed by the statute in such case made and provided, and that thereupon the county attorney caused witnesses to be subpœned and examined. From the testimony given it appeared that an offence had been committed, and the accused was held to bail for his appearance at the next term of the District Court. During said examination, and at all times, said defendant and his counsel were treated by respondent in a courteous and considerate manner

And respondent further alleges that at no time during said March term of court, while the official acts of said Ingmundson were being investigated, nor while said examination was taking place, nor at any other time, were his official acts in any way influenced, modified or controlled by malice or ill-will, or other improper or unkind feelings towards said Ingmundson, or by any desire to injure or degrade, or bring him into disrepute among the people of the said county or State, but that in all things done concerning said case, he was prompted and influenced solely by a desire to discharge his official duties in a faithful manner, and to promote the public welfare by an impartial and proper exercise of his duty as a judge. Respondent was and still is of the opinion that all of his acts were lawful and proper, and understands that the laws of the State make it the duty of all district judges to require grand juries to investigate the misconduct of all public officers, and requires said juries to be governed by the law as given in charge by the court, and if in any material or important matter said juries refuse to act or are negligent in this regard, it becomes a further duty of the court to in-

terpose in the interest of justice, and to that end may require the proper officers to institute such legal proceedings as are necessary.

And further answering said article, respondent says that for a long time previous to the said term of court, in the month of March, A. D. 1877, the public business of said county had been so unlawfully and irregularly managed that in consequence thereof the county had been put to a great trouble and expense in the employment of competent experts to examine the accounts of officers and had been involved in expensive and protracted litigation to recover funds which had been embezzled, and all of which might have been avoided if the grand juries empaneled and sworn at the various terms of court holden in said county had discharged their duties faithfully, that certain towns in said county had then recently sustained heavy losses on account of defalcations and embezzlements of their officers, some of whom were then under indictment and had absconded and forfeited their bail in order to escape prosecution.

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

Among the many disreputable acts of said treasurer which should be received as evidence of his desire to evade the law, as well as of the necessity then existing for a full investigation of his official conduct respondent, on his information and belief, alleges the following: That while the Grand Jury were engaged in the investigation of the affairs of his office, he secured communication with certain members of said jury, through the intervention of friends, and otherwise, and was thus kept informed from day to day as to what transpired in the jury-room— what position members took regarding it, and how they voted. That during the same time, while he was engaged in the discharge of the duties of his office in the same building where said Court was in session, in the presence and hearing of jurors and other citizens, he cursed and swore in the most disgraceful manner on account of the investigation that was being had, and indulged himself in the most abusive language of and concerning the judge then presiding at said term, and used every means in his power, by misrepresentation of the facts and otherwise, to create prejudice against the officers and jurors who were in favor of such investigation. That he pursued this conduct for several months after said term of Court, to such an extent that hardly a citizen of said county could enter his office without being insulted by some offensive remarks, or compelled to listen to a lengthy and abusive harangue concerning said officers. That he falsely, and without any cause whatever, except that they had discharged their duty in the investigation of his office, assumed that the court, the jurors and all others who did not espouse and advocate his cause, were his personal enemies, and he immediately assumed towards all such persons an attitude of hostility.

That he seemed to be informed as to the individual acts of all of the

grand jurors, and towards those whom he charged with voting or expressing themselves as grand jurors against him, he has ever since manifested bitter feelings of hostility, and refused to recognize them, while towards others his conduct has been of the opposite character.

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

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

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

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

SEVENTH.

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

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

Respondent then believed and still believes that, knowing the misconduct of said jury as hereinbefore set forth, it would have been a gross neglect of his duty to have discharged them without first reminding them that such misconduct was not sanctioned by law nor by the rules and practice of courts of justice. Many of said jurors, as he is informed and believes, when they came into court to be discharged, were greatly angered and excited on account of the bitter partisan discussions and wrangle which they had among themselves concerning the Ingmundson

case, and were in no suitable frame of mind to observe, recollect or correctly judge of the tenor or substance of the remarks made to them by the court. Moreover, the feelings of some of them at that time towards the respondent were exceedingly bitter and hostile, and the colorings and interpretation given to his remarks were mainly drawn from the disposition of their own minds. And save and except as hereinbefore admitted, this respondent denies severally and specifically each and every averment in said article contained.

Manager CAMPBELL. It will be impossible, Mr. President, to get through with the remarks on that. I deem this one of the most important allegations there is, and it needs a little time to examine it. It will be impossible to get through before adjourning time.

Pending the opening ot the case, the Senate took a recess until 3 o'clock P. M. Upon reassembling, Mr. Manager Campbell continued the opening argument in behalf of the House of Representatives.

AFTERNOON SESSION.

Manager CAMPBELL. At the close of our morning session articles six and seven, and the answer of the respondent were read in your hearing. The charges contained in those articles are, first, that judge Page in his capacity as judge, attempted to override the grand jury.

The grand jury I consider to be a co-ordinate branch of the court, having its peculiar duties to perform, and in a measure independent of the court. The law is given them in charge by the court, and there, it seems to me, gentlemen, ends the court's duty to the grand jury. The rest is with them entirely. It is their conscience, and not his, whether they will bring in indictments or not. They investigate matters that are presented to them, and act on their own judgment. Now what are the facts in the case, as admitted, or nearly all admitted, by the respondent.

At the September term in 1876, the grand jury, on assembling, were charged, among other things, that they should inquire into the conduct of the county officers. The law requires this of the court. He not only did that, but he goes one step farther. He tells them that rumor has brought to his notice that the county treasurer's office is not properly conducted; and that there are irregularities in the conduct of the county treasurer, I think, telling them what he had heard those irregularities were; and directs the grand jury to investigate the conduct of the county treasurer. The grand jury retire; at the close of their session they report that they have investigated the matter referred to. They have investigated the conduct of the county treasurer and they find no irregularity deserving their attention.

Now, gentlemen of the Senate, would you not suppose that this would have been satisfactory to any judge? Would it not have satisfied any reasonable man when that grand jury had performed their duty, and that county treasurer was exonerated from blame? How is it with this judge? In the meantime, or about that time, it seems that he had an ill feeling toward the county treasurer. They had been intimate friends; that county treasurer had unfortunately made a speech in a political caucus that did not suit the judge, and from that time on he was a bit-

ter enemy of the treasurer. He remarked, in connection with this, that the county treasurer had sold himself out politically very cheaply, and from that time on he did not see the county treasurer when they met.

He waits, then—after this grand jury had brought in the verdict, on their statement of facts as they found them, which should have closed his mouth forever—he waits until the next session of the court, and then he tells the grand jury, after charging them in a general way on other subjects, and in regard to the county officers, singling out again this county treasurer, and tells them that rumor says that it has come to his knowledge that there are irregularities in the county treasury. That he has got the enormous sum of $114 from the town of Clayton and refuses to pay it over; (that is about the substance of it), and that if such is the fact, it is their duty to investigate it, and to bring an indictment against him. Not only looking after that officer, but he was looking after all the county officers, showing himself the guardian—the moral guardian—of the people of Mower county, looking after everything. He tells them about some boys going up into the county auditor's office and fiddling there a little once in a while, and he understands the county auditor has told them they might, and if that is the case, it is an indictable offense; and they must not only look after the county auditor but the county commissioners, and they have no right to grant such orders. You see, gentlemen, he is running the county. Well, this grand jury are out several days; they don't act to suit him. Judge Page follows up the chairman of that jury, in the street, and says to him: "What is the matter that you don't investigate Ingmundson, the county treasurer?" "Why don't you do as I tell you to?"

Well, how did he know what they were doing in that grand jury room? They come in, and he gives them a lecture: "Why are you so loth, gentlemen, to investigate in regard to the matters that I charged you on in the matter of Ingmundson?" and sends them out again. They come in and make a report. I may not detail the facts just precisely as they occurred, because it is a lengthy story; they detail the facts, however. He is not satisfied with them; he sends them out again and tells them: "If these things are so, you should indict that county treasurer;" And he tells them to bring him in the facts. They come in with a statement of facts as they found them, and then he tells them: "Gentlemen, if the facts are as you state, if the evidence supports the facts as you state, it is your duty to bring an indictment against that man Ingmundson." They go out again, and report that they find no sufficient irregularities in the office to bring an indictment or presentment. He sends them out again, and again they return with no indictment against the treasurer.

Now, gentlemen, he sends that grand jury out six times, charged on this very one point. Did you ever hear of such a thing? Did you ever hear or dream that a judge of this State would take such a course? Why, there were two of our eminent attorneys there listening to his charge this last time; as they went out of the court room one said to the other: "Did you ever hear such a charge from a court?" The other says: "No, and I hope to God I never will live long enough to hear another such a charge from an American judge." And, gentlemen, we will prove that to you if they 'll let us.

Now, that grand jury, after he had sent them out six times (if I am not mistaken in the number) on this particular subject, he said to them,

"Gentlemen, you have violated your oaths. I can't control you, but it is not in your power to stand between crime and its punishment," and says, "Gentlemen, you are discharged." Now, if that is not an insult to a grand jury, what would be? What is the law, gentlemen, about these county treasurers? Supposing that man had violated the law, supposing the facts had been just precisely as he states them in his answer, what is the law? If an officer wilfully and maliciously violates his duty, then he is subject to indictment. Could this judge sitting there on the bench tell whether this irregularity, if it was any irregularity, in the conduct of Ingmundson, was wilful or malicious? Could he possibly tell? Was not that a matter in the consciences of those grand jurors, and did not this judge know it? No, gentlemen, he had a spite against Ingmundson, and he was bound to use the power of the court to gratify that spite, and that is all there was to it. He turns to the county attorney and says: "Bring a complaint against this man and have him brought before me, (before *him* who had prejudged the case) and have it investigated."

Now, was there any other remedy? If he was conscientious; if he believed he was a conservator of the peace, and that a wrong had been done and had made up his mind fully, is there not another way by which he could be reached? Could he not have gone before some respectable magistrate and made his complaint and let some man who had not prejudged the case decide in this matter whether there was sufficient ground to bind that man over? No! he caused the county attorney, who was a young man then, and under his thumb, as it were—completely under his control—to bring a complaint against Mr. Ingmundson against his own wishes; against his own opinion of right and wrong, and he brought up this man Ingmundson and says to the county attorney, (upon being asked by the attorney what witnesses he should subpœna,) "Never mind that; I will look after it." Here he is county attorney again. He subpœnas his own witnesses, and brings them up and makes them swear against Mr. Ingmundson, and the testimony *there* was not enough to bind over the biggest scoundrel in the county, let alone a man of high standing in the community, and here he binds him over to appear before another grand jury to answer to the charge. Now, gentlemen, this judge knew that when he bound him over to appear before a Mower county jury there was no possibility of his being indicted. This same matter had been before two grand juries, and they had acquitted him, and here he sends him before another grand jury under a bond to appear and answer to a charge—trying to tear down this officer—trying to throw a reproach upon him. These are facts, gentlemen, that will be proven to you. Where is there any excuse for it? A guardian of the rights of the people!

Now what are the facts that are to be detailed about this Ingmundson affair? I say that when I state the facts here, and when you hear the evidence, you will say that Mr. Ingmundson was right, and that the judge was wrong, and that the judge must have known that he was wrong.

The town treasurer of the town of Clayton had come to Mr. Ingmundson and wanted some money. He wanted a hundred dollars of the county money. Mr. Ingmundson paid it to him. Hadn't he a right to pay him a hundred dollars? Instead of his taking a receipt the town treasurer hands him a town order, and Mr. Ingmundson takes that as a voucher, takes the town order of one hundred and fourteen dollars as a voucher. Now, when he comes to settle with the town board, with the

next town treasurer, he wants to put in that town order as a voucher simply; there is no complaint but what he paid the money; there is no complaint but what the town had the money; the town treasurer took the money, but he must not put in that voucher; he must pay the money over again. They say that town treasurer was a defaulter. What had Mr. Ingmundson to do about that?—he had a right to come and draw every dollar in the treasury. He knew nothing of it. Perhaps he had no legal right to take this order. He should have taken a receipt for the money, but where is the difference? He took it, and only claimed to hold it as a voucher, and when they would not settle and allow him that, he comes to his attorney, and his attorney tells him he has a right to offset that against the town. This matter was all open and above board.

Now, where is the malice? Where is the wilful and corrupt conduct in office on the part of Mr. Ingmundson that needs to create all this enmity, that he should have him indicted? It is a matter that appeals to the good sense of everyone. If there was not malice on the part of that judge, I don't know wherein you can point out malice. This matter has become public notoriety. In the meantime his office expires. What do the people down there do? They elect him again to the office by an overwhelming majority—a thousand majority—in that county for Ingmundson, as you all know by the public records. Are the people all wrong down there—all crazy—and this the only sane man? The next grand jury has met, and Mr. Ingmundson is discharged. But we are not trying Mr. Ingmundson; we are trying Judge Page. We claim, then, on this point:

First—He attempted to over-ride the grand jury, to make their consciences subservient to his will.

Second—That he falsly stated the law to them, knowing it to be so.

Third—That he attempted to use the power of the court to gratify his malice, in order to ruin a man to whom he had taken a dislike.

Fourth—That he publicly insulted the grand jury in telling them, if not in words, in substance, that they had violated their oaths. I think his language was that "your oaths are your own"—something like that.

These are the accusations that we make on this point, and I think I have sufficiently explained them.

ARTICLE VIII.

Heretofore, to-wit, on May, 31, A. D. 1877, at said county of Mower, the said Sherman Page being judge as aforesaid, he, the said Sherman Page, as such judge, wrongfully, maliciously and unlawfully, and with intent thereby to injure and oppress one David H. Stimpson, then and still a resident of said county of Mower, issued a warrant under his hand for the arrest and detention in custody of him, the said Stimpson; of which warrant a copy is hereunto annexed, marked exhibit "C."

Prior to the issuance of the said warrant the said Stimpson had not been guilty of any contempt of court as he, the said Page, at the time when the said warrant was so issued, well knew, and no complaint, affidavit, or other legal evidence of the said Stimpson ever having been guilty of any contempt of court, had ever been presented to or laid before him, the said Page, as such judge.

After the issuance of said warrant, to-wit, on June 1, A. D. 1877, the said Page, as such judge, wrongfully, and maliciously, and unlawfully, and with the intent thereby to injure and oppress him, the said Stimpson, caused the sheriff of said county to arrest him, the said Stimpson, and bring him into custody before him, the said Page, as such judge, at said Mower county, for the examination into the charges in said warrant set forth, and then and there, further, wrongfully, maliciously and unlawfully, caused and required the said Stimpson to be and appear before him, the said Page, as such judge, from time to time to answer the charges contained in said warrant, and to give bail for such appearance, in the sum of five hundred dollars; and the said malicious and unlaw ful proceedings against the said Stimpson, were kept pending by the said Page, as such judge, until July 2, A. D. 1877, when they were finally terminated by the said Stimpson being fully acquitted by him, the said Page, as such judge, of the charges in such warrant contained.

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

ARTICLE IX.

During the progress of the said proceedings against the said Stimpson, in the last preceding article herein set forth before him, the said Page, sitting as such judge, he, the said Page, as such judge, publicly and in the presence and hearing of a large number of persons in attendance upon such proceedings, behaved and demeaned himself in a malicious, scandalous, unlawful, arbitrary and oppressive manner, in the following particulars among others:

I. The said Page, during the progress of such proceedings, required a large number of persons to attend before himself, at his chambers in said Mower county, as witnesses in said proceedings on behalf of said prosecution, on pretense that he desired to examine said witnesses as to the charges against said Stimpsom, in the said warrant set forth; whereas in truth, he, the said Page, as such judge, maliciously and unlawfully required the attendance of such persons in order that he might then and there compel them to testify as to matters wholly irrelevant to said charges, and concerning what persons, other than the said Stimpson had done, said, written and published concerning himself, the said Page.

Among the persons so required to attend before the said Page, as such judge, for the purpose aforesaid, were Lafayette French and R. I. Smith; and the said persons upon so attending before him, the said Page, as such judge, were severally required by him, the said Page, as such judge, to testify as to matters wholly irrelevant to the charges against said Stimpson, as he, the said Page, then and there well knew; and in particular the said French, was then and there, by the said Page, as such judge, wrongfully and unlawfully required to testify, among other irrelevant matters, as to whether he had sent certain communications ot the "Pioneer Press," a newspaper published in the city of St. Paul, in this State, as to whether he had been retained as an attorney for the publishers of said newspaper in a certain litigation then pending between the said Page and the publishers of said newspaper, and as to whether he had been paid any fees in such litigation, and as to whether any meetings had been held in his law office with a view of circulating a petition to the said Page, asking him to resign his said office of judge,

and as to what persons were present at such meetings, and as to what such persons then and there said and did; and the said Page, as said judge, then and there, wrongfully and maliciously required the said R. I. Smith to testify, among other irrelevant matters, as to whether he had ever signed a petition to the said Page, asking him to resign his said office of judge, and as to whether he, the said Smith, knew of him, the said Page, doing improper acts in his official capacity as such judge.

The said Page, during the progress of such proceedings, maliciously and wrongfully conducted and demeaned himself toward the counsel for the said Stimpson therein, George M. Cameron, Esq., an attorney of the courts of this State, in an unlawful, arbitrary and insulting manner, and in particular as follows:

The said Page, as such judge, then and there asked of one Chapman, a witness in such proceedings on behalf of the prosecution the following question: "Now, sir, don't you know that A. A. Harwood wrote that petition and handed it to you to print?" or words to that effect. Whereupon the said Cameron as counsel for thes aid Stimpson in said proceedings, objected to such question on the ground that the same was wholly irrelevant to the matter under investigation, and that the whole of said proceedings were unauthorized by law and without precedent.

But the said Page, as such judge, then and there maliciously and unlawfully overruled said objection, saying, "I can't listen to objections, I am running this thing," or words to that effect.

The said Page, during the progress before him of said proceedings as such judge, wrongfully and maliciously, and in a loud and angry tone of voice, publicly and in the hearing of all persons in attendance upon the said proceedings, declared of and concerning certain inhabitants of the said county of Mower, and in particular of and concerning A. A. Harwood and the said I. Ingmundson, both of whom were then and always well reputed among the inhabitants of said county as good and law-abiding citizens; that they, the said Harwood and Ingmundson, were worse than the Younger brothers (thereby meaning certain prisoners by the name of Younger, then and now imprisoned in the penetentiary of this State for having been guilty of murder and other heinous crimes, as was then publicly known throughout this State), and that they the said Ingmundson and Harwood deserved to be in the penitentiary, and that he, the said judge, could put them there if he saw fit, or words to that effect.

By which acts done and performed on the part of him, the said Page, he then and there became and was guilty of corrupt conduct in office and of misdemeanors in office.

EIGHTH.

In answer to the matters set forth in the eighth and ninth articles of impeachment, respondent denies each and every statement of fact or conclusion therein contained, except as hereinafter admitted or answered, and alleges the following facts:

At the general term of the district court held in Mower county in the month of March A. D. 1877, and for some time thereafter, one David H. Stimpson, the person referred to in said eighth article, was a deputy sheriff of said county, and as such deputy sheriff was in attendance upon said term of court and engaged in the discharge of his official duties. That soon after the adjournment of said term of court, and during

the months of April and May of said year, respondent received information from reliable citizens of said county that said deputy sheriff at and during said term of court, and immediately thereafter while engaged in the discharge of his official duties as such officer, wrote, printed and published of and concerning respondent as judge of the tenth judicial district of this State, and concerning his official acts as such judge, certain false, scandalous and defamatory statements, necessarily tending to impair public confidence in the integrity of said judge and to interfere with the proper and successful discharge of his official duties, which publication was in words as follows, to-wit:

"*To S. Page, Judge of the District Court, Tenth Judicial District, Minnesota:*

"SIR—Knowing you, and believing that your prejudices are stronger than your sense of honor, that your determination to rule is more ardent than your desire to do right; that you will sacrifice private character, individual interests, and the public good to gratify your malice; that you are influenced by your ungovernable passions to abuse the power with which your position invests you, to make it a means of oppression rather than of administering justice, that you have disgraced the judiciary of the State and the voters by whose suffrages you were elected; therefore, we the undersigned citizens of Mower county, hereby request you to resign the office of judge of the district court, one which you hold in violation of the spirit of the constitution if not of its express terms."

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

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

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

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

ion of Stimpson, but one of which he claimed was not published or circulated.

That in order to ascertain the facts as to the guilt or innocence of the accused it become and was necessary to examine several witnesses, most of whom were personal friends of the accused and had been more or less connected with him in composing and circulating said libel, and from their sympathy and interest in his behalf were extremely unwilling to disclose the facts. That all the questions put to said witnesses were proper and legal questions, and that no witness was compelled under his valid objection to answer any question, and only one witness, viz.: A. A Harwood, declined to answer on the ground that he might criminate himself, and he was not required to answer. No objection was made by any witness to any question on the ground of its irrelevancy or incompetency. Respondent submits that courts in such examinations are vested with discretionary powers to be exercised prudently in the interests of justice, and are not liable as for misconduct except for a criminal abuse of such discretion. And respondent avers that all questions propounded on such examination were pertinent and necessary as bearing either on facts established on the credibility of the witnesses, and were not propounded for the purpose of annoying or injuring said witnesses, but solely for the purpose of arriving at the truth relative to the matter then under consideration.

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

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

He denies that during said examination, or pending the same, he held conversation with said Stimpson, or with any other person, except as to the subject matter under consideration and the testimony given; and denies that he used any of the language set forth and alleged in said ninth article to have been used by him on said occasion, but avers that he did, after said examination had been adjourned, and again after the same was concluded and defendant discharged, have a conversation with said Stimpson, during which he, said Stimpson, expressed regret at the associations he had formed since he had been in Austin, and alleged that he had been led into difficulty by the influence of bad men.

Believing him to be sincere in his assertions respondent addressed him in a kind and friendly manner, and advised him to shun the society of such men, but did not use the names of any individuals. This conversation was introduced and sought by Stimpson himself, and at its conclusion he expressed himself as well satisfied with what he had done, and so said.

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

NINTH.

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

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

Here, gentlemen, we charge another act of arbitrary character on the part of this judge. On mere rumor, gentlemen, on a mere rumor that some one had done something against him, against the court as he termed it, he issues his warrant, has a man arrested, and brought before him for the offense. We claim, gentlemen, right here, that this is a violation of law.

Secondly—That no contempt was, or could be committed, and that this judge knew that he was violating the law when he did it. I commence by reading to you, gentlemen, what constitutes contempt, and how the court may proceed under our statutes. In his answer he says he gave it a careful examination. Well, if he gave it a careful examination and proceeded as he did, gentlemen, he is incompetent to act as judge, and of that I never heard of his being charged by anybody. He is acknowledged to be a man of ability, a man of superior ability, a man that is a good lawyer and a good judge of law. But he is charged with prostituting that knowledge for purposes that he ought not to. Now he says he gave this matter a careful investigation, and was satisfied he was guilty of contempt; and that he had a right to arraign him before himself and punish him for contempt. I read from Bissell's Statutes, page 939, section 1:

"The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

First. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding."

Now, certainly, he was not guilty of that, because he (Page) claims he was circulating a petition away off somewhere else. We turn over and see what contempts may be summarily punished.

"When a contempt is committed in the immediate presence of the court or officer, it may be punished summarily, for which an order shall be made citing the facts, as occurring in such immediate view and presence, that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein described. Such punishment, however, cannot exceed that prescribed by section 12; where the contempt is not committed in the immediate view and presence of the court an affidavit or other evidence shall be presented to the court officer of the facts constituting the contempt."

Now, if the court gave this matter as thorough an investigation as he says he did in his answer, where did he find his authority for issuing a

warrant on his own motion, on mere rumor, to arrest a man who was circulating a petition away off, derogatory, as he claims to the dignity of the court. Do you believe that it could be done? And did not this judge know when he issued that warrant under his hand that he was violating the law; that he was depriving a man of his liberty without due process of law? Has he not here clearly and distinctly violated (under his own admission) his oath of office? I will read to you a little authority upon this subject. I read you from volume 36 of the Indiana reports.

"A contempt is direct when committed before and in the presence of the court; or so near to the court, as to interrupt the proceedings thereof, and such contempts are usually punished in a summary manner, without evidence, but upon view and personal knowledge of the presiding judge. Contempts are constructive when they are committed not in the presence of the court, and tend by their operation to interrupt, obstruct, embarrass, or prevent the due administration of justice. The proceeding against a party for a constructive contempt must be commenced by either a rule to show cause or by an attachment; and such rule should not be made or attachment issued unless an affidavit is filed specifying the acts committed by the person accused of the contempt."

I could, gentlemen, pile up any amount of authority upon this subject, but it seems to me our statutes themselves are sufficient. The point that I make here is just this: That no judge, on his own motion, can arrest a man and deprive him of his liberty for contempt of court, even if he is guilty, unless it is done in his presence, except upon an affidavit or other evidence (evidence of course meaning legal evidence) of an offence. Suppose a judge listens to every rumor that he hears floating around in the air. Suppose we give a judge this right; where would be the liberty of our people? But I say still further—and I ask the lawyers of this House to examine it—that his warrant is entirely defective. Even if there had been an affidavit to have given him jurisdiction, he had no jurisdiction whatever. The affidavit and the warrant both should recite distinctly what that contempt was. And when you turn to his answer, and discover what he claims that contempt to have been, it would astonish you to think that a judge could presume even that that would obstruct the course of justice in a proceeding then pending, when the proceedings had passed; and this was not with reference to any proceedings in court, but it says they wanted him to resign, and gives the reasons for it: That he is disgracing his office; that he is using his office to punish individuals and to gratify his malice—whether it is true or false does not matter. It is not a subject upon which he could be brought up for contempt. Now what does he do when he gets him up there?

Let us see if there is any honesty in this whole proceeding. He brings him up—he don't examine him—requires him to give bail—keeps him in dancing attendance upon the court for four weeks—summoned a few witnesses, asks them about who is writing letters to the Pioneer Press. He has got into a libel suit with the Pioneer Press here. It is common notoriety that such is the fact. They have published certain articles that he thinks derogatory, and he wants to make evidence in this case, so he used the power of the court to bring witnesses before him ostensibly on this contempt business, and then questions them about who is writing articles for the Pioneer Press; I suppose it is the Pioneer Press or some other paper; what has that to do with contempt?

What has that to do with the proceedings before him? And we shall show you, gentlemen, that instead of treating these witnesses respectfully, he treats them in a shameful, arbitrary and insulting manner; and that he refuses counsel the privilege of asking questions. When a counsel interposes an objection that the matter concerning which he was questioning was foreign to the question at issue, he says: "I am running this thing," and the man is shut off from his defense. But it goes further than that, gentlemen. He says to the defendant, "There is no contempt here; you are not the man I am after; it is those other men you are associating with, who are worse than the Younger brothers." He owned right up, then and there that he is not after this man; that he is using the power of the court to worm out evidence that will aid him in his suit against the Pioneer Press.

Senator GILFILLAN: Was not that law amended?

I think the whole matter of the contempt law was repealed, accidentally, by the legislature in 1874, and amended in 1877.

Article 10, gentlemen, you all have in your desks, and you have all read, undoubtedly. It is of a general character, charging that he is arbitray, that he insults officers of his court, and is overbearing in his manner towards his inferiors generally. If there is anything in this article you will have learned, before you reach it, whether he is arbitrary or not, and that is a matter I shall leave to your consideration hereafter to specific evidence to be introduced under it. The respondent claims that it is of a general nature, and contains no specific charge—does not contain any charge against him. That is a matter that will be discussed, probably, hereafter.

I will say no more at the present time about these specific charges contained in our articles of impeachment. It may be, gentlemen, that the managers in this case have become partisans. Having been appointed by the House of Representatives to prosecute this case we may not look upon this evidence with an unprejudiced eye. It is not an unusual thing for lawyers when they are engaged in a case to argue themselves into the belief that their side is right and the other side is wrong. It may be so now. It may be that we do not do justice to the respondent, but certainly it is no wish of ours to injure him in any way, if the evidence does not support the accusation. We do not ask a conviction. All we ask of you, gentlemen, after hearing the evidence, is that substantial justice be done. We have no doubt but that it will be done. We desire that this man shall have a fair, candid and impartial trial. If he can excuse his conduct satisfactorily, it is well.

It will be a difficult matter to present to your minds the exact charcter and conduct of respondent herein. His words, his language may be given, but his manner we never can give. You all know that an educated man may, through very slight words and by his peculiar manner, conduct himself most arbitrarily to those who are under him, and will be hard to produce in evidence. In order to understand it—in order to feel it—a person would have to go among the people of Mower county, and hear them talk, hear those who have been oppressed by him tell their story in their own simple way.

From what we have learned we are led to believe that this man obtained his office in a manner that was ungentlemanly ; that that he obtained his office by the arts of a demagogue; and when you find a man

always parading his own particular virtues before the people, that man will bear watching. When men say they are all right, you need to watch them!

Holding the position that he does, we have a right to demand the strictest accountability for his conduct. The purity of the judiciary must be maintained. Upon that rests the welfare of the community, the liberties of the people, and the safety of our property.

We claim that judges are bound to act under the law and be governed by the law. That they can be free from judicial errors we do not claim; human imperfections are too many to allow any man to always judge correctly. Our whole judicial system is based upon this principle, that to err is human, and for the correction of errors we have our courts of appeal. We do not ask for perfection; we do not expect it, but we have a right to ask that our judicial officers shall act from an honest motive, and if the respondent has done that; if he has acted honestly, however erroneously, it is not for us to censure him. But if he has acted maliciously; if he has prostituted his office to gratify his malice; if he has not conducted himself within the bounds of reason; if he has allowed his passions to rule him—then we have a right to censure him; we have a right to say that he has disgraced the judiciary, and shall no longer wear its honors. We believe these to be the facts. We believe he has disgraced the office that the people have bestowed upon him. We believe that he has used it for the purpose of oppression, and that the people have a right to demand, and they do demand, that they be relieved from their oppression.

This is an important trial—important to the respondent, as it affects his character for all time—and more important to the public that the judicial offender shall not escape merited punishment, and if guilty, that he be not sent back to rule over the people. God help the people of Mower county if you send this judge to again rule over them.

Thanking you, gentlemen, for your attention, I now close my remarks upon this branch of the subject.

Mr. Edgerton offered the following resolution which was adopted.

Resolved, That the Secretary of the court take charge of and distribute the proceedings of this trial.

Mr. President ordered that the roll of witnesses subpœnaed be called.

The witnesses on behalf of the managers who answered their names, were as follows;

Messrs. R. O. Hall, D. S. B. Mollison, Lafayette French, G. M. Cameron, C. H. Davidson, Thomas Riley, James Grant, William Richards, W. T. Mandeville, A. W. Kimball. J. B. Yates, P. O. French, Joseph Schwan, I. Ingmundson, W. S. Root, J. D. Woodward, Soren Hanson, William L. Stiles, N. N. Hammond, H. Weber, Levi Foss and James Grant.

The absentees were:

Messrs. R. A. Jones, Ira Jones, G. Sutton, L. Baird, G. Baird, C. N. Bersecker, Herman Green, G. N. Baxter, C. T. Shor, Sanison Hanson, R. I. Smith, A. A. Harwood, P. T. McIntyre, F. W. Kimball, C. C. Kinsman, D. H. Stimpson. W. F. Sutherland, George Martin, W. T. Wilkin, C. C. Crane, John Bowley and W. H. Crandall.

The witnesses on behalf of the respondent who answered to their names, were as follows:

N. N. Thompson, George Robinson, F. A. Elder, S. H. Merrill, George Elliot, H. E. Tanner, D. B. Smith, Andrew Knox, R. N. Paden, J. D. Rugg, Frank Richardson, W. W. Noble, A. J. Hunt, Joseph Warner, Soren Harlason, J. McKnight, ——— Lovell, F. A. Engle, M. C. Potter, Frank Tickuor, John B. Austin, J. P. Williams, C. J. Felch, A. J. French, F. W. Allen, W. B. Spencer, H. F. Deming, D. B. Coleman, O. B. Morse, James Grant, Herman Warner, H. A. Fairbanks, Starling Chandler, William Baudler, William Henderson.

The absentees were:

W. K. Hankins, Dwight Weller, J. N. Hawkins, W. G. Hayden, Harlan W. Page, E. R. Campbell, D. A. Dickinson, William Litchfield, John E. Robinson, C. L. Chase, George P. Willson, E. J. Phillips, William Mitchell.

MR. DORAN offered the following resolution which was adopted:

Resolved, That while this body recognizes the right of the newspaper press to publish all of its proceedings in full, it disclaims the propriety and right of the press to comment upon its proceedings, and upon the parties to the controversy, as being prejudicial to the course of justice.

MR. ARMSTRONG offered the following resolution, which was adopted:

Resolved, That the committee on accounts be instructed to procure the printing of four hundred volumes—extra—of the proceedings in the trial of the impeachment of Judge Page, and that said committee provide for the binding of one copy for each member and officer of the Court of Impeachment, and one hundred copies for the use of the State Library.

Mr. C. D. Gilfillan offered the following resolution, which was adopted:

Ordered that the compensation of the witnesses shall be at the rate of one and 50-100 dollars per day for each day's actual attendance from the time of their appearance in the Court until they are dismissed from the witness stand, together with mileage at the rate of four cents per mile in coming from their homes and returning thereto.

Mr. Nelson moved that the Senate fix the morning hour for daily sessions at 9 o'clock instead of 10 o'clock, which did not prevail.

Mr. Edgerton moved that the Senate do now adjourn, which motion was adopted.

Attest:

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

ELEVENTH DAY.

ST. PAUL, SATURDAY, MAY 25, 1878.

The Senate was called to order by the President.

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

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Goodrich, Hall, Henry, Hersey, Langdon, Macdonald, McClure, McHench, McNelly, Morehouse, Morrison, Nelson, Pillsbury, Remore, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

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

The sergeant-at-arms having made proclamation,

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

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

Mr. Gilfillan C. D,, offered the following, which was adopted:

Ordered, that only witnesses who are examined for the prosecution or defense, whose testimony is material to the issues, shall be paid fees and expenses; and of the materiality of the testimony of such witnesses the court shall determine.

The PRESIDENT. Are the honorable managers ready to proceed ?

Mr. Manager MEAD. We are.

Gov. DAVIS. Mr. President and gentlemen of the Senate, the counsel for the respondent conceive that this is the proper time to bring before the attention of the Senate our exceptions in the nature of a demurrer which have been interposed to article ten. It is set forth in that article that throughout the term of office of the said Sherman Page, as judge of the district court, in and for said county of Mower, to-wit: "Throughout the term of office of the said Sherman Page as judge of the district court, in and for said county of Mower, to-wit: since on or about January 1st, 1873, he, the said Sherman Page, as such judge, has habitually demeaned himself towards the officers of said court and towards the other officers of said Mower county, in a malicious, arbitrary and oppressive manner, and has habitually used the powers vested in him as such judge to annoy, insult and oppress such officers; and all other persons who have chanced to incur the displeasure of him, the said Page.

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

To that article—this plea has been interposed.

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

I take it for granted, that, in this as in other proceedings a person accused of an offense is entitled to be informed of the nature thereof, in terms sufficiently specific to enable him to prepare his defence, to summon his witnesses and to instruct his counsel. I never heard yet that one accused of crime can be tried for habits extending over a period of five years, or that his habitual demeanor could be put in issue.

If this article is true, it must be made up of an aggregation of specific facts, from which this habit can be inferred. These specific facts must be proved and ought therefore to be alleged. If this respondent has oppressed other officers or has demeaned himself towards them in this manner, the acts of oppression ought to be specifically stated, as in other articles preceding that which we now question. In a complaint in a civil proceeding, in an indictment, or in any other charge which any court is called upon to consider, it is not enough to say in general terms that such is the character, demeanor, or course of life of the defendant.

This tenth article charges an habitual demeanor towards other officers of Mower county; and also charges him with impeachable demeanor towards all other persons, acts circumscribed by no territorial limits whatever, who have incurred his displeasure.

Now it is perfectly manifest that terms of that character conceal from us that which the learned managers intend to prove. We cannot demand of them a bill of particulars, of time, place and instance. As the closing act of this trial, after the specific charges have been gone through with, and have failed, other testimony, without notice to us—or the least intimation of what is intended—may be produced, of the demeanor of the respondent in Houston county, in Freeborn county, in Fillmore county, and, in fact, all over the State where he has held a court, upon the theory which my learned friends advance of exceptionable conduct on his part towards officers of the court, or towards (in the language of the articles) "all other persons who have fallen under his dislike." The case for the prosecution might close in that aspect.

In what situation would the respondent and his counsel find themselves? Testimony has been given on the charge, which contains no specific allegation whatever. We certainly could not be prepared to meet it. I can assure the Senators——

Senator GILFILLAN J. B. It is my understanding that on the part of the Managers, they have abandoned this charge. Am I mistaken as to that?

Manager MEAD. You are, sir. We rely upon all the charges.

The PRESIDENT. The chair does not so understand it.

Senator GILFILLAN, J. B. I beg pardon of the counsel, I so understood it.

Gov. DAVIS (continuing.) That in preparing our list of witnesses we have not taken the liberty to subpœna any person whose testimony we do not deem material upon the charges which are definite in their nature; in other words, we have only subpœnaed those witnesses whose testimony bear upon the charges down to the tenth. We have not taken advantage of the broad and sweeping charge contained in the tenth article, to bring witnesses here from other counties to testify as to acts which we might apprehend would be brought before the consideration of the Senate, although not specifically charged in the articles.

Now if this article ten has any foundation in reason, it threatens to make these proceedings of indefinite continuance. The learned counsel who opened this case on behalf of the management did not state, nor did he profess to know, what acts they intended to prove under that article. If acts concerning which we have not been legally notified are put in evidence under article ten, of course we are entitled to the process of this court to bring a cloud of witnesses from all parts of the State to controvert them. If my learned friends undertake to prove one act under this article, and fail in that, they are entitled to go on and prove another, or they are entitled to prove them cumulatively, and then we are entitled to rebut them by arguments and evidence.

No one can tell where these proceedings will end. I make this objection in the utmost good faith. There is not a member of the bar on the floor of the Senate who will not feel its force. There is not a Senator not of our profession, I think, who will not be struck by the manifest injustice, both to the public and the respondent, of making a charge so general and indefinite in its character, that he for six years—in the judicial district where he has resided, and where he has acted as judge—has demeaned himself habitually towards the officers of his court and towards all other persons who have incurred his displeasure in an arbitrary, malicious and oppressive manner. Now, for purposes of imposing limitations upon this trial, to enable us and the court to know where we are; for the purpose of certifying to us that in time there shall be some end, short of eternity and in space some limit short of infinity, to this investigation; that there shall be some limitation as regards money and expense, I move that the tenth article of the articles of impeachment be quashed as insufficient.

Senator NELSON. As a member of this court we will try to decide and vote upon this question. There are two questions in connection with this matter that I shall be glad, for myself at least, to hear some discussion upon. First, in this proceeding whether the counsel for the respondent have a right to demand a bill of particulars or specifications under this charge.

Secondly. If they have, have we the power to require the managers to amend this article by making specifications, or in other words, have we the power to compel them to furnish a bill of particulars, in the nature of specifications. In other words, have we the power to require them to amend this article, if they so desire it, and if so, would the proceedings then be proper. I would like to hear these points discussed.

Governor DAVIS. With the permission of the Senate, it seems to me that the constitution provides that you cannot try a respondent unless he has a copy of the impeachment twenty days before the trial proceeds. It seems to me that leave to amend or produce a bill of particulars would introduce matter entirely new into the articles.

Manager MEAD. I don't know that I understand fully the position of the counsel upon this question. What I have to say in regard to it, is, that the counsel for the respondent assumes that there is not an impeachable offense stated in the tenth article, and that it is not a motion, that rests in the discretion of the Senate, to make the charge more definite and certain or to have a bill of particulars. In answer to the Senator, I would say, that I have no doubt of the power of this House to call upon the managers to spread upon the record the particular offenses which will be sought to be proved, under the tenth article. I have no doubt but that the Senate has the power to call upon the managers, and it would be the duty of the managers in a particular case to furnish specifications in the premises, if the charge was not definitely set forth so as to enable the respondent to properly answer or prepare for his defense. We shall at all times hold ourselves in readiness to prepare such specifications and to present a detailed statement of the offenses.

In regard to the position assumed by the respondent, in the motion to quash, we shall maintain that this tenth article, as much as any other article set forth in these charges, clearly shows an impeachable offense, and in the opinion of the managers (although we would respond very readily and very quickly to a rule of the Senate to furnish a bill of particulars), our view however is, that that burden, under precedent and under law, ought not to be imposed upon the managers. The learned counsel for respondent has hardly stated, it seems to me, his objection. He has stated to the Senate that article ten embraces acts of the respondent during an indefinite number of years, and that such acts were confined to no place or time. I beg leave to call the attention of the Senate to that article, which covers only three years of time and expressly limited to the officers of Mower county, thus presenting the reasonable question that this respondent must know what his action has been towards the officers of that county. We do not ask him to defend himself against any other offenses or officers, except as specified within the three years mentioned. Therefore, we say, that this is sufficiently definite.

When we charge openly that he has habitually demeaned himself towards the officers of his court, the attorneys of that county and other officers of that county, he will be abundantly able to meet such proof as is in the possession of the managers, when it shall be given on the stand. Therefore, we ask that no specifications be required, and we shall ask that in view of the authorities to which I shall direct the court, that it will be found by this court that this article contains an impeachable offense. I beg to call the attention of the court that a motion to quash, as determined in the Barnard trial, is not properly before the court until evidence is offered to prove the charge. However, the managers make no point in regard to that. The counsel alludes to the practice, if I understand him, in criminal proceedings and indictments, and that probably will present the ground work of the question, which arises on this motion. Now, we undertake to say, and I do not suppose the learned counsel will dispute, that in impeachments it is not necessary to detail particularly the offenses charged against the offending officer, or that they be presented with that strictness required in the forms of proceeding in the criminal courts of the State. About the time of the adoption of our constitution, Hamilton laid down the rule that I believe has been followed ever since. It is found in number 65 of the Federalist.

"The necessity of a numerous court for the trial of impeachment is equally dictated by the nature of the proceeding. This can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors, or in the construction of it by the judge, as in common cases serve to limit the discretion of the courts in favor of personal security."

That is the rule, so far as my examination has extended, when questions of this kind have arisen in the trials of impeachment, that has been uniformily adopted by the court and unchallenged by the counsel upon both sides; and in invoking that rule, we say here that this article ten, under the liberal doctrine enunciated thereby, presents an offense sufficiently definite as to enable this trial to go forward without the burden being cast upon the managers to set forth the matters provable under article ten more specifically.

I quote from *Cushing's Practice of Legislatures*, page 988. section 2565: "The articles thus exhibited need not, and do not in fact, insure the strict form of accuracy in an indictment. *They are sometimes quite general in the form of the allegations*, but always contain, or ought to contain, so much certainty as to enable the party to put himself upon the proper defense, and also, in case of acquittal, to avail himself of it as a bar to another impeachment. Additional articles may be exhibited, especially, as is commonly the case, if the right to do so has been reserved at any stage of the prosecution." I ask the court to the consideration of these two rules, for they disclose the true doctrine which runs through all cases of impeachment, and adhered to whenever a question of this kind has been determined. I ask that this article charging Judge Page, during a period of three years—confined to a single county—that he has habitually demeaned himself in an oppressive and arbitrary manner towards the officers of his court, and other officers in his county, be adjudged ample in form and averment to sustain a conviction. We submit that, according to the established principles of construction and the liberal doctrine, allowed to be followed by the court in construing articles of impeachment, that article ten is sufficient for the purpose contended for; and in any event, it is certain that it could not be tried again. Can any person doubt that if the respondent is tried upon this article, that he can be tried again for it? Does it not force him to the rule that he could plead it in bar to another prosecution?

Senator Sumner in his filed opinion in the Andrew Johnson case, adverts to this rule, and lays down the same doctrine. It is a question that calls for the exercise of the judgment of the court, whether the tenth charge is sufficiently certain, that if such a charge is preferred against a person and he is acquitted on it, could he present that as a bar to another prosecution on the same ground? Now I need not argue that the respondent never could be tried again upon that charge. That is the extent of any objection that could be made to this article. I have before me the same objections which were raised in the trial of Judge Peck, in which this same doctrine is laid down. Now, in relation to the assertion of the learned counsel, that an amendment or new articles could not be filed because of the constitutional provision of twenty days notice to answer the same, I will say that that does not obtain in the case of new charges or amendments, unless the Senate so order. The respondent has known the whole nature and extent of the conduct towards these officers and has it in his mem-

ory; he must know if there is evidence to prove that his conduct was contrary to that alleged. And under that article we expect to produce a large amount of proof as to the conduct during the last three or four years of this respondent in the county of Mower with reference to the officers of his court, and other officers of that county, and we shall be prepared to satisfy this court beyond a reasonable doubt that even if all the other articles fall from failure of proof, which is impossible, that there will be enough proven under this article to warrant the conviction of the respondent.

[Gov. Davis here rose to speak.]

The PRESIDENT. The chair will state that the counsel for the respondent has already consumed the time allotted to him by the rules.

Senator NELSON. I hope the gentleman will be allowed more time.

The PRESIDENT. Unless objection is heard the counsel will proceed.

Gov. DAVIS. The concluding words of counsel not only define the object of the tenth article but furnish the most cogent reason why the motion to quash should be sustained. What before was latent is now openly avowed, and its object is, if this respondent shall purge himself before this court of those things wherewith he is specifically charged, that under the obscurity of that tenth article there may be sprung upon this court acts of which he has not been notified. It will eke out; the failure which casts its shadow upon the prophetic souls of the counsel. They seem to apprehend such failure and seek to sacrifice this respondent to accusations which do not occur. If the respondent felt indignant at the article itself, how indignant has he a right to feel at this open avowal of its object? Now, may it please the Senate, the House of Representatives has preferred these articles of impeachment against the respondent, and has adjourned; upon them as preferred, they, or the respondent, must alike stand or fall.

This proceeding is one criminal in its nature. Its object is an impeachment for crimes and misdemeanors. Its object is to remove a high public functionary from office, and disqualify him forever from holding any office of trust or profit, in this State. The House of Representatives has delegated to the learned managers the power to present articles which the House has adopted, and no other. I never yet heard that charges of this character re susceptible of amendment. You cannot permit them to be amended any more than a court can receive an amendment to an indictment. You can no more receive a bill of particulars under these articles than a court can secure a bill of particulars under an indictment, charging that a man since 1873, in the county of Mower has habitually committed murder. Gentlemen, such views are absurd upon their face.

I will test the correctness of this manager's position by the authority he has cited.

Mr. Cushing *does* lay down as follows:

"The articles thus exhibited need not, and do not, in fact, pursue the strict form and accuracy of an indictment."

That is true, gentlemen, no one denies it. If it were otherwise we would have a motion to quash every article preferred. Charges ought to allege with such certainty as to enable the party to put himself upon his defence, and also, in a case of acquittal, to avail himself of it as a bar

to another impeachment. Does this article contain the certainty which enables us to put ourselves upon our defense? The charges are habitual harshness or demeanor towards the officers of Mower county, and it also charges habitual harshness of demeanor towards all other persons who have chanced to incur the displeasure of the defendant.

This charge is circumscribed by no limits whatever. My learned friend says that an acquittal here upon this article, will be a bar to another prosecution. A bar to what? A bar to another prosecution for for habitual harshness and demeanor, perhaps, but not a bar to another prosecution for some specific act of malfeasance. Suppose in a criminal prosecution an exception of this nature was taken to a complaint or an indictment, as defective as this is, charging that the defendant since the year 1873, had been habitually guilty of some crime? An exception taken to a complaint of that nature, is not that it is too indefinite or uncertain, but that it charges no crime whatever. I mean in legal contemplation, that it charges no crime whatever, states no occasion, gives no time, names no place. That this proceeding is governed by legal rules, in the very severest sense of the expression, I will show by reading from Story's Commentaries on the Constitution, vol. 1, section 797.

"Resort, then, must be had either to parliamentary practice in 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 would be deemed innocent at anothert ime, 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 as 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 andduties 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 perhaps has struck the attention of the Senators that the learned managers have cited no precedent for this extraordinary form of accusation. In all the annals of impeachment, which udoubtedly my learned friends have consulted most thoroughly, there is but one precedent, so far as I am instructed, of an accusation of this kind. In the trial of Horace G. Prindle before the Senate of New York, on page 352, the following proceedings are reported:

Mr. Stanton. I offer that receipt in evidence upon the final settlement that $350 was reckoned in.

Q. Allowed by Judge Prindle as disbursements in allowing your account?

A. Yes, sir.

Q. By Judge Prindle in auditing the account?

A. Yes, sir.

P. You were also the executor of the estate of Reuben Sears, were you not?

A. Yes, sir.

Mr. Mygatt. Any specifications of that?

Mr. Stanton. No particular specifications. We have a general charge which covers all fees which are illegal from the commencement of the term of office of the respondent, the first of January, 1864. I suppose that if under the general charges we are able to prove other cases we may be allowed to do so.

Mr. Mygatt. We enter the objection that there can be no proof of any charge we have had no opportunity of examining and answering to.

The President. Will the prosecution present the charge?

Mr. Stanton. Yes, sir.

Mr. E. H. Prindle. Certainly no court would hear evidence against a man unless there was a charge. You cannot charge a man with larceny without saying when and where and under what circumstances the crime was committed.

Senator Perry. Under what specification do you offer it?

Mr. Stanton. Fifty-first.

Senator Benedict. Do you offer to show under that charge that he has received illegal fees in a certain case other than Sears case?

Mr. Stanton. That is the explanation, sir.

Mr. E. H. Prindle. Mr. President, I understand about one hundred witnesses have been subpœnaed in reference to charges that are not specified, coming under such general charges as this one now offered.

The President. The prosecution will state under what specific charge they propose to prove this.

Mr. Stanton. The fifty-first. I would state that I am not perfectly correct in my knowledge of the facts in this Sears case; possibly it may come under the twelfth charge instead of the fifty-first; one or the other will embrace this case. I will read the charges:

First—The twelfth charge.

That the said Horace G. Prindle, being such county judge and surrogate of the said county of Chenango, at the town of Norwich, in the said county, during the years 1867, 1868, 1869, 1870 and 1871, having one George W. Ray as a clerk in the office of said surrogate, occupying a table in his said office, and performing the duties of a clerk to said Horace G. Prindle, as such surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the constitution and laws of said State, did unlawfully, knowingly and corruptly, in many and various proceedings and actions pending before said county judge and surrogate, allow, permit and encourage the said George W. Ray to practice as an attorney and counselor at law, before him, the said judge and surrogate, in the matter aforesaid, and in numerous instances did demand, receive and extort from the parties to the proceedings aforesaid, employing said Ray, fees for the said Ray, charged by the said Ray for his services as an attorney and counselor at law in the actions and proceedings aforesaid.

The fifty-first charge reads: That the said Horace G. Prindle being such county judge, and surrogate of said county of Chenango at the town of Norwich, in said county, and at various and numerous times, during the years 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, the particular time or times being unknown, in violation of the constitution and laws of said State, and of his oath of office, has wilfully, unlawfully and corruptly charged and received fees and compensation other than such as are provided by law for official services performed by him as such county judge and surrogate.

The President. Senators; the question now will be—

Mr. Glover. I now desire, Mr. President, to say a word in relation to the admission of the evidence. The respondent is arraigned here in what may perhaps be termed a *quasi* criminal proceeding for the consequences to him are of a criminal nature, and of a very serious character, and it seems to me that under none of these specifications could a party be tried in court so, or that an indictment of a character so general, giving no statement as to when and where so we might subpœna witnesses to meet the accusation could be sustained in court.

The question arises can the respondent with these consequences to come upon him be arrainged and tried upon general charges; charges so very general in their nature as these and the prosecution permitted to run through the entire county of Chenango, in a matter of which we are entirely ignorant as to what they claim, and prepare their case and leave us in the situation so that we must be entirely unprepared to defend ourselves. These charges do not specify anything except that general recital. My associate here says that he understands there are a large number of witnesses subpœnaed Your sargeant-at-arms imformed me yesterday that he had previously subpœnaed thirty witnesses and that since last adjournment he had received subpœnas for over seventy more. He supposed when the list was called here on Friday last that we had heard their list of witnesses, and that we were in possession of the number and names of the witnesses who were to be examined in the case, and we therefore made our arrangements accordingly. Certainly we can make no proposition for a defense if we are called upon to defend charges so very general as these.

The answer of Judge Prindle to those charges was in substance the same as the one we have interposed to this. After some other remarks by counsel and Senators, the Senate thereupon went into private consultation and upon the reopening of the doors, the clerk announced the result of the consultation as follows:

Resolved, That the object to the offer of prosecution be sustained for the reason that the charge proper to be proved against the respondent is not mentioned in any of the specific charges presented to this Senate by the Governor."

That was a proceeding under the constitution of the State of New York to remove the judge not by impeachment but by address. Now, unless I am partly mistaken, this is the only precedent where it has been undertaken to prosecute and convict a man for a habit or custom (no specific act being charged); extending over a number of years.

In the Hastings case, the Pickering case, the Peck case, the Johnson case, the Hubble case, the managers pleaded like lawyers, and so framed their allegations that ample opportunity was given to the respondent to meet the charges. In the Prindle case it was undertaken, as it has been undertaken here, under a general charge covering five or six years, to show accusations or habit; and the Senate of New York properly ex-

cluded the offer in support of that article, for it was in that stage of the proceedings that the question arose.

Mr. Manager Mead. I wish to call the attention of the Senate to an authority that was cited by the counsel for the respondent. I wish simply to say that the learned counsel has cited section 797 of Judge Story, where Judge Story is speaking of resort the common law to ascertain the definition of criminal offenses, without any reference whatever to the coustruction of the pleading or charges in an impeachment proceeding, and without any reference whatever to the delineation of the offence to the sufficiency of a charge in an impeachment case, but in another section he does directly speak upon those questions, and that is to what I wish to call the attention of the Senate.

He says, in the authority cited by the learned counsel: "Resort then must be had either to parliamentary practice or the common law in order to ascertain what are high crimes and misdemeanors." And the rules of evidence which we admit, and that if it was a question of definition of a legal term here as to what constituted crime, or what constituted legal evidence, we necessarily would have to resort to parliamentary practice or the common law. But when Judge Storey speaks of a pleading, or what is necessary to charge against the defendant in an impeachment case, he uses this language—section 765, page 541: "In the next place it is obvious that the strictness of the forms of proceeding in cases of offenses at common law is ill adapted to impeachments. The very habits growing out of judicial employments." Our charge is upon the habit of the respondent.

Story says "growing out of judicial employments the rigid manner to which the discretion of judges is limited and fenced in on all sides in order to protect persons accused of crimes, by rules and precedents, and that adherance to technical principles, which, perhaps, distinguishes this branch of the law more than any other, to the trial of political offences, in the broad cause of impeachments. And it has been observed, with great propriety, that a tribunal of a liberal and comprehensive character, confined as little as possible to strict forms, enabled to continue its session as long as the nature of the law may require, qualified to view the charge in all its bearings and dependencies, and to appropriate on sound principles of public policy, the defense of the accused seems indispensable to the value of the trial.

Now Judge Story boldly announces the doctrine that in an impeachment proceeding a charge is sufficient if it is in a general form. Now I ask this court to try article ten by the rule laid down by that eminent jurist, and it is plainly to be seen that we have conformed to the requirements such as Judge Story declares sufficient in a proceeding of this kind. That ought to satisfy the learned counsel; I am sure it will this court.

Further—"There are few exceptions which arise in the application of the evidence, which grow out of mere technical rules and quibbles." And it has repeatedly been seen that the functions had been better understood, and more liberally and justly expounded, by statesmen than by mere lawyers."

I ask this Honorable Court to apply the doctrine which is laid down by Judge Story who is admitted to have enunciated a correct rule, and which is cited in case after case.

Here is a court having the treasury of the State and the power of the State to do justice to this respondent. If perchance, in the language of Judge Story, it should appear here that he needs new or distant testimony to satisfy this court, by which he can explain away everything criminating which might be proven under the tenth charge, the court has the power to enable him to produce it; so unlike a court of common law there can be no loss or injury to this respondent, because, says the learned jurist, this court has ample time and resources at its command, and under your oath it is your bounden duty to see that no technialty shall operate to the prejudice of the respondent, and that is all that he can ask.

A general accusation is sufficient, that is the rule upon which the managers rely, and which will be a safe guide to this court to determine why we should be permitted to prove the accusations alleged in article ten, and then under the discretion and wisdom of this court, any amount of time that is reasonable, any appliances within the power of the State, may be given to the respondent ,and I trust it will be the feeling of the managers to make no objection disproving the accusation by any attainable evidence.

Then this Court can judge whether the people of that judicial district can longer suffer the oppressions and the tyranny which is alleged they have suffered and which we hope to make good by proof to this Court. The managers submit the proposition that under the rule of Judge Storey, we are entitled to present to this Court proof of the general charge contained in article ten, and that the rights of the accused can be taken charge of when he asks for time to produce evidence in denial.

The Senate resolved itself into secret session to consider respondent's motion.

Mr. Edgerton offered the following:

Ordered, That the respondent's specific exceptions to article ten contained in the answer be sustained.

Mr. McDonald offered the following amendment:

Resolved, That the motion submitted by counsel for respondent be taken under advisement by the Senate, until Monday's session of the Senate.

Which was adopted.

Mr. C. D. Gilfillan offered the following; which was adopted:

Ordered, That the rule heretofore adopted fixing the time of convening of the court at 10 A. M., be changed to 9:30 A. M.

On resuming business in open session the President said: I am instructed by the Senate to announce that they have not arrived at any conclusion on the motion by the counsel for respondent, but have taken the matter under advisement until the Monday session. Are the managers ready to proceed with the testimony?

Mr. Manager MEAD. Yes, I suppose we are. Have the Sergeant-at-Arms call Mr. Mollison, and make provision for his position in court.

Gov. DAVIS. Mr. President: I don't know what the disposition of the Senate is as to proceeding this afternoon, and I do not arise for the purpose of asking any postponement.

Deeply conscious of the importance of time, I wish to state our position here, and leave to the consideration of the Senate whether a motion ought to be made for a recess until Monday, from the fact that in

the division of the duties between counsel for respondent Mr. Losey of La Crosse, will conduct the cross-examination. He was called away to La Crosse day before yesterday, by unexpected matters of great urgency, and he telegraphed me this morning that he can't be here until to-night. Unless in the opinion of the Senators it is very important to proceed with the testimony of Mr. Mollison, we should feel very much gratified if a recess could be taken until Monday morning.

Mr. NELSON. I will inquire what time counsel will be ready.

Gov. DAVIS. At any hour the Senate should see fit.

Mr. NELSON. Would they be ready as early as 8 o'clock, so that we could make up for lost time?

Gov. DAVIS. Yes; I get up before 8, a long time. (Laughter.)

Mr. Armstrong moved that when the Senate adjourn it do adjourn until 3 o'clock P. M. on Monday.

Mr. Nelson moved to adjourn.

Which motion prevailed.

Attest.

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

TWELFTH DAY.

ST. PAUL, MONDAY, MAY 27, 1878.

The Senate was called to order by the President.

The roll being called the following Senators answered to their names

Messrs. Ahrens, Bailey, Bonniwell, Clement, Clough, Deuel, Edgerton, Edwards, Finseth, Gilfillan C. D., Goodrich, Hall, McHench, McNelly, Morehouse, Morrison, Morton, Nelson, Remore, Shaleen, Smith, Waite and Wheat.

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

The sergeant-at-arms having made proclamation,

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

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

A quorum not being present, Mr. Nelson moved a call of the court.

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

Messrs. Ahrens, Bailey, Bonniwell, Clough, Edgerton, Edwards, Gilfillan C. D., Goodrich, McHench, McNelly, Morrison, Nelson, Remore, Shaleen, Swanstrom, and Waite.

A quorum being present, on the appearance of Senators Clement, Deuel, Finseth, Hall, Morehouse and Smith, on motion, further proceedings under the call were dispensed with.

Mr. Edgerton moved that the court take a recess until 2 o'clock P. M.,

Which motion prevailed.

AFTERNOON SESSION.

Upon reassembling, Mr. Nelson offered the following resolution:

Resolved. That the counsel for the respondent, and the managers, be and are hereby requested to re-argue the questions involved in the respondent's motion to quash the tenth article.

The roll being called, there were yeas 14, and nays 7, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Bonniwell, Clough, Deuel, Edwards, Finseth, Goodrich, Morrison, Nelson, Remore, Shaleen, Swanstorm, Waite, and Wheat.

Those who voted in the negative were—

Messrs. Bailey, Clement, Edgerton, Hall, McNelly, Morehouse and Rice.

So the resolution was adopted.

Mr. Edgerton offered the following resolution:

Resolved, That the officers of this court be allowed the same per diem as the officers of the Senate during the session.

The roll being called, there were yeas 23, and nays none, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Bailey, Bonniwell, Clement, Clough, Deuel, Edgerton, Edwards, Finseth, Goodrich, Hall, Macdonald, McHench, McNelly, Morehouse, Morrison, Nelson, Remore, Rice, Shaleen Swanstrom, Waite, and Wheat.

So the resolution was adopted.

Mr. Manager MEAD. I would suggest to the court that in no view of the case is there any haste required, or any necessity of a determination of that question at present. We shall not reach under two or three days any testimony, or offer any testimony under charge ten. Deeming that article of so much importance, we desire that a full Senate be had upon its disposition, and we should prefer that the further discussion, if there is any, should be a day or two hence.

Mr. EDGERTON. Mr. President, I move that we go into secret session.

The court here went into secret session.

Mr. Nelson offered the following, which was adopted:

Ordered, That the managers at once proceed to introduce evidence in support of any any or all of the articles except the 10th: and it is further ordered that the motion to quash the 10th article be argued tomorrow morning at the opening of this court.

Upon resuming business in open session, they will be permitted to be heard upon the argument upon the tenth article.

Mr. Manager MEAD. Call D. S. B. Mollison.

D. S. B. Mollison sworn and examined by Manager Mead, on behalf of the prosecution testified.

By Mr. Manager MEAD.

Q. Where do you reside, Mr. Mollison?

A. In Mower county, sir.

Q. How long have you lived there?

A. I came there in 1856; I have lived there all the time, with the exceptions of some three years I was out of it, I believe.

Q. How far do you reside from the city of Austin?
A. About eleven miles I should think by the road.
Q. What is your business?
A. Well, farming and mechanical business; my family lives on the farm, and I work at mechanical business sometimes.
Mr. CLOUGH. I should like to ask the Senators in the rear part of the room if they hear the answers of the witness?
Senator NELSON. Not very distinctly.
Mr. CLOUGH. A ltttle louder, if you please. Mr. Mollison.
Q. State whether or not in the month of September 1873, you were present at the district court at a term held in the city of Austin?
A. 1873.?
Q. Yes sir?
A. Yes sir, I believe I was.
Q. How came you to be there?
A. I was brought there under a warrant of arrest by the sheriff of Mower county.
Q. What part of the term—first week or first day?
A. The last day of the first week.
Q. On what day of the week?
A. Saturday.
Q. State whether or not you were brought there under arrest, in consequence of an indictment having been found against you?
A. I was sir, yes.
Q. Indictment found at that term of court?
A. I believe so, yes.
Q. Who was presiding at that term of the court on that Saturday when you were brought into the court room, if you were brought in?
A. Judge Page was.
Q. State when you were arrainged on that indictment?
A. The Monday following I was arraigned.
Q. How long were you in court that day—Saturday?
A. I should think from between an hour and a half and two hours.
Q State whether or not you staid in court until it adjourned?
A. I did.
Q. State, if you know, whether Judge Page knew of your presence that day in court?
A. Well, I could not state to a personal knowledge. I was right in front of him—within 20 feet of him, I suppose. I sat in the front seat, on the benches.
Q. State whether or not you were held under arrest until the time you were arraigned on Monday?
A. I was let have my liberty by my word of honor to the sheriff that I should appear on Monday morning.
Q. Did you remain in the town?
A. I did, sir.
Q. What time of day was it Monday when you went into court?
A. I should think it was between nine and ten; just after court commenced; the first thing that was done in the morning.
Q. State what occurred on that occasion?
A. The whole particulars.?
Q. The whole particulars on Monday, the time you were arraigned before Judge Page?

The PRESIDENT. Speak up loud, Mr. Mollison.

A. Yes, sir; I will endeavor to. I was brought in Monday morning as soon as court was convened, by the sheriff, and presented before Judge Page to hear the indictment read, and while the indictment was reading I seemed to have got to a nodding of my head It is a habit that I have if anything amuses me.

Mr. LOSEY. You need not explain your habit.

The witness. [Continuing], and while thus before the judge he told the district attorney to stop reading for a moment; he looks up at me and says: "What are you nodding your head for?" I thought for a moment, and said I, "I don't know that your honor has any right to ask such a question." He asked me then in a still louder voice: "What are you nodding your head for?" Said I, "I think my head is my own, your honor, sir, and I have a right to nod it if I please." He repeated it with still more force. Said he, "I will put you in the hands of the sheriff. if you don't answer me, sir." "Your honor, I am there already." But I was merely taking cognizance of the difference of the indictment and the articles that were written. That is what occurred there at that time. Then the attorney proceeded with the reading of the indictment, and when he was through the question was asked me if I was guilty or not guilty. I told him that I was not guilty. He then said something with regard to the bail; that he could not try the case; that I would have to give bail.

Q. State whether or not he there named the amount of the bail.

A. He did—the sum of fifteen hundred dollars. Seeing that I was answered so severely, I thought it was not safe for me to say any more.

Mr. LOSEY. We object to the witness stating anything further than just the occurrences that took place in court. What his thoughts were, and so forth, and so on, we object to his giving.

The PRESIDENT. The witness will confine himself to statements—the actual occurrences there.

The WITNESS. I asked him if I might speak, and his reply was, most peremptorily, "Not a word, sir!" I then sat down in court and remained there until the court adjourned. I then was put in jail, and kept there until evening. Some of my friends visited me there and wanted to go my bail. I told them that I proposed to get no bail; that I was ready for trial.

Mr. LOSEY. Your honor, we object to this evidence on the ground of incompetency. What occurrred between the witness and his friends at the jail, certainly the respondent cannot be bound by. What occurred in court as a matter of course, as between the respondent and the witness, we are bound by.

The PRESIDENT. What is the object of your testimony?

Mr. Manager MEAD. We do not propose to show anything out of the hearing of the respondent.

Q. State whether or not Judge Page asked you while your were in court in regard to whether or not you were ready for trial?

Mr. LOSEY. I would ask that the evidence of the witness in that particular be stricken out: statements made by him at the jail as to what occurred at the jail, they merely cumber the record, and it seems to me they are not proper in the record.

The PRESIDENT. Does the counsel insist upon their remaining on the record?

Mr. Manager MEAD. We care nothing about it only that might become proper I would like to know what the record would be hereafter, whether it goes out entirely, or is it to have no effect for the consideration of the court?

The PRESIDENT. This question I will submit to the Senate, whether testimony not regarded as material shall go upon the record? as many as are of the opinion that it shall, will vote aye.

The Senate voted to exclude the testimony from the record.

Mr. MEAD. Q. I ask you, Mr. Mollison, what, if anything, did Judge Page say while you were in the court room as to whether you were ready for trial.

A. No sir, he never asked me whether I was ready for trial.

Q. State whether he said anything in reference to your having counsel?

A. He did not in my hearing; I did not hear him.

Q. State whether or not that you stated in court that you were ready.

Mr. DAVIS. Wait a moment. We object to the form of the question.

Q. State what you said in court to Judge Page with respect to whether you were ready for trial or not.

A. I can't remember the precise words that I stated to him, but I remember that I wanted my trial, that is all that I stated, or something to that effect—that I was ready for trial, that I proposed giving no bail.

Q. You stated that to Judge Page?

A. Yes sir, right in open court.

Q. When you were next brought before, or appeared before Judge Page, what did Judge Page say to your request for an immediate trial?

A. That he could not try it; that he would have to get another judge to try the case.

Q. When were you next brought before Judge Page upon that matter?

A. At the next judicial term of court, or my counsel, Mr. Cameron, appeared on the next day to plead to the demurrer or to make a motion.

Q. State whether or not you were absent?

A. I think so, the next day.

Q. State whether or not bail was given in your case?

A. Yes sir.

Q. When?

A. That same evening that I was arraigned. About six or seven o'clock somewhere.

Q. Did you appear in court at the time you furnished bail?

A. No sir.

Q. Who were your bondsmen!

A. Mr. Jeremiah Yates, Mr. George Sutton, Mr. Ira Jones, and they were procured without my knowledge.

Mr. LOSEY. We object to your statements, as not responsive to the question.

Q. Did anything further occur in regard to this matter of your trial during that term of court—September 13, 1873?

A. Not anything sir, that I have any remembrance of.

Q. State whether or not you attended the March term of that court in 1874?
A. Yes sir.
Q. When did you appear at the court, what day?
A. I appeared at the first day of the court.
Q. Was the case of the State against Mollison called?
A. It was; yes, sir.
Q. Who presided at that term of court?
A. Judge Page.
Q. When your case was called what response was given or did you give any?
A. I gave none. He had the same statement to make.

Mr. LOSEY. I object, your honor. The witness has gone on and answered the question.

Q. State what Judge Page said?
A. That he would have to get another judge to try this at a special term—those cases—mine with others.

Mr. LOSEY. That's all right now.

Q. How long did you remain at that term of court?
A. I think I was there during the whole week; the first week of court before the case was disposed of.
Q. State whether or not you gave any consent for a continuance of the cause at that March term of the court?
A. I did not.
Q. Did any counsel give any consent for you, or did you have any counsel?
A. There was no counsel that I had employed for that purpose; I was ready for my trial, and wished it.
Q. Who was the county attorney of that county at that time?
A. Mr. Wheeler, I believe, was county attorney.
Q. State whether he made in your hearing, gave any consent, or made any motion, in regard to your case?
A. He did not to my knowledge.
Q. Do you remember when the next term of court was held in that county?
A. I think the next term was a special term.
Q. Well, the next general term?
A. It was in September.
Q. State whether you appeared?
A. I did.
Q. State whether or not the case of the State against Mollison was called at that term of court, on the first day?
A. It was not the first day; I could not say what day it was. It was several days after the court was convened before it was called.
Q. State whether or not you had attended from day to day every term of that court for the trial of that cause.
A. I did, sir.
Q. What took place when the case was called?
A. The same took place.
Q. State what it was.
A. That it has to go over because he could not try it.
Q. What statement or information did you give the presiding judge at that time in regard to whether you desired a trial or not?
A. Was that the fall term? I got up in the court room and called

out in a loud tone of voice, "Ready for trial," myself at that term of court, I think. I think it was at that term of court the judge said he would have to get another judge to try it; he could not try it himself at that time.

Q. Now, when you made that demand, how many days, if you know, of that term had passed?

A. I could not say positive in regard to the time; I should not wish to state positively.

Q. State whether or not you attended that court in March at the March term, 1875.

A. I did.

Q. Well, what transpired at that time with respect to this indictment or this cause?

A. I think after that, if I remember right, that the cases was not called; the parties names were not called out; they were called by number; numbers one, two, three.

Q. Do you know what number this was in the calendar?

A. I did not know. I did not know what number it was until—well, I never looked at the calendar in regard to it until the last, and then I did not. It was by Mr. Hall to see if it was stricken off when the others were stricken off.

Q. What announcement did he make at that term of court in regard to case No. 1 on the calendar?

A. Well, there was case No. 1 and some others I think was included in them—when they were called over under the same reason that he had given before; that he could not try them.

Q. State whether you made any statement at that term of court to Judge Page as to whether you desired or was ready for the trial of your case?

A. I did not personally or openly in court. The thing was so disposed of so that it was passed and I let it go at that.

Q. Now I call your attention to the September term in 1875, following the March term.

A. That was the same way.

Q. Now will you just state to the court just what took place, so we may understand it?

A. These numbers was called, these criminal cases that was on the docket—and he said that he would have to get another judge, that he had been unable to procure a judge, but as soon as he could he would procure a judge, for the trial of those cases.

Q. State whether you attended the next term in March, 1876.

A. Yes sir.

Q. Were you there the first day of the term?

A. I was there the first day of the term with the exception of one.

Q. State whether there was a statement or announcement made by the judge when those cases, or the numbers of cases on the calendar were called?

A. Yes, the same statement—that he would endeavor to get a judge for the trial.

Q. What transpired with reference to your attending court in September, 1876?

A. The same thing; the same course; that he would get a judge to try the cases; that *he* could not do it.

Q. State whether you said anything at any of these last terms of court, when the numbers were called, about being ready for trial.

A. I think not; Idon't remember it, at least; I think there was only one time that I called in open court myself, that I was ready for trial.

Q. State whether you attended any terms of court after that.

A. I did—next March term.

Q. What transpired there with reference to the indictment—this case against you?

A. I supposed that the case was dropped from the calendar. I had been told by the county attorney—

Mr. LOSEY. We object; the witness is not answering responsive to the question. I ask that his answer be stricken out as far as given.

Mr. MEAD. That may be explanatory of his answer.

The PRESIDENT. That should be stricken out.

Q. What transpired there with reference to this indictment in connection with your—

A. I presume I was not there at that time when it was carried over; I called upon Mr. Cameron; I was very busy at the time.

Q. State whether or not you had an attorney appear at that term of court for you.

A. I did.

Q. What term of court do you refer to?

A. I refer to the March term, previous to the one I had my bail surrendered me?

Q. March term, 1877?

A. Yes, sir; I told him I could not wait; to answer for me, and send after me if needed.

Mr. LOSEY. That was objected to.

Mr. MEAD. That is proper; that he employed an attorney to send after him in case he was wanted.

The PRESIDENT. That testimony is stricken out.

Mr. MEAD. State whether or not you made any arrangement at that term of the court in case your case was called for trial to appear there and try it at any time during the term?

A. I did.

Q. With whom did you make that arrangement?

A. Mr. Cameron.

Q. Mr. Cameron, an attorney at law at Austin?

A. Yes, sir.

Q. Now you may state what occurred with reference to your demand for a trial or readiness for trial at the September term, 1877?

A. I wished to have the thing disposed of in some way. I had been running backward and forward for—

Mr. LOSEY. We object to that, your honor, and ask that that be stricken out.

The PRESIDENT. The witness will confine himself to the question.

Witness continuing—I had; my bail surrendered me to the sheriff or the proper officer for that purpose. One of the bail was not present, and I was still—

Q. State whether or not you appeared in court at that time and demanded a trial!

A. I did sir; I did not demand my trial. No sir, only by my appearance.

Q. State whether you were ready for trial?
A. Yes sir. I have always been ready for trial.
Q. State what transpired with reference to the bail surrendering you up to the court?
A. They surrendered me out the hands of the sheriff, what the sheriff done or said to Judge Page I don't know, but one of my bondsmen that did not appear that I was told that he was sick, could not come—it was said that he was good enough.

Mr. LOSEY. Your honor I ask that this answer be stricken out, it is hearsay; and beside that it is not shown that it was brought to the notice of the respondent.

Now it is a very proper thing for bail to deliver up a person, it is a common law right that they have; but they deliver him under the common law to the sheriff, and it is the sheriff's duty to take him into custody. Now it don't appear here from the statement of the witness that the respondent knew anything of this proceeding, nor was he bound to know anything of it, and in fact it is not a response to the question that is asked the witness. He has been asked as to what occurred in court in the presence of the respondent, and has gone on in answer to that question, and made a statement as to what occurred out of court and between himself and his bondsmen and the sheriff. Now I submit that it is not proper that it should be here in that form.

Mr. MEAD. A larger portion of this occurred in court, and we shall connect the respondent with the whole of it, and we can see what the connection is.

The WITNESS. I was still,—that is, one of my bondsmen was still held, and I was informed that the bail was still holding for me; and in order to have the thing decided some way or other, I took advice of Mr. Richard Jones, of Rochester—he was there, a friend of mine, and had him draw up a surrender of the bail; and got my bondsmen together, that is the two of them that was able to be out, and they signed it; I carried the bond up to my other bondsman, he being in bed sick at the time, and he signed it while in bed. I carried it down and put it into the hands of my other two bondsmen, and they delivered it to the sheriff.

Q. State whether or not, immediately after that, you were not in court?
A. I followed the sheriff right into court.
Q. State what the sheriff, if you know, did with that bond surrendered.
A. He carried the document as I presume it was, and handed it to the judge while he was on the bench.
Q. Judge Page?
A. Yes, sir.
Q. State whether you heard the statements made in that connection by Judge Page?
A. I did not.
Q. State whether Judge Page then and there made a statement in court?
A. He did not.
Q. State whether or not at the time of your surrender of your bail you announced to the court that you were ready for trial?
A. I did not make any further announcement.

Q. State whether or not, during all these terms of court, you were ready for the trial of the case of State, against Mr. Mollison, in which you were indicted?

A. I was ready from the first time I was arraigned.

Q. State whether or not, during any of these terms, you ever consented by yourself or an attorney to a continuance of those cases?

A. I never consented myself. Mr. Cameron had been employed to act sometimes, as I have said, when I was not there; I do not know what he done in the matter.

Q. State whether or not the court or Judge Page ever asked you, during those terms of court, whether you were ready for trial.

A. He never did, sir.

Q. State whether or not the county attorney, during any of these terms, ever moved the court for a continuance of that case?

Governor DAVIS. We object, we are not bound by the case of the county attorney whether he did or did not.

Mr. Manager MEAD. It is directly in point.

The PRESIDENT. The chair will submit the question to the court.

Senator EDGERTON. I would like to ask the Manager whether he intends to follow that up by action that was taken by the court, or is it simply the action of the county attorney?

Mr. Manager MEAD. We ask that question under the pleadings. The answer sets forth that this case with the consent of the parties from time to time was adjourned. We wish to disprove that—which is made an issue in the case, and that the only cause for the delay and non-trial of this case was not caused by the county attorney—not by Mr. Mollison, but by Judge Page, and by him alone. It is a matter that this court will take judicial notice of, that in a criminal cause the county attorney represents one side—the prosecution. Now if the county attorney was the cause of this delay, of course the respondent is here to so establish. We want to prove that the county attorney desired no continuance, that Mr. Mollison continued to ask for the trial of this case, and it is the logical conclusion that Judge Page alone is responsible for the delay. That is the matter in issue.

The witness, answering: Never to my knowledge, never heard it.

Q. Did any attorney employed by you, or at your request, ever move for a continuance in this case, at any of these terms that I call your attention to?

A. No sir, not to any knowledge of mine.

Manager MEAD. Mr. Mollison, you will have to speak louder.

CROSS-EXAMINATION.

By Mr. LOSEY. How long did you say you lived in Mower county?

A. I came there in 1856.

Q. Came there in 1856?

A. Yes, sir.

Q. At what time was this indictment found against you?

A. Well, it was found against me the Saturday after the first week after the commencing of the court.

Q. That was in 1873, was it?

A. Yes sir, I believe so.

Q. You came into court with the sheriff on Saturday.
A. The deputy sheriff I believe.
Q. Was you in his actual custody at that time?
A. Yes sir.
Q. Did he lead you into court, or did you walk in behind the sheriff?
A. I walked in behind; after him.
Q. Where did you take a seat in court?
A. In front of the benches that they have there in the court room.
Q. On the front bench do you mean?
A. I think so; the front one, or the one adjacent to it.
Q. At what time of the day was that?
A. It must have been about two o'clock.
Q. Was the court then engaged in the trial of the case?
A. I think so.
Q. Did the court remain on the trial of that case during the whole of the afternoon?
A. That I could not say positively.
Q. Did you call the attention of the court during that afternoon to yourself?
A. Well,—

Mr. LOSEY. Answer my question.

(Question repeated.)

A. No, sir.
Q. Did you have any attorney there during the afternoon?
A. I did not.
Q. You say the court was occupied all the afternoon on the trial of the case?
A. I didn't say so?
Q. What was the court doing?
A. I don't know.
Q. Was the court busy?
A. Yes, sir.
Q. Engaged in doing court business?
A. Yes, sir.
Q. Was there a jury in the box during that afternoon engaged in the trial of the case?
A. I think not, I would not say positively.
Q. You cannot answer as to whether there was or not?
A. No. I cannot say positively.
Q. I asked you, I believe, whether you had an attorney in the court that afternoon, what did you answer?
A. I did not.
Q. Then no attorney called the attention of the court to you that afternoon?
A. No, sir.
Q. The court adjourned at what hour?
A. That I could not state positive.
Q. You then went where?
A. I was in the hands of the sheriff.
Q. Where did you go?
A. I went out into the street?
Q. To a hotel?
A. No, sir.

Q. To a friend of yours?
A. No, sir.
Q. Where did you remain over Sunday?
A. With a friend.
Q. In the custody of the sheriff?
A. No, sir.
Q. How did you go to the court?
A. I was taken to the court by the sheriff?
Q. What hour?
A. Well, I should judge a few minutes past nine.
Q. Where did the sheriff find you?
A. In Cameron's office.
Q. At your lawyer's office?
A. Yes, sir. Mr. Cameron has been my lawyer.
Q. Had he previously been your lawyer?
A. Yes, sir.
Q. Had not you at that time employed him?
A. I had not.
Q. Didn't you tell him that you desired him to attend to your case?
A. I don't recollect that I did.
Q. Did you, or did you not?
A. I don't recollect.
Q. What is your best judgment?
A. I think if I had employed him I would have known.
Q. Did he appear in court that day?
A. He did not.
Q. Did he appear in court for you during that week?
A. He did.
Q. Did you see him again before he appeared in court?
A. I did.
Q. At what time?
A. That evening, after I had given bail.
Q. What day of the week did you give bail?
A. That Monday.
Q. At what time of the day?
A. I should think between six and seven, somewhere about that hour; about the dusk of the evening.
Q. You went there and consulted with Mr. Cameron?
A. Yes, sir; I was in his office.
Q. Now state just what occurred between you and the judge of the court on that Monday.
A. I have stated it already.
Q. State it again.
A. I was arraigned before him.
Q. How were you arraigned? Was the indictment read to you?
A. The indictment was being read to me.
Q. Was the indictment read to you during that day?
A. Yes, sir.
Q. Now, while the indictment was being read, you stated that you made certain motions with your head?
A. I did.
Q. How did you use your head?
A. By a motion that way (witness inclines his head forward), I presume.

Q. Was it a more marked nod than usual?
A. I could not say.
Q. What is your best opinion?
A. I could not tell.
Q. Your opinion was that it was noticeable?
A. I presume so.
Q. It seemed to be a nod of assent?
A. Well, somewhat.
Q. Did you judge from the Judge's action, at that time, that he considered that it was a nod of assent to what was being said?
A. I don't know what his thoughts were.
Q. You could not judge from his subsequent acts what his thoughts were?
A. No, sir.
Q. What did he ask you?
A. He asked me what I was nodding my head for?
Q. What did you answer?
A. I told him that I did not know that he had any right to ask such a question.
Q. Why did you nod your head?
A. That is something I cannot tell you why.
C. You cannot answer why you nodded your head?
A. No, sir. I presume it is a habit that I have.
Q. Is it a habit that is universally known among people that you possessed?
A. Well, I have been accused of it very often.
Q. Was it a habit the judge knew of?
A. I don't know as to that.
Q. What answer did you make to the judge's question?
A. I told him that I thought he had no right to ask such a question.
Q. Why didn't you give a direct answer.
A. Well, if he had asked me in a mild voice I should have done so
Q. What was the tone of voice?
A. It was a boisterous tone.
Q. What was it?
A. [Speaking loudly.] "What are you nodding your head for?"
Q. And you made the reply that you have said?
A. Yes, sir.
Q. Now, what did he say again in answer to your reply?
A. Answer me; what you are nodding your head for?
A. I told him that I did not think it was right for him to ask me that question.
Q. Did you consider that you had given him a respectful answer to his question originally?
A. I think I did.
Q. Such an answer as was proper in a court of justice?
A. Yes, sir.
Q. When he asked you the second time?
A. I have answered that.
Q. What further occurred?
A. He asked me again, the third time.
Q. What did he reply?
A. He said he would put me in the hands of the sheriff. I told him I was there already.

Q. What further did he say?
A. That's all.
Q. Did he not say if you were not more respectful in your conduct he would arrest you. Did he not say that?
A. No, sir.
Q. Are you positive?
A. Yes, sir.
Q. Didn't he use an expression similar to that at that time?
A. No, sir, not in my hearing.
Q. Are you positive?
A. Yes, sir.
Q. How many people were in the court at that time?
A. I didn't count them.
Q. Was the court full?
A. I think not.
Q. Well, what was the next thing that occurred?
A. The next thing that occurred, he stated that I should have to give $1,500 bail, and that he would have to get another judge to try the case.
Q. What was the next thing that occurred?
A. I asked him if I might speak to him.
Q. Hadn't you retired to the body of the house? where had you got about this time? when was this?
A. I don't know. Well it was while I remained around.
Q. How far had you got?
A. That I could not say.
Q. You had got some distance, had you?
A. I could not say how far.
Q. Had you got back as far as the place occupied by the audience?
A. No, sir, I had not.
Q. Were you not outside the bar?
A. I was not.
Q. How long an interval had occurred since this last statement had been made to you by the judge?
A. Not as long as you have been asking the question.
Q. Didn't the judge say to you when you made your last statement, and just previous to the time when you desired to speak to him, "I will put you in the hands of the sheriff if you do not answer me civilly?"
A. That was previous to the time when I asked him the privilege of speaking to him.
Q. You asked the privilege of speaking to him? You stated you were in a position away from the bench, and you had turned around to leave the bar?
A. I think I had turned around.
Q. You had pleaded to the indictment?
A. Yes, sir, "Not guilty."
Q. Your bail had been fixed?
A. Yes, I think he mentioned the bail.
Q. The case, the court had told you, would have to be put ovethatr term?
A. Yes, sir, that was the reason why I asked the question.
Q. You had got some distance, and you then asked the privilege of speaking to the Judge? State the manner in which you asked the question.
A. I said, "Please, your honor, may I speak to you?" and his answer was "Not a word, sir."

Q. Had there anything preceded that right there as between you and the Judge? Had any remark been made by you, previous to the Judge's?

A. I think not. I don't remember.

Q. What did you then do?

A. I took my seat in the court room.

Q. What announcement had you made to the court previous to this time as to you being ready for trial?

A. I think I told him then at that time that I wanted my trial. He had stated that he would not allow me to speak. I said I wanted my trial.

Q. Are you positive that you made that statement?

A. I think so,

Q. Had you made any preparation for trial at the time?

A. Not particularly.

Q. Had you subpœnaed witnesses?

A. I had not.

Q. Are you an attorney?

A. No, sir.

Q. Had you employed counsel?

A. I had not.

Q. What preparation then had you made for trial?

A. Well I could not hardly explain what preparation, only I was going to prepare for it; I supposed the court would give me time to prepare.

Q. But you hadn't then made any preparation?

A. Certainly not, because I was just then being arraigned or had been arraigned.

Q. You state you employed Mr. Cameron on that night?

A. That night to make a motion for a demurrer.

Q. He came in the next morning?

A. Yes sir.

Q. Into court?

A. Yes sir.

Q. A motion was then made?

A. He heard the application.

Q. Did he appear as your counsel that day?

A. Yes sir.

Q. Did he appear generally or for a special purpose?

A. For a special purpose.

Q. Did he announce to the court that he appeared specially to the court for you, or anything of that character?

A. I don't recollect.

Q. Do you know whether the court had any knowledge of his acting in any other capacity than for a general attorney?

A. I could not say.

Q. He had appeared as your attorney on the next morning?

A. Yes sir.

Q. To make a motion?

A. Yes.

Q. What was that motion—the records, perhaps, are the best evidence of it?

A. I think it was a motion for a demurrer; that this implicated other persons, and I was advised to do so in my case. That is all I know about it.

Q. If you wanted a trial, why did you want to withdraw your plea of "not guilty" and put in a demurrer?

A. Well, I am not posted in law expressions in reasons why it was, and I was in the hands of a lawyer, and I supposed he knew best at that time.

Q. You had a lawyer?

A. Yes, sir.

Q. And you relied on him?

A. Certainly.

Q. Do you know whether his name was entered in the records of the court as your attorney in that case?

A. I cannot tell anything about it.

Q. Did you ever notify Judge Page at any time that Mr. Cameron had ceased to be your attorney in your case?

A. I did not.

Q. You gave him no notice?

A. I gave him no notice.

Q. At the fall term of 1873—let me see—the spring term of 1874, March term of 1874—who held that term of court?

A. Judge Page.

Q. Did you hear of the court at that time concerning your case?

A. He said he hadn't been able to procure a judge to try it.

Q. Was that term adjourned over to July?

A. I don't know how it was.

Q. Was your case alone on the calendar that term?

A. Yes, sir; it was left on the calendar.

Q. Did you hear the judge state that there were several cases there in which he had acted as attorney, and that it would be necessary in the adjourned term to be held to dispose of these cases?

A. He may have said so, I didn't hear him; I have no recollection.

Q. And did not the judge state in your presence that your case would be continued to that term?

A. Well, I have no recollection if he particularized my case.

Q. Did he particularize cases in that condition?

A. Yes, that he had particularized cases in that condition, mine, I presume, along with the rest.

Q. They were cases he considered he would not be able to preside over?

A. Yes, sir.

Q. Now, sir, was there any adjourned term held in July, 1874?

A. I could not say; I believe the term was in June or July.

Q. Didn't Judge Mitchell preside at that term?

A. Yes, sir, he was there.

Q. Was there a grand jury in attendance for trial there?

A. I saw none.

Q. Do you swear that there were no jury trials at that time?

A. Not to my knowledge.

Q. Do you swear there was no jury in attendance at that time?

A. I could not say as to that.

Q. Now, sir, how came your case to be put over to the July term?

A. That I do not know.

Q. Do you know, as a matter of fact, that it was continued by consent in open court, by your own consent, over that term.

A. No, sir.

Q. Didn't your counsel give consent?
A. Not to my knowledge.
Q. Did not you demand a trial of Judge Mitchell, at that term of court?
A. I did not.
Q. Why then were you in town at that time?
A. I supposed that my case would come up.
Q. Had you subpœnaed witnesses?
A. I had not.
Q. Did you authorize Mr. Cameron to go and appear at the court at that term for you?
A. I have no recollection of it.
Q. Has Mr. Cameron, since that time, tried this case for you—has he acted as your attorney in this case.
A. Yes, he acted as one of my attorneys when the case was tried.
Q. How long did Judge Mitchell remain there?
A. I don't know how long he was there before he came to Austin.
Q. Didn't you, as a matter of fact, consent to a continuance of your case for that term?
A. I did not.
Q. Do you know that it appears on the records of court, in Judge Mitchell's own hand writing, "continued by consent of parties?"
A. It may be, but I have no knowledge of it myself. I had no way of finding it out.
Q. If you were anxious to have your case tried why didn't you demand it, and make preparation for it?
A. I supposed that the judge was brought there for that purpose, and that as a natural consequence my case would be called and tried.
Q. That don't answer the question.
A. I cannot answer it any other way.
Q. Answer the question.
A. I didn't happen to think it was just right.
Q. Were you less bold in Judge Mitchell's than in Judge Page's court?
A. No sir, he was a perfect gentleman.
Q. Did you consider that your trial should be called, and so demanded it?
A. I didn't know that it was necessary for me to do so.
Q. Did you hear your case called by Judge Mitchell?
A. I did not.
Q. How long did you remain in court?
A. I remained in court, I think, until the evening.
Q. Did you make any inquiry as to whether the case had been called?
A. I think the case was disposed of.
Q. Did you make any inquiry as to whether the case had been called?
A, I don't recollect with reference to that. I was informed when I came there that the case was not to be tried.
Q. Who informed you?
A. It was some of the court officers.
Q. Did you go to your attorney to find out?
A. I might have done so.
Q. What did your attorney tell you?
A. I have no knowledge of that or whether he told me anything.

Q. Was you there demanding a trial at that time?
A. I was there demanding as far as my presence to be ready was concerned.
Q. Did you make the same kind of demand then that you always made on Judge Page?
A. I didn't make a demand because it was stated the case was disposed of before I got there.
C. And you cannot tell why?
A. No, sir.
Q. And you did not make particular inquiry?
A. Well, I might have done so, but do not recollect of it.
Q. Did you not then tell the court that no one had power to continue that case for you?
A. I did not.
Q. Did you make any application to the court at all?
A. I did not. It was impossible to know anything about it, at all. I went there and found I could not do anything.
Q. When was the term when the trial of cases by numbers was called?
A. I think it was the spring of 1875.
Q. You pretend to say that the cases at that term were called by numbers.
A. I would not say positive about that.
Q. Who was your attorney there in court at that time?
A. I had no one that I know of.
Q. Was the case called?
A. Well, it was called and I suppose by these numbers.
Q. Did you hear the case called—the case of the State against Mollison?
A. No, sir, that was the time that this course was pursued in calling them off by numbers; previous to that time it was called out "The State of Minnesota vs. Mollison," and then I knew when my case was called and when it was disposed of, but by some manner or other this course was abandoned.
Q. Was the whole calendar of this court called by numbers?
A. I don't know.
Q. Did you during any of those terms make any preparation for the trial of your case?
A. No more than I did when it was tried.
Q. Do you remember of Judge Dickinson being present holding a term of court?
A. He was there but I did not see him.
Q. Did you go to court during that time?
A. I did not.
Q. Did you know of an understanding that he was to call a jury in case any jury cases were ready for trial?
A. I don't know. There was no jury called.
Q. There was no jury called in any case?
A. I don't know, I was not there; I went home.
Q. When did Judge Dickinson hold that term there?
A. I could not state the precise time. I have gone there so often that I have got mixed up.
Q. Did you ever make any motions or have any made for you, to dismiss this case?
A. I asked the county attorney.

Q. Did you ever make any motions to dismiss this case, or any attorney for you?
A. No sir, none by the county attorney.
Q. Did you ever apply to any attorney to make a motion to dismiss it?
A. I have asked several of them, they told me it should never be done through the county attorney.
Q. Did your counsel advise you that?
A. No sir, he did not.
Q. Did you consult any lawyer in relation to that whom you had employed?
A. No sir.
Q. You simply got a street opinion on the subject?
A. I thought it could be dismissed.
Q. But you did not apply to your own lawyer?
A. I don't know; I would not say as to that positively.
Q. Do you know whether Judge Page was ever asked to dismiss it for want of prosecution?
A. I don't know only by hearsay, and that is not allowed.
Q. At whose request did your bail surrender you?
A. At my own request.
Q. You stated Mr. Jones drew the bail piece to surrender you on?
A. Yes sir.
Q. And you obtained their signatures to it?
A. Yes sir.
Q. And you followed the sheriff into court?
A. Yes sir.
Q. And you saw him deliver some paper to the judge?
A. I did sir.
Q. Did you hear anything further of that?
A. I did not, only hearsay.
Q. When was this?
A. Well it must have been last fall.
Q. Was he your attorney only, when you appeared in court at that time?
A. He was not.
Q. You had no attorney then?
A. No sir.
Q. Did you make any personal application to Judge Page in relation to the matter?
A. I did not.
Q. Did you call his attention to it at all?
A. I did not, sir.
Q. By writing or by word?
A. I did not. I did not know it was my duty to do so.
Q. No matter about your duty. You did not call his attention as a matter of fact?
A. No sir.

Mr. LOSEY. That is all.

Re-direct examination by Manager MEAD.

Q. State whether or not, Mr. Mollison, at the time you nodded your head, you meant any disrespect in any way to Judge Page?

Mr. LOSEY. That we object to. As to what the witness's intentions were at the time I don't see is material. A man may be ever so impudent, and may not intend to be impudent.

The PRESIDENT. I don't see that it is material.

Manager MEAD. State whether or not in any way you were disrespectful to Judge Page—at the time you were arraigned.

Mr. LOSEY. We object. The facts are the criterion as to what he did and said.

Manager MEAD. I think it comes under that rule.

The PRESIDENT. It is for the court to determine whether his action was disrespectful or not. We will determine whether anything he did or said was in any way disrespectful. If any Senator desires it to be submitted, however, I will submit it to the court, but that will be my ruling. [No response from Senators.]

Manager MEAD. State what was the manner of Judge Page; whether or not he was angry at the time he fixed your bail at $1,500.

Mr. LOSEY. That we object to. It is a conclusion, merely.

Manager MEAD. We insist upon that question.

The PRESIDENT. I think the question is competent.

The Witness (answering) I should judge he was angry.

Q. In answering the counsel you stated that you didn't know the exact time the court adjourned, Saturday, the day you were arrested. Now, state as near as you can when the court adjourned, Saturday, the day you were arrested.

A. Well, I should think it was before sundown somewhat, probably four or five o'clock; I could not say positive. I think I was in the court room an hour and a half, or two hours.

Q. State whether or not Judge Page knew you personally, before you were arraigned?

A. I think we had a personal acquaintance.

Q. At that adjourned term, July 1874, did Judge Mitchell say anything about your case in your hearing?

A. I never heard a word.

Q. Did you see any jury there in attendance upon the court?

A. I did not see any.

Q. State what occurred between you in regard to the dismissal of your case.

Mr. LOSEY. That we object to.

The PRESIDENT. The chair is of the opinion that that question is not a competent one.

Manager MEAD (to witness):

Q. How long an acquaintance had you had with Judge Page before you were arrested and arraigned in his court?

A. I think I got acquainted with him when he first came there.

Q. The court wants to know the number of years.

A. That I could not state positive.

Q. As near as you can.

A. I should think some four or five years: I don't know positive as regards to that. I got acquainted with him the first week or second week he came to Austin. I was then living in Austin.

Q. You were answering the counsel that Mr. Cameron was your attorney during the final trial. Will you state when that final trial took place?

A. In this March term.

Q. Since the commencement of these proceedings?

A. Yes, sir.

Q. Was it before the respondent, or some other judge?

A. Judge Brill. I think that is the name, if I am not mistaken.

Re-cross examination by Mr. LOSEY:

One word as to that trial. Were you in court when the case was called, the spring term of 1878?

A. No, sir, I was not.

Q. Were you then ready for trial when the case was first called?

A. Well, I got ready in a day and a half.

Q. Had you employed Mr. Cameron?

A. I hadn't employed him, I didn't know I was going to be tried.

Q. Do you know that he appeared for you in court, and announced that you were not ready for trial?

A. I had instructed Mr. Cameron to do so.

Q. Is it not a fact that he did at that time announce to Judge Brill that you were not ready?

A. I don't know in regard to that, I have no knowledge of it.

Q. Were you so informed by your attorney about that time?

A. I was not.

Q. Had you subpœnaed any witnesses previous to the time when Judge Brill went there?

A. No sir, not a witness—knew nothing of it until I went to Austin.

Q. You did not know what occurred the first time between Judge Brill and your attorney?

A. I do not.

Q. Have you ever been sheriff of Mower county?

A. No sir.

Q. You never have?

A. No sir.

Q. Have you been somewhat excited over these proceedings against Judge Page?

A. I have not got excited, I have got so used to it.

Q. You have had a hostile feeling towards Judge Page latterly?

A. No sir, not towards Judge Page.

Q. Did you make any speech in the cars when coming up here last week in regard to this impeachment question?

A. I presume I did.

Q. You cursed Judge Page extensively.

A. No, sir, I never curse.

Q. Still you denounced him considerably.

A. I presume I denounced his actions.

Q. You felt hostile?

A. I didn't feel hostile, personally.

Q. You have felt hostile towards Judge Page, personally.

A. No sir, not personally.

Q. You make a distinction between the man, and the man's actions

A. Yes sir, I do.

Q. And you are hostile to his actions, but not hostile to him?

A. No sir, I am not hostile to him.

Q. I suppose you would desire his conviction, would you not?
A. It is not for me to say. If he is guilty he ought to be convicted, and if he is innocent he ought not to be.
Q. You don't know whether you desire it or not.
A. Well, if it is right, certainly he ought to be.
Q. You have had a considerable talk, since you arrived in St. Paul, with M. J. Thompson and Mr. Phillips in relation to the seat of Senator Clough, and you thought that there would be war if they didn't seat him?
A. No, sir, I didn't say that, I am not a war man, and I don't believe in that at all.
Q. You don't believe in fighting.
A. I do it with my tongue, and not with any weapons.
Q. Did you state here in St. Paul, to Mr. Thompson and Mr. Phillips that if Senator Clough was allowed to sit in this Senate there would be war?
A. I have no recollection of it.
Q. Do you swear that you did not make the statement?
A. I have no knowledge of making such a statement.
Q. Do you swear that you did not say so?
A. I would not because I do not recollect. That is not the kind of fighting I believe in, at all.
Q. You have never lived in Austin, have you?
A. Yes, sir.
Q. It was several years ago?
A. Yes sir.
Q. Not latterly?
A. Not for several years.

C. H. DAVIDSON sworn and examined on behalf of the prosecution, testified.

Q. Where do you reside, Mr. Davidson?
A. At Austin.
Q. How long have you resided in that city?
A. Since the spring of '57.
Q. What is your business?
A. I am a publisher.
Q. Do you know the respondent, and how long have you known Judge Page?
A. About twelve years; ever since he came to Austin.
Q. Do you know the last witness, Mr. Mollison?
A. I do.
Q. Were you acquainted with him in 1873, and ever since?
A. Yes, sir.
Q. Do you remember the fact of his being indicted by the District Court of Mower county, in 1873?
A. Yes, sir.
Q. State if you know what he was indicted for.

Mr. LOSEY. I suppose the record will show that.

Manager MEAD. Of course we can put it in.

Mr. LOSEY. Well, I don't object. It was for libel.

The witness. A. It was for libel.
Q. Do you know in what paper?
A. Yes. sir, the Austin Register.

Q. The paper you publish?
A. Yes, sir.
Q. State whether or not a letter, in the fall of 1873, signed by Mr. Mollison, was published in your paper.
A. It was.

Mr. LOSEY. That we object to. It is immaterial matter. It is admitted that he was indicted, and the plea made is that after he was indicted the court conducted itself improperly in the conduct of the case towards him. What preceded the indictment is, I suppose, immaterial.

Manager MEAD. That is not our view. I will inform the court and counsel our purpose in this connection. One of the most serious charges that we expect to develop by the proof is that this bail was unusual and unprecedented with regard to crimes in Mower county. We shall show the conversations, the threats and statements of Judge Page before the grand jury found this indictment, showing a personal resentment towards Mr. Mollison, which, in our view, bears upon the question of malice and intent of the respondent in fixing that bail so high. That is the course of inquiry that we are now endeavoring to pursue, and therefore it will be necessary to identify the article supposed to be libellous and prove the conversations and communications between the witness and Judge Page with reference to the foundation of the indictment wherein this personal resentment is shown. This very fact will determine what Judge Page's motive was when he fixed that bail higher than was usual—that he imposed an unwarranted and unnecessary amount of bail.

Mr. LOSEY. It is not charged here that the bail was excessive, nor that the bail taken of Mollison was in any manner irregular, nor was there any complaint made in this article, that Judge Page was malicious in his action in relation to Mollison; the charge is:

"At the term of the court aforesaid, and after the said Mollison had made and entered his plea aforesaid, and while the said Sherman Page was presiding over said court as judge, he, the said Mollison, duly informed the said court, while the same was in open session, that he was ready to proceed with the trial of his said case at that term of court; but he, the said Sherman Page, as such judge, wrongfully and maliciously, and with the intent thereby to oppress and injure him, the said D. S. B. Mollison, and solely upon the motion of himself, the said Page, as such Judge, and without being moved or requested thereto by the county attorney of said county, or by the said Mollison, refused to permit the said cause to be tried at the said term of court, and continued the trial of the same until the next general term thereof, and required him, the said Mollison, to enter into recognizance, in the sum of fifteen hundred dollars, with sufficient sureties, to appear at the next general term of the said court and answer the said indictment, and abide the order of the court therein, or, in default of such recognizance, to be committed to jail to await the action of the court in respect to said cause.

"Afterwards, and at the same term of court, the said Mollison did in obedience to the said requirements of the said Sherman Page as such judge, enter into recognizance in said court in the sum of fifteen hundred dollars, with two sureties, to appear at the next following general term of said court, and answer the charges set forth in the said indictment, and abide the order of the court therein."

There is certainly no complaint that the bail was excessive.

Mr. CLOUGH. If the Senate will indulge me but a moment: the charge in this article is that all the conduct of Judge Page in respect to the acts therein mentioned were oppressive and that he was actuated by malice. It will be found in the allegations towards the close of the charge as printed on page six of the printed articles. But if the charge of malice had been confined merely to the refusal of Judge Page to give the defendant in that case a speedy trial, still the evidence as offered here would be material. Now, I apprehend the great question that will arise here, or one of the great questions that will come up, will be the motive that actuated Judge Page in his conduct. Now, Judge Page undertakes to say what his motives were and what his conduct was; and so he says on page 45 with reference to this case, "that respondent had no knowledge or information of said indictment until the same was read in open court by the county attorney of said county, nor did the respondent incite, or procure said indictment, or instigate the same in any manner."

Now he is here to appear before this Senate in the *role* of a man who had never heard of this case; who had never heard of this prosecution, and had no connection with it whatever; as a man who first knew that a prosecution of that kind was set on foot, when Mollison was brought into court and arraigned upon this indictment. Now, we propose by this witness to refute that pretense of Judge Page, and to show that from the very outset he did instigate that indictment, and that when Mollison was arraigned there it was in furtherance of a design that had been set on foot by Judge Page, and was carried out by his instigation. We want to get at what was the motive of Judge Page. Of course we must show that his motives were malicious in respect to these matters, in order to make out an impeachable offense. How are we to determine this? Here is a case where an alleged libel was committed against Judge Page. We desire to show malice. Now the fact that the alleged offense was against Judge Page makes one step in the proof of what his motives were—that he was angry, malicious and vindictive toward Mollison.

Now, we go still further, and we say that this was not a prosecution set on foot merely by the public prosecutor in the discharge of his official duty, but we shall show and we think we will convince the Senate when the testimony is in, that Judge Page himself was a prosecutor, and that he was not as he aays, first made aware of the case when it came up in court

Gov. DAVIS. Mr. President. In answer to the last portion of of the counsel's argument, it seems to me to be enough to say in regard to the order of proof, that this article contains no charge whatever that Judge Page instigated or promoted the finding of that indictment. If it had been intended to prosecute him for maliciously tampering with the functions of a grand jury, in procuring them to find an indictment which they ought not to find, then that fact ought to be averred, and in the very nature of the logic of proof counsel cannot anticipate our defense or anticipate their rebuttal of it by showing the fact that Judge Page knew about that indictment, or anticipated it, or connived at it in any way.

This charge is simply this—and I appeal to any man of sense, who desires to instruct himself, by the use of his eyes—that the respondent

with improper motives, kept this man "hung on the tenter hooks of delay," and refused to give him a trial from term to term. That is the charge. It is that which we have been notified we are to be tried for, and I ask any Senator, in the light of fair construction, to read this article carefully and see if that was not what was meant. If it had been intended to charge Judge Page with a violation of that constitutional provision which ordains that excessive bail shall not be required, why did they not say so? It is proposed to prove against Judge Page an act not charged in this article, namely: that fifteen hundred dollars was excessive bail. The gentleman who drew these articles is a most astute lawyer, he has just spoken ably in support of this proposition, and if he had ever meant to have brought the respondent to trial upon the ground that $1,500 was excessive bail in this case, he could have said so. The gravamen of this article is at the conclusion of the second paragraph on page four.

"Refused to permit the said cause to be tried at the said term of court, and continued the trial of the same until the next general term thereof, and required him, the said Mollison, to enter into a recognizance in the sum of fifteen hundred dollars, with sufficient sureties, to appear at the next general term of the said court, and answer the said indictment, and abide the order of the court therein, or, in default of such recognizance, to be committed to jail to await the action of the court in respect to such cause."

Now, if the House of Representatives had conceived that any offence had been committed against public justice in regard to the amount of that bail, they would have so alleged. They would have said that he abused his official discretion in that respect. They have not said it. Then the article proceeds on page five to allege the various sessions of that court since September, 1873. They go on to allege that Judge Page refused to permit this case to be tried, and, as the result that the action, "in so refusing to permit the said cause to be tried, and so continuing the trial thereof from term to term, was done under the pretence on the part of him, the said Page, that he was unwilling to preside over the said court during the trial of the said cause, and that he desired and intended to procure some one of the other judges of the district court of this State to preside in the said court during the trial of said cause.

"But he, the said Sherman Page, as such judge, wrongfully and maliciously, and with the intent thereby to injure and oppress him, the said Mollison, has neglected to procure, and has not procured any of the district judges of the district court of this State to preside over any term of the district court holden in the said county of Mower, since the presentation of the said indictment, at which a jury for the trial of causes has been in attendance."

"That he continued the case, and that he has not procured the attendance of a single other judge!" How this article "thunders in the index!" How is it to be decided upon the testimony of the last witness? Here is an article protesting that Judge Page never procured the attendance of another judge. I am surprised that the counsel have not retired from that specification instead of pressing it, for it has been refuted *in this very trial*, by the testimony of Mr. Mollison, given not ten minutes ago, that Judge Mitchell was there for trial, and now they propose to shift the ground, and challenge him with fixing most exorbitant bail in this case—a charge upon which he was acquitted by the report of the committee of the House of Representatives, who pre-

pared these articles. This will readily be discovered if the Senators will take the pains to refer to it.

We objected strenuously to article ten the other day and we professed then and we profess *now* to be ready to meet all these charges as they come up, and we defy them, for under the consuming light of their own testimony, this charge has broken down, for they charge that no other judge was procured when a judge appears to have been in attendance for that very purpose.

We take objection to putting the respondent on trial for fixing an excessive bail.

The court sustained the objection of the respondent. Examination of Mr. Davidson continued.

By Mr. Mead—

Q. State whether or not, Mr. Davidson, in the fall of 1873 you had any interview with Judge Page.

A. I did, sir.

Q. With respect to matters and things charged in the Mollison libel.

A. Yes, sir.

Q. Where was that conversation?

A. In my office.

Mr. LOSEY. (To the managers) Was this before or subsequent to the finding of the indictment mentioned?

Mr. Manager MEAD. It was before the indictment.

Mr. LOSEY. We object to it. It is already ruled out of order.

Mr. Manager MEAD. To the witness:

Q. State, if you remember the question; you may give your answer, Mr Davidson.

Governor DAVIS. I wish——

Mr. Manager MEAD. We desire to be heard on this matter.

Gov. DAVIS. I will suggest as matter of order that we get some specific question. The question just put is merely preliminary; so if my learned friend will make his question more obnoxious we will object to it.

Mr. Manager MEAD. (To the witness) When was that?

A. It was before the indictment.

Q. How long before?

A. I should say a couple of weeks.

Q. State what the communication then and there was between you?

Gov. DAVIS. That we object to as being the question just ruled upon.

Mr. Manager MEAD. I suppose that the rule adopted is that the counsel shall state his grounds when he makes an objection, and the opposite side should reply to it. The counsel perhaps relies upon so much of his former argument as to apply to the question now at issue.

Gov. DAVIS. I rise to a point of order. If this same question is to be ruled upon again we will be drawn into an everlasting argument.

The PRESIDENT. The chair did not understand that it was the same question.

Mr. Manager MEAD. I will answer this objection. Now, the object of that question is, and others similar, are to show the feeling of judge Page just prior to this indictment, towards Mr. Mollison; to show by his statements and by his threats, what his purposes

and motives were in the prosecution and delay of trial involved in the statements of the charges that were preferred. I hardly think that counsel can cite a single case where an officer has been charged with oppressive conduct upon the question of motive, the relation of the respondent to the person that was injured might not be shown.

In the Peck case the relation of Judge Peck to Mr. Lawless, for years prior to his imprisonment for contempt, was allowed in the United States Senate, and this court can see readily the force of this rule.

If Judge Page threatened Mr. Mollison does not this court want to know it, that you may from that information find out the motives, feelings, objects and purposes of Judge Page in delaying the trial. It was for that purpose a moment ago, that it was decided to put in testimony with regard to the amount of this bail, and not to make a charge as the counsel seem to understand as a specific charge, but to determine the quality of Judge Page's action with reference to the jury, with reference to the gravamen of the charge set forth, and how is this court to get at motives except in that way?

In an ordinary criminal prosecution in the courts that are bound down by stricter rules than this court, you can always show the efforts of the accused against persons who have been indicted, what their actions were as to the subject of the indictment. And will this court prevent the House of Representatives at the bar of this court from showing that these men who have suffered, and only suffered in obedience to the threats and the determination expressed in words on the part of the respondent, that they should suffer? It is a question of motive. It is not a question of a new charge. It is to show the relation and the purpose, and the feeling of malice and personal resentment of Judge Page towards—in this case—Mr. Mollison. And it can only be done by this court having in testimony all the circumstances, all the facts and statements of Judge Page, with reference to matters and things alleged in charge one. Now that is all the object and purpose of this testimony. It is not a distinct independent charge, but it is simply a matter of testimony, so that this court can judge of the motives of the respondent.

GOV. DAVIS. I thought that before the counsel got through with his offer he would re-occupy the ground from which the Senate just ejected him. Now let us recur to the article and act which you are sworn to try. It is simply that certain proceedings were instituted down to the time when Judge Page began to wrongfuly continue these cases. There is not a word in these articles that that indictment was not justly found—and that Mollison did not deserve it. If Senators will take the articles and read pages three and four they will see that not an exception or objection is taken to either judge or jury; that the indictment was not deservedly found in the interests of public justice. Taking then that indictment thus found and thus pending, the complaint is that when it was brought before the court it was continued from time to time and that the judge presiding never procured another judge to try the case.

Now the offer made by my learned friend goes much further than that; under the guise and pretense of supporting that which really is charged here, this Senate is asked to go back and try Judge Page for maliciously fomenting and permitting the indictment and these proceedings, from their beginning, by threats, as I understand, made to the gentleman on the stand. The object is, gentlemen, to try Judge Page for

that which is not charged. The pretext is to give evidence and acts *not* charged in justification of that which *is* charged.

Mr. CLOUGH. I wish to deny that.

Governor DAVIS. I supposed you would. I suppose that my learned friend would protest under that accusation.

Mr. CLOUGH. Just wait a moment.

Governor DAVIS. The gentleman can reply hereafter. I expected they would disavow these facts. I am not surprised in reading this article, which charges that the respondent never procured any other judge to sit, and after listening to testimony of Mollison, as that person gave it, that counsel would disavow their facts, and that they would disavow this article. They now propose to put us on trial for something which took place between Judge Page and Mr. Davidson, with regard to the words spoken, concerning an indictment which, so far as the article was concerned, was properly found, and justly found.

Mr. CLOUGH. I wish to correct a misapprehension into which the learned gentleman has evidently fallen—because I know he would not willingly make a misstatement. In the first place it is a mistake that judge Mitchell attended the district court of Mower county for the purpose of trying Mr. Mollison. There was no jury in attendance there at the term that judge Mitchell attended; that will, hereafter appear, and we will, before the evidence is closed, prove that no judge ever was in attendance upon the term of court at which Mr. Mollison could be tried, just as we have charged, and Mollison has not said anything to the contrary. In fact we asked him whether there was a jury in attendance, and he stated that there was not. I make that correction at this time.

Now, in respect to the particular question which is before the Senate. We alleged, as we were compelled to do, that the conduct of Judge Page in holding, as Gov. Davis has expressed it—this man, by the "tenter-hooks," from term to term, was done maliciously. How are we to prove that it was done maliciously? Whenever it is alleged in any plea, either civil or criminal, that an act is done by one person against another, with malicious motives, there is a right to inquire into the state of feeling of the party. We have a right to prove whether the act was done maliciously, and what the person's motives were. We say the conduct of Judge Page—all of which has not yet appeared—was malicious, and we have called this witness purely for the purpose of showing malice and a prejudiced state of feeling against Mollison.

In the course of the impeachment of Mr. Johnson, the learned managers have just called my attention to an argument on the part of manager Bingham and it is one which is enforced in every criminal court and in almost every civil court every day. Mr. Bingham said:

Mr. PRESIDENT. We consider the law to be well settled and accepted everwhere in this country, and England to-day, that where an intent is the subject matter of inquiry in a criminal prosecution, other and independant acts on the part of the accused looking to the same result, are admissable in evidence for the purpose of establishing that fact; and we go further than that, we undertake to say upon even high and commanding authority, not to be challenged here or elsewhere, that it is settled that such other and independant acts showing the purpose to bring about the same general results, although at the time of the inquiry, the subject matter of a separate indictment are nevertheless admissable.

It is not necessary to read or cite further authorities upon that point, because it is well understood. It is not necessary to set out evidence because every lawyer knows that to plead evidence is one of the worst qualities of a bad pleading.

It is enough for us to say that this act was done maliciously, and when we have said it was done maliciously, we have the right under all rules, as enforced in all courts, to bring forward all the evidence which shows malice, and that is all we desire to prove upon that point, and the question that we put here is directed to that end and nothing more.

GOV. DAVIS: A question has arisen between the learned counsel and myself, and my respect for his word constrains me to say that we are differently advised, and if it is deemed material for the purposes of this discussion, that the Senate should inform themselves of the fact, I will say that I am instructed that the records of the court now here under *subpœna duces tecum*, shows that a jury was called during Judge Mitchell's term.

Senator NELSON. I move that we retire.

Senator DORAN. Before we retire, I submit whether this argument is not all premature.

Senator NELSON. I move we retire to consider this as well as the other question.

On motion, the Senate went into secret session.

Mr. Nelson offered the following—

Ordered that the Senate will hear evidence as to the motives of Judge Page, in reference to the matters involved in the Mollison indictment, and as to his feelings towards Mollison. And that such evidence may cover time as well before as after the finding of the indictment.

Mr. Edgerton moved to insert after the words "Mollison indictment" the words "as charged in article one."

The question being taken upon the amendment, and

The roll being called, there were yeas 15, and nays 17, as follows:

Those who voted in the affirmative were—

Messrs. Bailey, Clement, Edgerton, Gilfillan C. D., Gilfillan John B., McClure, McHench, McNelly, Morehouse, Morrison, Pillsbury, Remore, Rice, Waite, Wheat.

Those who voted in the negative were—

Messrs. Ahrens, Armstrong, Bonniwell, Clough, Deuel, Doran, Edwards, Finseth, Goodrich, Hall, Hersey, Lienau, Macdonald, Nelson, Shaleen, Smith, Swanstrom.

The question recurring upon the adoption of the resolution, and

The roll being called, there were yeas 21, and nays 11, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Doran, Edwards, Finseth, Goodrich, Hall, Hersey, Lienau, McHench, Morrison, Nelson, Shaleen, Smith, Swanstrom.

Those who voted in the negative were—

Messrs. Edgerton, Gilfillan C. D., Gilfillan John B., McClure, Morehouse, Pillsbury, Remore, Rice, Swanstrom, Waite, Wheat.

So the resolution was adopted.

Upon resuming business in open session,
The order of the Senate was announced.
C. H. Davidson was called on the part of prosecution.

Mr. MEAD. You say prior to this indictment against Mr. Mollison you had an interview with Judge Page?
A. I did. Yes, sir.
Q. About how long before the commencement of the term of court which found that indictment, was it?
A. I think about two weeks.
Q. Where was that interview?
A. In my office.
Q. State whether that interview was concerning the letter written by Mr. Mollison which was the foundation of the indictment for libel?
A. It was.
Q. State whether or not Judge Page made any reference to that in his conversation?

Mr. LOSEY. I object on the ground that the question is leading.

Mr. PRESIDENT. The objection is well taken, I think.

Mr. Manager MEAD. It is not a leading question, however I will change it.

Q. What did he say concerning that letter?
A. He wished to know if we were aware that the portions of the letter—he pointed out portions of the letter; wished to know if we were aware they were libellous. I told him I was not; and he went on to say that we must make a retraction or he would make us suffer.
Q. State whether anything was said by you or him with reference to its being written by a third party?

Mr. LOSEY. I object, your honor, to the question on the ground that it is leading. I presume the counsel is familiar with the rule that he is required to ask for the conversation and the witness is intelligent enough to answer without being led.

The WITNESS. I told him that we did not consider ourselves responsible, as the letter was written by a correspondent; and his name was signed to it in full, and we had said nothing editorially.
Q. State whether it was a fact that Mr. Mollison's name was signed to this letter published in your paper.
A. His name was signed to it; printed to it.
Q. What reply did Judge Page make to that statement of yours to him.
A. He said that it made no difference; we were equally liable.
Q. What further was said in respect to the retraction or otherwise?
A. Well I asked him for some explanations in regard to this decision in this railroad case, and he gave me some. That was about the substance of our conversation.
Q. State whether or not anything was said with reference to a prosecution?

Mr. DAVIS. Now if the court please, I do object.

The PRESIDENT. Ask him what was said.

Mr. Manager MEAD. Q. What was said in reference to a prosecution?
A. He said that he would make us suffer; he would "go for us," or words to that effect; I can't remember the exact language, but he threatened us.

Q. State whether or not you published the retraction, or what you did do as the result of that interview.

A. We published an explanation the following week.

Q. State whether that was prior to or not, to the finding of this indictment.

A. It was.

Q. State whether, subsequent to that publication and before the indictment was found, you had any communication or other interview with Judge Page.

A. I received a communication from Judge Page.

Q. What was it?

Mr. DAVIS. Wait; was it written or verbal?

A. A written communication.

Mr. DAVIS. I don't suppose you will insist upon that question, will you?

Mr. Manager MEAD. A part of it; I will say to counsel that the original is not here.

Mr. DAVIS. Well, lay your foundations for it.

Q. State the circumstances when or where and what kind of a communication you received from Judge Page?

Mr. DAVIS. We object as not the best evidence, it was in writing; there is no foundation laid for secondary proof of it.

Mr. Manager MEAD. We wish to inform the court that Judge Page sent a letter by a man and directed the man to bring it back.

Mr. DAVIS. We admit that, if that is all you want.

Mr. Manager MEAD. Now we propose to show the contents of that letter.

Mr. DAVIS. That we object to.

Mr. Manager MEAD. We simply obey the rule that is observed in all our courts; we give the notice to produce it.

Mr. DAVIS. May it please the court, the rule is elementary that the best evidence and that for old evidence cannot be given of the contents of a writing unless ground is laid therefor, its absence satisfactorily explained—its legal absence explained. Now my learned friend says he has given us notice to produce a letter written to his witness;—a letter not in our custody, which has passed from us, which we cannot control; that is no notice.

Mr. Manager MEAD. It is returned to you, Gov. Davis. I understand you admitted that.

Mr. DAVIS. I did not understand that.

Mr. MEAD. That is the way.

Mr. DAVIS. I know nothing about that. We ask that foundation may be laid for the proof.

Mr. Mannager MEAD. That is what we propose to do; I ask when and where, and the kind of communication you received; what was done with it?

The PRESIDENT. That is right.

A. It was a day or two after the publication of the explanation in our paper. Mr. Meigs, postmaster at Austin, brought us a letter from

Judge Page. After reading it he said his instructions were to return it to Judge Page, and he insisted upon having it, and took it away with him. Enclosed in the letter was a retraction which Judge Page wished us to publish.

Mr. DAVIS. Never mind, Mr. Davidson ; just wait a moment. (After consultation.) What was you about to say? Go on for a moment.

The witness. Enclosed in the letter was a retraction written by Judge Page, which he desired us to publish ; and in the letter he stated—

Mr. LOSEY. We object.

Mr. Manager MEAD. Now we ask to prove the contents of that letter.

Q. You may state if you returned that letter or did Mr. Meigs take it back?

A. Yes sir, we returned it to him.

Mr. LOSEY. What may have occurred between Judge Page and this witness in relation to a libel he may have published had no connection with Mr. Mollison or a letter written by him ; had no connection with Mr. Mollison, for there is nothing here as yet shown in the evidence, nor is there any proof tending to show that Mr. Mollison's name was mentioned with this letter at all. It seems to me improper. Now what appears so far is that Judge Page was seeking to make these publishers retract a libel that they had published—retract so far as they were concerned. It was a proper thing on his part, if they saw fit to make a retraction. But how Mr. Mollison is connected with that paper there is no explanation, and nothing to show that he is connected with it in any manner.

The PRESIDENT. I would like counsel to state what his object is in introducing this testimony?

Mr. Manager MEAD. I am seeking to show Judge Page's relation to this libel, and how it came before this grand jury, and his statements in the nature of threats. Of course we must necessarily show that his statements and threats involved Mr. Davidson and Mr. Bassford, because they were connected with this identical libel. Although we shall claim nothing as evidence in this case, simply because there were three persons connected with the libel case in this case, a threat against one happens to be a threat against three is no reason why we should shut out the threats as against Mr. Mollison, or the relation of Judge Page to this libel.

The PRESIDENT. Does the counsel intend to show by the letters any malice on the part of Judge Page?

Mr. Manager MEAD. That is my view of a prosecution of the matter subsequently, in a few days before the grand jury. A declination on the part of these publishers to publish what Judge Page sent there and a refusal to publish it, was in a few days followed by these three indictments, one of which is before this Court, namely, the Mollison matter. It is a matter running along in order of time and history. These publishers only are connected with it as necessarily establishing the history of Judge Page to Mr Mollison.

The PRESIDENT. The witness may answer the gentleman in that view.

Q. What were the contents of that letter, returned to Judge Page, as near as you can get it?

A. The contents were substantially these: that the retraction that we had published was not a retraction, and that it was an insult to him, and he proposed that we should publish one which he had sent us, which alone would be satisfactory, and by publishing it at the head of our columns it would be all right; if not, he should prosecute us. And he signed the letter "Yours in earnest, Sherman Page."

Mr. LOSEY. We move to strike that out, your honor; it don't pertain to this case.

The PRESIDENT. I will submit the question to the court.

Mr. LOSEY. It was stated by counsel that they should connect Mr. Mollison directly with it, as I understood it. Now a question arose on the strength of a communication had between the respondent and this man who sits here, in relation to a retraction of the libel made by himself and his part of it. I don't see how Mr. Mollison can be tied up or the respondent tied up by proof of that kind.

The PRESIDENT. I will submit the question to the court.

Senator NELSON. I don't know whether I am clear about the contents of that letter. The witness stated: "That he would prosecute us;" whether he meant by that himself or somebody else; I don't know.

The PRESIDENT. I suppose he refers to the firm.

The witness. I suppose so.

Mr. DAVIS. The firm of Davidson & Bassford.

A. The letter so stated.

[The court refused to allow the question.]

Q. State whether you published that retraction.

A. I did.

Mr. DAVIS. We object, as it is wholly immaterial what Davidson & Bassford did with the retraction of Mr. Mollison.

The PRESIDENT. The objection is sustained.

Q. State whether or not you had any other interview with or communication from Judge Page.

A. None other.

Q. State whether you was present during any term of Mower county court between 1873 and 1877, when the case of the State against Mollison was referred to.

A. I can remember of being present at two different terms.

Q. Can you state what terms of court these were?

A. I cannot; it is so long ago I cannot recollect.

Q. What judge presided at those terms.

A. Judge Page.

Q. Do I understand you to say the case of the State against Mollison was called?

A. Yes sir.

Q. What disposition of it was made?

A. At one time it was put over; at both times they were put over.

Q. Mr. Mollison present?

A. Mr. Mollison was present at one time that I remember; he might have been present at both times, but I don't remember.

Q. State what he did in respect to the case.
A. At one time when the case was called, he replied that he was ready for trial.
Q. What answer did the presiding judge give?
A. None at all.
Q. No answer whatever?
A. No answer whatever.
Q. Well at the next time the case was called what took place?
A. The judge simply said "cases No. 1, 2 and 3, are put over."
Q. Do you know what cases No. 1, 2 and 3 were?
A. Yes sir.
Q. What case was No. 1?
A. D. S. B. Mollison, and the 2 and 3 were Davison and Bassford.
Q. Did he make any statement then with respect to his desire or expectation to get another judge?
A. None at those times; at neither of those times.

Mr. Manager MEAD. We offer now the article written by Mr. Mollison

Mr. DAVIS. Let us see. [The witness exhibited his paper file containing the alleged libel to the counsel for the respondent.]

Mr. DAVIS. We object to the competency of this article under the article of impeachment. It is not denied Mr. President by any averment in the article that Mr. Mollison had been guilty of libel, he was indicted for libel and the offense charged against the respondent is that he did not and would not give him his trial. Now I am aware that my learned friend will say that this article ought to come in under the rule which the Senate has adopted, that it is entitled to in order to judge of Judge Page's feelings by his acts; but the idea that this article should go in for that object opens up a large field of discussion. For instance, I see that this article charges various acts upon the Judge of the Tenth Judicial District with malfeasance in office. We will take it for granted it is libelous to say the least. Now if this article is put in here to go into everything for the purpose of showing Judge Page's feelings we are entitled to go into every question of fact raised by the article, and there is no limit to this discussion. It seems to me that the Senate has gone far enough to ascertain the state of feelings of the parties directly concerned in the controversy. If you are entitled to consider the article itself, you are entitled to consider the causes which preceded it; you are entitled to consider the facts which are alleged in it, and we are of course entitled to rebut as to that, and there is no end to it.

The PRESIDENT. The question will be submitted to the court.

Senator HALL. I would like to inquire what the object of the counsel is in introducing it as evidence.

Mr. Manager MEAD. Our view is that we would like to have the court see the whole evidence bearing on this libel of Mr. Mollison. I shall not attempt to state what is contained in that newspaper article. Opposing counsel has given his views, if I should attempt to give ours we should differ. I prefer the Senate to see it itself.

The PRESIDENT announced the vote as follows:
Yeas, 15—Nays, 9.

So the article was received.

Mr. DAVIS. Well, let's have it read.

The Secretary then read the article which was as follows:

"MR. MOLLISON PROPOUNDS A FEW QUESTIONS TO THE TWO JUDGES.

Written for the Austin Register.

The maniac quill driver of the TRANSCRIPT, in his article entitled "Political," of the 14th instant, shows how he would like to cover up the rottenness of his party. He says: 'There will be a larger Republican vote in Mower county at the coming election than there has ever been at any previous one. Several causes conspire to produce such a result; the bold and systematic corruption of certain party leaders. What party is it you denounce in different parts of the State?'

"Pray, Mr Transcript, what party is it you denounce so severely? It can't be the Democratic party, because they do not hold any office in this county or state, and it certainly cannot be the new party that came into existence at Brownsdale on the 26th ult., that you have lied so much about and libelled the committee that was appointed by republicans—men who voted that ticket last fall—for the new party never had office. Can the man tell us who he means? His article has a double object in view, and is a fair specimen of that gentleman's character, as we showed in our last letter to him, for in the first place the party that he denounces in such strong terms, is the party that he belongs to. Then he is only laying the lash on his own back. We thank him for the acknowledgment of his own corruption and that of the rest of the leaders of the Republican party; but how consistent his argument. Because the prime movers of that party are so corrupt, as he describes them, they are going to poll a larger vote than ever before. The men who have created new offices where they were not needed in different parts of the state; men who have doubled the representation in our Legislature; men, who in their legislative capacity in this state, passed a bill creating a new Judicial District, where it was not required, thereby creating an additional tax on the people; men, who in the same Legislature, and from this county of Mower, endeavored to steal fifty thousand acres of state lands, and would have accomplished it had it not have been for Governor Austin's veto. These are the men (or some of them) that are leading the Republican party, to-day, and by their acts in the past, they are going to poll a larger Republican vote in this county than ever before, i. e. *relying upon the principles enunciated in their platforms.* How absurd. They may enunciate them with the trumpet of the "Angel Gabriel," and what effect will the platform have on the leaders of this party who are "steeped in corruption," as he represents them: and it's a true maxim that where the leaders are corrupt, the whole body politic is affected. Then where is the security in keeping them in power? He says the Republican party have largely relegated the care of public interests. He should have said that they have largely relegated the principal and interest of the public money into their own pockets. In the Republican state platform they adopted in St. Paul, they denounce "salary grabbers," and such like, but how pure *we* are, they say, that is, in their own estimation.

"Let us see how their purity will stand an examination in Mower county. The head leader said in his stump speech three years ago, at the stone school house south of Austin, that they were sifting out the pure elements from the corrupt in this county; that the people might rely with confidence on the men who were to run the different offices of this county. Now, let us see: The first act was against G. W. Bishop, county commissioner. He had some six or seven hundred dollars in his possession that belonged to this county, they said. But their action proved only a blind to the people, for they withdrew the action upon Mr. B.'s resigning his office. They let him go with the money that belonged to the county, and bribed him with as much more, that these dear "Purifiers" might have full sway Now that they have the reins in their hands, how comes it that our taxes are no lighter than they were four years ago. A large amount of back personal property tax was collected last year, and there is one-fifth more taxable property in the county, and yet there is no reduction "What is the matter?" Are they salting it down in bank, so that the Mower county purifiers shall have sufficient funds on hand for the fall election. The next item: The salary of the Superintendent of common schools is doubled. Is that gentlemen a more faithful officer than any of his predecessors? We think not, for some of the schools have not been visited by him for the two last terms, yet his salary has been doubled, making it eight hundred dollars instead of four. The County Attorney's salary has gone through the same multiplying process, and let any who wish, ascertain whether that gentleman's services are worth more than any of those who formerly held that office.

"Now, all this increase of salary was brought about by the pliant tools, in the shape of County Commissioners, who dare not disobey their head purifier, who now

acts as District Judge—resting from his arduous labors in purifying this county, and recuperating his exhausted strength at the expense of the "dear people," whom he sympathized so much with three years ago. But what are his acts as Judge? There was an act passed by the Legislature last winter taxing certain railroad lands, and every honest thinking man will say "Amen" to it. But as our righteous Judge has been plowing with the Railroad heifers of this state, he has issued an injunction forbidding the officers whose business it is to collect such tax from doing so, in this district. Now this same Judge (for it was him that wrote the article entitled "Political," in the *Transcript* of the 14th), by this one act, has robbed this county of more than he can bring against Mr. Smith in his seven years' services, and he (the Judge) has been only about six months in office. When you take into account the amount that will be lost to this district, will fifty thousand cover the loss? But by such actions as we have represented, they (the Republicans) are going to have a larger vote in the county this fall than ever before. Well, then a large majority must love to see their officers rob and steal their money, that they may build palaces and live in comfort and ease—all obtained by dishonest conduct while in office. Then brother farmers, and all who wish to have these dishonest men put out of power, let us stand together for our rights and interests, and Mr. Political Majority may dwindle down some on election day. Then don't be led by lying sophistry. It's only to blind and deceive the people in the future as it has done in the past. I would say to Mr. *Transcript*, in reply to his statement that "some lunatic has written over the signature of Mollison," that it happens that "crazy coon" and the one D. S. B. Mollison are one and the same, and he may find that he is one too many for him.

D. S. B. MOLLISON.

Rose Creek, Aug. 19th, 1873.

Mr. Manager MEAD. We are through with the direct examination.

The PRESIDENT. Counsel for the respondent take the witness.

CROSS EXAMINATION.

Mr. LOSEY. How long did you state you had resided at Austin?

A. Since 1857.

Q. What business had you been engaged in during the last twenty-one years.

Q. How long in publishing a newspaper, I mean?

A. Fifteen years.

Q. Fifteen years?

A. Yes sir; will be in July.

Q. The last fifteen years?

A. Yes sir.

Q. In Austin?

A. At Austin.

Q. At what time did Judge Page come to live at Austin?

A. I think it was about twelve years ago, that is my best recollection.

Q. At what time did this interview that you have spoken of as occurring at your office between Judge Page and yourself, take place?

A. I should say about the first of September, 1873.

Q. Who was present at that interview?

A. O. W. Shaw and my partner.

Q. Who is your partner or was your partner then?

A. Mr. H. O. Bassford.

Q. Did not that conversation relate solely to a retraction by yourself of what was claimed to be the libel?

A. Well it related to the articles.

Q. Answer me whether it did or it did not?

A. It was in regard to ——

Q. The retraction in your paper?

A. It was in regard to a retraction by ourselves, yes, sir.

Q. How long did the interview last?
A. I should say five minutes, perhaps ten.
Q. You state you then published a retraction?
A. I did not consider it a retraction; we published an explanation or a correction.
Q. Did you promise in that interview to publish a retraction?
A. No, sir.
Q. You did not?
A. Did not.
Q. Have you since published a retraction?
A. We have.
Q. Have you got that retraction here?
A. We published the—I suppose you would call it retraction.
Q. Well you have called it a retraction; have you got that retraction here?
A. I think so.
Q. Where is it?
A. I guess I have got a copy of it in my pocket.
Q. Let us see it.

Mr. Manager MEAD. Wait a moment. I object.

Mr. PRESIDENT. State your reasons.

Mr. LOSEY. It is a part of the history they have brought to introduce here.

Mr. Manager MEAD. No, we have not put in any retraction or offered to put in any.

Mr. LOSEY. They have put in the article to show malice.

Mr. Manager MEAD. Because Mr. Mollison wrote the article. Now we don't care if they have got a retraction from Mr. Mollison; let them put it in.

Mr. DAVIS Let the witness hand us the paper, we may not offer it in evidence.

The witness handed counsel for respondent the article referred to.

Mr. LOSEY. [After reading the article.] We offer this. We are after the truth of history, and it seems that counsel is after the same thing, and it is a part of the history of this case.

Mr. Manager MEAD. We want to be sure of the identity.

Mr. LOSEY. Well the witness has sworn to the identity of it.

Mr. Manager MEAD. Did that come out of your paper?
A. Yes sir.

Mr. PRESIDENT. You may read it.

Mr. Losey reads as follows:

"JUDGE PAGE.

"It may be remembered by some of our readers, that theissue of this paper of August 28th, 1873, contained a somewhat lengthy article over the signature of 'D. S. B. Mollison,' in which occurred certain strictures upon Judge Page, and especially one in regard to his official action in granting a temporary injunction at the suit of the Minnesota Central Railroad Company against the auditor and treasurer of the county, restraining them from enforcing certain taxes against the lands of that company situate in this county. The article in question was admitted to our columns—as we are frank to admit—without sufficient care to ascertain the truth of the charges and inuendoes. We have taken pains since that time to investigate them, and it affords

us pleasure (for it ought, and we trust always will, afford us pleasure to do an act of simple justice), to be able to fully and entirely exculpate Judge Page from all blame or color of blame in the matter referred to in said article. So far as the railroad tax case was concerned, Judge Page acted strictly and exactly in the line of his duty, and came to the same decision to which Judges Lord, Chatfield and Crosby had already come in other districts, and which decision was unanimously sustained by the Supreme Court. In fact, no law existed for taxing these lands, and it was an act of injustice to the company to attempt to tax them. It was also an attempt which was of no sort of benefit to the people of the State or county, as the three per cent. of the gross earnings, which the Milwaukee & St. Paul railway pays as a consideration for the exemption of the lands, is worth much more to the people of the State and county, so that the judicial action of the Judge, so far from being a fit subject of censure, was an act of justice performed by him at a time when it required some nerve to face public clamor by an unpopular decision, with that fearlessness and strict adherence to law, in disregard of all personal consequences to himself, which we believe have been distinctive features of his judicial career. The fault was ours, not his, and we gladly make this full and explicit retraction of the charge."

Mr. Losey. There is a marginal reference on the side of this; made by yourself?

A. Yes, sir, it is, "Austin Register, Feb. 22d, 1877."

Q. What is it meant to imply by that?

A. A description of that paper of that date.

Q. At what time were you in court, and did you hear proceedings that you have spoken of here?

A. I could not tell you.

Q. Could you tell what year?

A. No, sir.

Q. You can't tell what year?

A. No, sir.

Q. You just remember the fact that you were there and heard what you stated.

A. Yes, sir.

Q. Did you take a considerable interest in the case of the State against Mollison?

A. I took some interest. Yes, sir.

Q. Have you taken considerable interest in this case?

A. Some interest. Yes, sir.

Q. I learn you contributed some money to its prosecution.

A. I have. Yes, sir.

Q. You mean for the prosecution of Judge Page in this impeachment matter?

Q. I have contributed money to jury and attorney.

Q. Please answer my question?

A. That is the answer. I have contributed money to an attorney for the prosecution of this case.

Mr. Davis—

Q. This impeachment case?

A. Yes, sir, this impeachment case.

Q. How much did you contribute?

A. The firm of Davidson & Bassford has contributed something like $37.50, I think.

Q. You have contributed a good many peppery articles, too, to the prosecution, haven't you? [Laughter.]

A. Well, I don't know what you'd call them.

Q. Well, do *you* call them peppery?

A. I don't know that we have.

Q. Well, you have published a great many articles in your paper during the last year concerning Mr. Page, haven't you?
A. We have published some things.
Q. You have published a great many concerning this impeachment matter, haven't you?
A. Why, we have published a few, I guess.
Q. Don't you *know* that you have been publishing such articles right along, week after week?
A. No; there has been a great many weeks that we have not published anything.
Q. There has?
A. Yes.
Q. You have not copied anything or written anything?
A. Yes, sir, a good many weeks within the last six months.
Q. Have there been many weeks during the last three months that you have not contributed some article?
A. There has been some weeks.
Q. Very few, I suppose?
A. Well, I presume there would be very few.
Q. Well, very few indeed.
A. Yes.
Q. Well, haven't you considered those articles very peppery?
A. Not very peppery.
Q. Not particularly so?
A. No, sir.
Q. You drew them mildly, then?
A. Rather mildly.

That is all. [Laughter.]
Re-direct examination:
By Mr. Manager MEAD. Q. This retraction bears date August 7th, 1877.
A. Feb. 7th, 1877.
Q. Feb. 7th, 1877; how many years after the original publication?
A. The original publication was August 28th, 1873, if I remember correctly.
Q. Now, will you state how that came to be published?

Mr. LOSEY. That I object to.
A. I will.

The PRESIDENT. What do you refer to; the retraction or the article?

Mr. Manager MEAD. The retraction; it is important for the Senate to know that retraction came in after four years. We wish to show who wrote it, and what was done in consequence.

The PRESIDENT. Do the Senate desire to have the question submitted?
The court voted to receive the question.
Q. Now you may state how and under what circumstances that came to be inserted in your paper; the retraction of February 7, 1877?
A. I was told by our attorney——

Mr. LOSEY. That we object to.

The Witness. Well, I was going to tell you how it came to be published.

The PRESIDENT. Anything that will show why you published it I think will be proper.

A. I was told by our attorney, Mr. Gordon E. Cole, that he thought Judge Page would be satisfied if we would publish a retraction of the article which we had attempted to do once before in regard to the railroad case, and would dismiss this action, and advised us as our attorney to do so, and said he would draw up one and submit it to us. He drew up the article which has been read, and it was taken to Judge Page, and Judge Page and Gordon E. Cole, Lafayette French and myself, it was agreed in case we would publish—or Judge Page agreed—that in case we would publish the article, the cases should be withdrawn.

Mr. Manager MEAD. Now wait; what cases were they, criminal or civil?

A. All of them.

Q. What cases were they?

A Criminal and civil cases both; we had been indicted twice.

Q. He had sued you for damages?

A. Yes, sir; and these cases were all to be withdrawn; the Mollison case included.

Q. When was that agreement?

A. That agreement was at the special term held when Judge Dickenson was present; I can't remember the time of the year.

Q. How long prior to the publication of this retraction?

A. The week before.

Q. State whether or not those criminal cases were then and there dismissed. [No answer.]

Q. When were they to be dismissed?

Mr. DAVIS. [To Mr. Mead.] Do you withdraw your question?

Mr. Manager MEAD. Yes, sir.

A. They were to be dismissed at the next general term of the district court. They were not to be dismissed at that special term.

Q. State, if you know, why Judge Page did not dismiss them at that term with reference to this same article—your retraction.

A. Well, he said, "He thought it would not look well to have them dismissed then; it would look as though it had been fixed up." [Laughter.] That is all.

Re-cross examination.

Mr. LOSEY. Q. Who did he tell that?

A. He told that to myself.

Q. Who else was present?

A. I think the county attorney and General Cole; I don't know whether they heard it or not.

Q. Was it a conversation carried on between all of you?

A. We were all present.

Q. Where was the conversation held?

A. In the rear end of the court room.

Q. At what time during court week?

A. Well, I think it was the second day of the term; it strikes me so.

Q. Did you get together for the purpose of holding this conversation?

A. Yes, sir.

Q. And you were holding it altogether?

A. Yes, sir.

Q. Did Gordon E. Cole engage in that conversation?
A. He did.
Q. Did Mr. French engage in it?
A. Yes, sir.
Q. And you and Judge Page?
A. Yes, sir.
Q. Then you all heard what was said didn't you?
A. Well, I suppose so: I heard it; I couldn't say what they heard.
Q. Now, was the Mollison case mentioned at that time?
A. Yes, sir; I mentioned it.
Q. You mentioned it in the presence of others, to whom?
A. I did; I mentioned it to Judge Page and to Gen. Cole.
Q. Repeat what was said about it.
A. It was said that they would be dismissed.
Q. Well, but what was said particularly about the Mollison case?
A. I don't know that the Mollison case was mentioned specially by itself any more than ours.
Q. You have stated that the Mollison case was specially mentioned.
A. I stated that I mentioned it.
Q. You say that you mentioned it. In what connection did you mention it.
A. In connection that that was the agreement.
Q. In what connection did you mention the Mollison case. Give me the language that you used.
A. I agreed to publish the communication on condition that all the cases, including Mr. Mollison's, were dismissed.
Q. Now, did you so state that?
A. I did; yes sir.
C. You stated so there?
A. Yes sir.
Q. To Judge Page?
A. Yes sir.
Q. In the presence of Gordon E. Cole.
A. I said so in the presence of Gordon E. Cole.
Q. You had a talk previous to that time with Gordon E. Cole?
A. I had; yes sir.
Q. You have stated here what that conversation was, have you not?
A. With Gordon E. Cole?
Q. Yes sir?
A. Previous?
Q. Yes?
A. I have stated that he thought a retraction would settle the case; that is all I have said of it.
Q. Have you stated all that occurred between you and Gordon E. Cole in relation to it?
A. I presume not sir, we had a good many talks.
Q. Did you talk with Gordon E. Cole about the Mollison case?
A. I did. Yes sir.
Q. Previous to this interview that you had with Judge Page?
A. Yes sir.
Q. Do you know whether he had anything to do with the Mollison case or not?
A. I don't know.

Q. You don't know that he had anything to do with it?
A. I don't know that he had.
Q. Did you know of his ever appearing in it?
A. I don't know; I can't say whether he ever did or not.
Q. Do you know of his being interested in it in any way?
A. I could not tell you whether he so construed it or not.
Q. Did you not talk about it?
A. Yes sir.
Q. At the time you first had this conversation?
A. Yes sir.
Q. Now sir, is it not a fact that the reason why you withdrew that libel and published the retraction was because the Supreme Court made its decision affirming the decision of Judge Page and the other judges who ruled on that tax question, and didn't you wait until after the decision of that case before you thought of a retraction at all.
A. I made the retraction because I thought it was due to Judge Page on consulting with my attorney.
Q. You thought it was due to the Judge because the Supreme court had sustained him didn't you?
A. No sir, I don't know that, I knew anything about the decision until I was informed by General Cole.
Q. Did Gordon E. Cole advise you that your article was a libel?
A. Did he advise me?
Q. Yes.
A. No sir, he did not.
Q. Didn't Mr. Cole tell you himself that he knew that it was false, and that you must retract it?
A. Well the statement of facts—
A. Answer my question.
A. Well you say the facts; I say the statement of fact—in regard to the railroad case was false.
Q. He did tell you it was false?
A. Why, certainly.
Q. Well, that was the libellous part of the article, wasn't it?
A. I did not so consider it.
Q. You did not consider it a libel to have said that a judge had made a decision for the purpose of favoring a railroad company?
A. Yes sir.
Q. You did not consider it a libel for you to say that he had ploughed with railroad heifers; you did not consider that a libel. [A long pause.]
Q. Do you mean to say you did not?
A. I mean to say this: that I did not consider that we had said anything that libeled Judge Page.
Q. You did not?
A. No, sir.
Q. Accusing him then of making a wrong decision corruptly. You do not consider libellous; that is your code, is it?
A. I did not consider him libeled by making that charge.
Q. He had commenced a civil action against you, had he?
A. Yes sir.
Q. That action was withdrawn?
A. That action was withdrawn.
Q. Who was his attorney; who acted as his attorney?
A. Whose attorney?

Q. Judge Page's.
A. I think he acted himself. [Laughter.]
Q. Who was your attorney?
A. Gordon E. Cole.
Q. Gordon E. Cole was your attorney?
A. Yes sir.
Q. When did the withdrawal of the action date. Was it prior or subsequent to the publication of this retraction?
A. He drew up a document and gave it to General Cole to be filed as soon as the article was published.
Q. And it was so filed was it?
A. Yes sir, it was sent to me direct.
Q. Did you say that Judge Page drew that document?
A. I meant General Cole. General Cole drew up the document. I wouldn't swear that he drew it up; I could not swear as to his handwriting.

Mr. DAVIS. You couldn't read it, could you?
A. No I couldn't read it. [Great laughter.]

On motion the court adjourned.

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

THIRTEENTH DAY.

ST. PAUL, TUESDAY, MAY 28, 1878.

The Senate was called to order by the President.

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

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

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

The sergeant-at-arms having made proclamation,

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

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

The matter under consideration being the motion of respondet's counsel to quash the tenth article.

Mr. LOSEY. Mr. President and gentlemen, I suppose that this is a proceeding in the nature of a demurrer to this tenth article or rather it will partake of the nature of an objection to the introduction of any evidence under it, on account of its insufficiency and uncertainty. The article is—and it is well enough to analyze it as follows: "Throughout the term of office of the said Sherman Page as Judge of the District Court, in and for the county of Mower to-wit: since on or about Jan. 1st, 1873, he the said Sherman Page as such judge, has habitually demeaned himself towards the officers of said court.

Now the pleading, as far as I have read, is a little uncertain, because it may be implied from it that it refers to the officers of all the courts of all the counties throughout the district that Judge Sherman Page presides over, or perhaps it is not claimed it goes to that extent, and that it simply means the officers of Mower county. Now, gentlemen, it seems to me that there is no rule of law laid down in the books, either in a civil proceeding or in a criminal proceeding; there is no known statute of the State of Minnesota under which it would be permissible to introduce any evidence touching the matter of a charge made in the manner in which this charge is made. I do not care how humble the court; I do not care how inferior the court in its jurisdiction; I do not see how even in a pleading in a civil action before a justice of the peace, any evidence could be permitted where a misdemeanor was charged in the manner in which this misdemeanor is charged. There are certain rules laid down for the government of courts. It is true this tribunal has a right to make its own rules, but it seems to me they ought to be in conformity with rules which govern courts generally, and rules which mete out justice both to the prosecution and to the respondent in this case, ought to be adopted. I know of no rule, and I know of no law, which will permit them to come in and amend this pleading, if it is a pleading. t

The constitution delegates to the honorable assembly certain powers, among which is this power to present articles of impeachment, but there is no constitutional provisions authorizing them in any manner whatever, to extend this power beyond the time, at which they may sit, nor can they delegate their powers to a committee. They cannot delegate their power to legislate; they cannot delegate their powers in any respect whatever to any subordinate part of their body, even while in session. They must act themselves as a body. So it seems to me that that does away with the power of the members of this committee, so far as the articles of impeachment are concerned, and that they cannot do what it is impossible for the assembly to do after the assembly has ceased to exist. Now it is true that the committee can come in here and act, and conduct this proceeding. They cannot come here and legislate, as you may say, articles in this case. They come here by themselves and propose to present articles by which the respondent is to be bound. It would be neither justice nor fair to the court, nor the officers of the State, nor the respondent, to permit a precedent of that kind to be established.. Now what is this power of impeachment the assembly possesses? I was not here when the argument was made the other day, and I may repeat some things then said, but I consider it proper that I should do so.

The constitution of this State provides that

"The House of Representatives shall have the sole power of impeachment through the concurrence of a majority of all the members elected to seats therein."

The House has the sole power. Not a delegated power. The sole power of impeachment. And they must present articles of impeachment in definite shape. If that be not so, suppose these articles, instead of being ten in number, only contained the tenth article. Suppose only the tenth article was here before you. What could be said in relation to that? We would say that the respondent in this case had no notice of facts on-on which he was to be tried, and yet if these powers be given to the Managers, the power can be extended in any direction and to any extent, even to the filing of new articles of impeachment in this case. As I understand the law, it is not justice to the respondent, as I said a few moments ago, and it is not justice to the people of the State, that any such construction should be put on the constitutional power of the assembly.

You, gentlemen, are making a precedent here; you are making a precedent which is to govern, in a measure, the people of this State for all time to come. The history of this case is not going to die out in a month. It is going to last for all time, as long as the constitution of this State exists, and it is a matter of the utmost importance to all people who are to hold office hereafter, and to all the people of the State, and you should be right in your construction of the powers that are to be given by members of the Assembly to their committees in presenting articles of this character. The additional provision in relation to the matter of impeachment is, "No person shall be tried or impeached before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial." Now, has Sherman Page, the respondent in this case, been served with the articles of impeachment, provided their amendment is permitted? The common sense of every man teaches him that there is not so. If they are permitted to come here, and make that specific and certain which is not now specific and certain; if they are permitted to come in here and file a bill of particulars, or to file some sort of a summary upon which they may be permitted to procede, then the respondent has not been served with the articles of impeachment in this case, because the power is given to this committee to come in and file new articles of impeachment. It amounts to that, nothing more, and nothing less.

In what situation then does it place this respondent? He has subpœnaed certain witnesses here, and I will say he has subpœned these witnesses upon full consultation with his counsel in this case. He has subpœnaed no witnesses upon this tenth article because advised by his counsel that it was not necessary, the article not being specific and certain. Now in what situation is he placed? He is many miles from home; he appears here with his counsel; his counsel have no time to investigate new specifications; he cannot leave his place in this court to investigate new specifications; he is placed in the position of answering in the dark. If the rule of the court is to be that the Managers may make certain amendments, the prosecution has given him no notice of what is to be done under the plan proposed. Besides that, there is the great expense attending such a course, although with that I have nothing to do, but the trouble is the interminable delay.

Here are nine articles of impeachment that are properly presented, so far as the facts are concerned. They are presented by the Honorable Assembly after a very full investigation—as full an investigation as could be had under the circumstances; certain things that were brought up were rejected by the House; the history of the case shows that.

Certain other things that were brought up were not acted upon, but if this amendment is to be permitted, these managers can come in here and take up what that assembly rejected and say, "We will prove them, notwithstanding the assembly saw fit to reject them." "We will make a new specification under this tenth article out of those things which the honorable assembly rejected, and we will take proof because, in our opinion, it is pertinent." Is it fair that such a thing should be permitted' a power it is manifest they may exercise under the rule—if such a rule is made—and they may take such action in this case.

Something was said here in relation to a bill of particulars. There is no practice under the statutes of the State of Minnesota giving a party the right to file a bill of particulars in a criminal action; nor is it permissible in an action *quasi* criminal. Under your constitution they must specify the offense itself.

The offense not being charged in the article must fall. In a civil action a bill of particulars is sometimes required in a matter of account, but the right to a bill of particulars was never before carried to such an extent as it was in the Beecher case; and it probably never will be again. It was a case of *crim con.*, where one party was charged with having seduced the wife of another, the complainant, naming persons, and the facts necessary to constitute the offense, and it was held to be in the discretion of the court to compel them to specify the acts relied on. It was a proper proceeding because it was said they should not be permitted to ramble over the country in search of proof.

The statute provides that "Indictments shall be direct and certain, as regards first, the party; second, the offen,e charged; and third, the particular circumstances of the offense charged, when it is necessary to plead the offense."

Section 7 of the constitution of this State, article first, entitled, "Criminal prosecution, and the rights of the accused, "is as follows: "No person shall be held to answer for a criminal offense, unless under presentment or indictment of a grand jury, except in cases of impeachment. * * *"

The prior section six, entitled "Criminal prosecutions, and rights of accused," says, that "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the county or district, wherein the crime shall have been committed, which county or district, shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation. * * *"

Now, as I said a few moments ago, by the constitution this proceeding is made a *quasi* criminal action. It comes under the head in the constitution of criminal proceeding. The respondent is impeached for high crimes and misdemeanors, and it is a *quasi* criminal action. In its consequence it is more severe, and in its effect and ultimate bearing more far reaching than the consequences of any criminal act possible to be charged, for it strikes at the respondent in such a manner as to affect not only his own life, but his friends, his family and all his posterity. It enters into all matters that he may attempt to do hereafter. It is really the destruction of his usefulness, if a conviction follows here. It strikes deeper than it would if be was on trial for hislife. It is a *quasi* criminal action. It is criminal so far as the rights of the respondent are concerned under the constitution, and it ought to be governed by the rules which govern courts in the conduct of criminal actions.

There is no court as I said a few moments ago, however humble, in the State of Minnesota, but what would quash that article upon sight.

I desire to read from the "Lives of the Lord Chancellors."

The PRESIDENT. I would like to know if the Senate will limit counsel to the rule. The counsel has already occupied the allotted time. If there is no objection, the counsel will continu.

Mr. Manager GILMAN. I would like to enquire if this question which seems to be the subject of the gentlemen's argument is before the Senate or the court as to whether the managers wish to amend to furnish a bill of particulars. It was my impression that the question before the Senate at this time was whether article ten should be stricken out. I am not aware that the board of managers so desire.

The PRESIDENT. The motion is a motion to quash.

Mr. LOSEY. I had got the idea that there was something said in relation to amendment during the progress of the argument the other day. If I am arguing it simply upon the basis that it is not so definite and certain as to permit the introduction of any proof under it, I am perfectly willing to proceed upon that basis.

Mr. Manager GILMAN. I may have an erroneous impression in this matter. My recollection is that the counsel for the respondent moved to strike out the tenth article, and that the counsel for the State objected to that, and proposed to defend the tenth article as it stands, at the same time giving the court or the Senate to understand that they had a right to furnish a bill of particulars, but that the defence, in the first instance, proposed to strike out the article.

Senator GILFILLAN, J. B. After a discussion of the motion which was made, I think the Senator from Douglas requested that argument might be made upon the question whether the managers would have the right or the power to amend, or whether we have the right to require them to file a bill of particulars.

I think the original question was subsequently changed in that respect at the request of the Senator from Douglas.

Senator NELSON. I think it was my suggestion, and I think the gentlemanly counsel is perfectly in order. I suggested it, as I desired to hear that question of amendment discussed in connection with the validity of the article.

Mr. Manager GILMAN. My remarks, Mr. President, were not designed as an objection to the speaker on the other side, but rather for information. I was laboring under a false impression, perhaps.

Mr. LOSEY. I desire, as I have stated. to quote from the Lives of the Lord Chancellors, volume seven, page 101, in the case of Warren Hastings. The Lord Chancellor said: "But in proportion as I am ready to punish Mr. Hastings with severity when lawfully convicted I must see that he has a full and fair opportunity of vindicating his innocence. This he can only have by hearing all that is to be said, or proved against him, under all the charges, before he is called upon for his defense."

"With respect to the usages of parliament, of which we have been told so much, as contra distinguished from the common law, I utterly disclaim all knowledge of it. It has no existence. In times of barbarism, indeed, when to impeach a man was to ruin him by the strong

hand of power, the usage of parliament was quoted, in order to justify the most arbitrary proceeding. In these enlightened days I hope that no man will be tried but by the law of the land, which is admirably calculated to protect innocence and to punish guilt. The trial of Lord Strafford was, from beginning to end, marked by violence and injustice. A licentious and unprincipled fellow, Pyin, attacked that Lord with all the virulence and malignity of faction. The real crime of that great statesman was, that he quitted his party—as if it were not meritorious to serve the State instead of a faction—as if it were a crime to quit a gang of highwaymen. The commons may impeach, but your Lordships try the cause, and the same rules of procedure and of evidence which obtain in the courts below, I am sure will be rigidly followed by your Lordships.

Now that is a precedent laid down a long while ago, but it is a precedent that has governed courts of impeachment largely from that day to this. The respondent in this case is to be tried by the rules of evidence; the rules that govern common law procedure, and if it be found by this court that this article at common law, as a pleading would be insufficient, and that it is to put the accused upon his defence without notice of what he is to meet under it; if that be found, then it ought to be stricken out, and the defendant should not be called on to answer it at all.

Mr. CLOUGH. Mr. President and gentlemen of the Senate, I am requested by the managers on their behalf to present to the Senate a few propositions, and to cite a few authorities bearing upon this question, and shall do so in a very brief manner.

The principal question is whether the tenth article charges an impeachable offense. I shall consider in the first place whether it would be sufficient under the rules of pleading which govern in criminal cases in the ordinary courts of justice. And certainly if the manner of pleading used in the framing of that article, would be good in ordinary criminal procedure in any ordinary court of justice, charging an offense against an individual, under the rules of pleading which obtain in courts of impeachment, there could be no objection whatever to the validity of the charge. Now I might say at the outset, by way of getting down to the roots of this question, that criminal offenses are divided into *two* great classes. In the first place there are offenses—and a great majority of offenses are of this class—offenses in which the commission of a single act done with a malicious or unlawful intent, completes the offense. Now, murder is a crime in this class. The simple act of killing a human being with malicious aforethought completes the crime. However good and pure a man may have been who has committed that crime, before he did the single act; however good and pure he may have lived, after that act has been accomplished, the commission of that single act under that intent completed the offense of murder.

Now, the manifest majority of offenses which come before the ordinary courts of justices, are of that kind; they are offenses in which the crime is completed by the performance of a single act done with a malicious and unlawful intent. But that is not the only class of offenses; there is another, and a numerous class of offenses, both under the common law and created from time to time by statute, in which the gist of the offense is something very different; in which the gist of the offense is not the commission of a single act with a particular intent, but where the gist is wholly in a course of conduct. Now, offenses of the latter

class are not complete by the commission of a single act, or any definite number of single acts. In all these cases the gist of the offense consists in a bad and unlawful course of conduct. Of this class at the common law are nuisances of many kinds; carrying on an obnoxious trade: keeping a disorderly house; keeping a bawdy house; those ere all offenses of the second class. Where the offense lies in a course of conduct, and in the constant repetition of a particular line of acts, and it was necessary that a certain course of conduct should exist in order to make an offense.

Now, we have under the statutes of this country many offenses of the same kind. For instance, in many States, and particularly in the State of Massachusetts, statutes existed for a long time making it an offense for a man to be a common dealer in liquors. When you come to the question of criminal pleading the pleading must conform to the nature of the offense. When the offense sought to be charged is one which is complete by the doing of a specific act with a particular intent, there the specific act must be alleged, and the intent must also be alleged; but on the other hand when the gist of the offense consists in a course of action, in a habit of action, in customary action, there the allegation in good criminal pleading is entirely different; and it is not necessary either under the common law or under statutory law, in order to charge those crimes well and sufficiently against a person, to allege any specific acts whatever. Now, those distinctions,. both in nature of crimes and the manner of charging them in criminal proceedings, has always existed under the common law as well as under statutory law.

Now, let us go a little further in respect to the question of pleading. When a course of conduct is necessary to make the offense complete, both under common law and statutory law, for all time, an offense has been charged in general terms, and the proof may be of two kinds. In the first place it may be general proof not confined to specific acts. In the second place it may be proof of a large number of specific acts from the commission of which the court may infer what the course of conduct has been. But when a course of conduct constitutes an offense, it is necessary to prove the course of conduct, and not merely the specific acts. I will trouble the Senate with one or two authorities, which explain this matter, and I might say further, before reading these authorities, that whenever a course of conduct has been charged in general terms in the indictment or criminal complaint, and it is sought to prove that charge by specific facts, in that case it has always been under the common law, and under statutory law, the right of the defendant if he chooses to do so, to go into court at a proper time and under proper circumstances and inform the court that he wishes a bill of particulars of the specific acts which will be introduced in evidence to prove the general charge, and then the court in its discretion has a right to call upon, and as a practice does call upon the counsel on the other side to make out and present to the defendant the bill of particulars which he asks.

The learned counsel who has just preceded me is utterly mistaken in his theory that a bill of particulars is not known in criminal procedure. it is one of the oldest established rules in criminal procedure that in the class of offenses which I have adverted to under the second head, if defendants ask for it, for the courts to require the prosecutor under proper circumstances to furnish a bill of particulars.

I read from the first volume of Bishop on Criminal procedure, (and

there is no higher authority, as all lawyers know, than this work.) I will commence with section 285. The sections prior to this one in the same chapter, are devoted to the method of charging offences, and the author lays down the general rules which is true as I have stated that the great majority of offenses, because they consist in specific acts, must be charged specifically.

In section 285, Bishop says: "The principal exceptions to this rule at the present day, are the cases of a common barrator and scold, and the keeper of a common bawdy house, who may be indicted by these general words, without setting forth any particular acts of barratry or scolding; because the charges include in their nature a succession and continuation of acts which do not belong to any particular period, but form the daily habit and character of the individual offending. And upon the same principle, it seems, an indictment merely charging the defendant with keeping a common gaming-house would be good. But n the case of an indictment against a common barrator, though it may be general, the prosecutor must give the defendant notice before the trial of the particular instances that are meant to be proved."

He then goes on in section 286 as follows: "It sometimes appears that notwithstanding the particularity with which the law requires the offence to be set out in the indictment, the defendant still fails to receive from it such notice as the court deems him to be entitled to of the specific matters which the prosecutor will attempt to prove against him on the trial. In such a case, if the judge is applied to on behalf of the prisoner he will order a bill of particulars, as it is sometimes called, or a written statement of these specific things to be filed in court with the papers in the case and, on the trial, restrict the prosecuting officer in his evidence to the proof of the items which he has thus set down. Such a bill does not constitute a part of the record, and it is not subject to a demurrer. The application for it is addressed merely to the judicial discretion of the presiding judge, and his action thereon is not generally deemed to be subject to revision by a higher tribunal."

Now section 287:

"Such a bill has been deemed proper in an indictment for embezzlement if the prisoner does not know the specific acts of embezzlement intended to be charged against him; in an indictment framed in general terms for being a common seller of intoxicating liquor without license; and an indictment for libel containing general charges of official misconduct against a magistrate, the defendant offering to give the truth in evidence was required to file a bill of the particulars on which he should rely at the trial."

There was a case where the prosecution even called upon the defendant to put in a bill of particulars. and the court required it to be done.

I will read one other authority bearing upon the same point. I cite the case of the Commonwealth of Massachusetts against Edward Pray. A case which was determined in the Supreme Court of the State of Massachusetts, and is reported in 13th Pickering's Report on page 359. A case which is of the highest authority, as all the lawyers of the Senate are aware. The defendant was indicted as follows on the statutes of 1786, chapter 68:

'Section 1. The jurors, &c., present, that Edward Pray of Braintree, in the county of Norfolk, trader, the 30th day of Sept., in the year of our Lord, one thousand eight hundred and thirty, and on divers other days, between that day and the 20th day of December next follow-

ing, at Braintree aforesaid, did presume to be, and was a common seller of wine, beer, ale, cider, brandy, rumand other strong liquors by retail in less quantities than twenty-eight gallons, and that he delivered and carried away all at one time, and did at said Weymouth, during all the time between the days aforesaid, commonly and habitually sell to divers persons, to the jurors unknown, wine, beer, ale, cider, brandy, rum and other strong liquors by retail in less quantities than twenty-eight gallons, and that he delivered and carried away at one time, he, the said Edward Pray, not being first duly licensed, therefore according to law."

There were several other indictments in the charge, but that indictment was sustained by the court. You see that it did not charge any specific act of selling liquors, and one great question in the case was whether that kind of pleading was sufficient. "The defendant demurred generally to the indictment. The general rule is that an indictment should set forth the particular facts constituting the offense charged. There are some exceptions, as in the case of a common barrator and a common scold, but they do not embrace the offense for which this defendant is indicted."

I read this to show that the point was distinctly made and presented to the court.

MORTON, Judge, delivered the opinion of the court. The learned judge says: "This case comes before us on general demurrer, and the only subject for our consideration is the sufficiency of the indictment. It is framed upon the first section of stat. 1786, chapter 68. That section contains two distinct prohibitions enforced by different penalties; the first clause provides that no person may without being duly licensed presumed to be a common victualer, innholder, taverner or seller of wine, beer, ale, cider, brandy, rum, or any strong liquors by retail under a penalty of twenty pounds. The second clause provides that if any person shall without license sell any spirituous liquors or any mixed liquors part of which is spirituous, he shall incur a penalty of not less than forty shillings nor more than six pounds.

"The first offence consists in presuming to be a common victualler or common seller, &c.; the second in actually selling. Although the first offence may not be completed without committing the second, yet the second may be without committing the first.

"The indictment contains two distinct charges. The one in general terms that the defendant did presume to be and was a common seller, &c., in the words of the statute. The other that the defendant did commonly and habitually sell to divers persons, to the jurors, &c, unknown, wine. The first is laid with a proper venue, viz.: at Braintree, aforesaid. Braintree having just before been described as in the county of Norfolk. In the second the offence is alleged to have been committed at said Waymouth; whereas Weymouth had not before been named. This, unquestionably, is a mere clerical error. But it is inconsistent with the former venue, and clearly insufficient.

"The next inquiry is, whether this defective averment may not be rejected as surplusage; It does not contradict any other averment in the indictment; it is no- descriptive of the identity of the charges, or of anything essential to it, nor does it, in any degree, tend to show that no offence was committed.

"The second allegation embracing all between the words *all at one time*, where they first occur, and the words *he, the said Edwards*, may properly be rejected as surplusage. Indeed, it must be excluded, for it

contains no legal averment. And the indictment must be treated as if originally drawn without it. But it cannot aid the indictment and it will not require it.

"The indictment describes the offense in the very words of the statutes. This, usually, is not sufficient, the established rules of pleading require the essential facts and circumstances to be particularly, unambiguously and certainly stated, that the court may know whether they amount to a violation of the law, and what punishment, if any, they require. A general charge, as that a man is a common thief; common forestaller, or common champertor, &c., is clearly insufficient.

"But this general rule, useful and important as it may be, is not without its exceptions; for there are classes of cases to which it does not apply. Whenver the crime consists of a series of acts they need not be specially described, for it is not each or all the acts of themselves; but the practice or habit which produces the principal evil, and constitutes the crime.

"Thus it is sufficient to charge a person with being a common barrator or a common scold. And it is not necessary to set forth any particular acts of barratry or scolding, for it is the general practice, and not the particular acts, which constitutes the offense. They go to make up the evidence of the crime, but are not the crime itself; and it is never necessary in pleading, civil or criminal, to set forth the evidence.

"There is another class of cases which, though very similar to the above, seem to come within the same exception.

"It is sufficient to charge a person generally with keeping a house of illfame, a disorderly house, or a common gambling house. Now, although all the acts which make up these general offenses, are, in themselves, unlawful, it is not necessary to set them forth; yet general acts may be indicted and punished separately, but the keeping of the house is a distinct offense, and, as such, liable to punishment.

"This indictment comes within these principles, although to make out the statute offense, it may be necessary to prove particular acts, such as entertaining company or selling spirits, yet these acts are only evidence of the general charge, and may be proved, but need not be alleged.

There is also one other class of cases well settled, as we think, which are in principle similar to the case under consideration. It is made the duty of towns to keep in repair all highways within their limits, and for a neglect of this duty they are liable, not only to indictment, but if any individual injury occurs by reason of it, to a civil action. In indictments and declaration on this statute, which are almost of daily occurrence, the practice never has been to set forth, minutely, the defects in the highway; but a general allegation that a certain highway is out of repairs, ruinous and unsafe; has always been deemed sufficient.

"The object of the rule requiring the charge to be particularly, certainly and technically set forth, is threefold. First, to apprise the defendant of the precise nature of the charge made against him; secondly, to enable the court to determine whether the facts constitute an offense, and to render the proper judgment thereon; and thirdly, that the judgment may be a bar to any further prosecution for the same offense.

"The allegations remaining in this indictment entirely satisfy all these objects. They fully apprise the defendant of the nature of the charge preferred against him. When it is alleged that at a certain time he did presume to be, and was a common inn-holder and common seller

of spirits, &c., he cannot be ignorant of the offense which is imputed to him.

"Besides the court, according to all modern practice in all cases of general allegations, take care that the defendant shall not be surprised, but that he shall seasonably be furnished with such specifications and particular statements as may be necessary to enable him to prepare for his trial, and to meet all the proof which may be brought against him."

Now, gentlemen, I might cite you to another thing. One ground of divorce in this State is habitual drunkenness. In a pleading for a divorce for habitual drunkenness it is not usual or proper to state that the respondent was drunk on such a Thursday, or that he was carried home in a state of stupifaction on a certain Saturday night. So a man may be deprived of the control of his property for habitual drunkenness upon application to the probate court, setting forth that the party is an habitual drunkard, and all that is necessary in such a case is to allege the habit, because the gist of the bad conduct is its constant repetition of intoxication ; the habit of getting drunk.

What have we in this case ? As the managers intended, and as they understand the force of the tenth article, the gist of the offence charged therein is not a particular act, at a particular time and place, but it is a course of conduct.

This article says that Judge Page has been in the habit of indulging in a certain course of conduct. And in the habit, in the course of conduct, the gist of the offense lies, which was attempted to be charged in this article.

Now will anybody say that it is not an impeachable offense for a judge, habitually to indulge in a course of insulting position and arbitrary conduct toward the officers ? That is the question which the learned counsel for the respondent must take. They having demurred, or excepted, which is the same thing, to this article, they have admitted the truth of all that is contained in it, and they must be forced to take that ground. And if the Senate quashes this article, the Senate must take that ground—that it is not an offense for a judge to indulge in a course of conduct such as that described in this article.

Now let us look at the subject of impeachment for just a moment, to see what is the object of an impeachment. I wish to state at the outset (as you gentlemen understand fully already I have no doubt) that the object of an impeachment is not to punish an offense. That appears right at the threshold of the article in the constitution in regard to impeachment, because it says "that no impeachment or conviction or acquittal shall be a bar to an indictment for the same matter." Now, if the intention of impeachment was to punish a crime which has been committed, it would be subversive of the very foundation of all natural and established justice, if the judgment of the court of impecahment should not constitute a bar to any subsequent punishment for the same offense; and that is not what we are here for to-day—to punish any crime which Judge Page may have committed. But we are here to determine whether he has shown himself by his course of conduct to be an unfit person to occupy the position of Judge of the Tenth Judicial District, and that is the entire theory of impeachments in this country; and I may remark briefly here that while we have adopted the general features of proceedure in impeachment cases which obtain in England the intent and design of impeachments here is totally different from what they are there. In England the House of Lords in the trial of

impeachment is a criminal court of general jurisdiction. It punishes crime finally. It has jurisdiction of all crimes committed by all persons; and when it has once acted by the process of impeachment, and convicted and punished or acquitted the defendant, no other criminal court has a right to take jurisdiction of the same matter.

But where impeachments were introduced into this country, although the same general procedure was adopted, it was adopted for a different purpose. And that was to remove from office men who had shown themselves by bad and unlawful conduct in office unfit to hold the place, and that is the question that is before this court of impeachment, as it is before every court of impeachment in this country. The acts of Judge Page, however wrongful, and criminal, are not to be punished by this court in the sense of punishment. The constitution has delegated that duty and power to the other civil tribunals of the State; and whatever this Senate may do in respect to this case, Sherman Page will not be punished, so that he cannot be punished at the hands of another tribunal.

Now let me read the constitution upon that subject:

"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 indictment, trial, judgment and punishment according to law."

Now gentlemen, it seem to me entirely clear and beyond dispute, that a course of insulting, oppressive and arbitrary conduct, on the part of a judicial officer towards the officers of his court, constitute an impeachable offence;—an offence which was contemplated by the framers of the constitution for which he should be removed from office, as an improper person to hold the same. When we come to prove this article we claim and we insist, that the burden upon us under this article will be to show a course of conduct—to show a habit on the respondent's part. Now it well may be that a single outburst of passion, a single exhibition of an arbitrary spirit standing alone and by itself, would not be sufficient to show that a man was utterly unfit to hold the office; and that is the test as I claim, beyond any question for impeachment. But suppose that arbitrary conduct were repeated, suppose it were exhibited from day to day, from term to term, from year to year.

Suppose it was a custom and a habit to insult, and oppress, and treat in an arbitrary manner the officers of the court. Can there be any question that that would be misbehavior in office. The constitution says that a man shall be impeached for misconduct in office. What is misconduct or a misdemeanor? it is failure or neglect of an officer to act in a manner in which the law requires, and demands that he should act. Hence it is impossible to specify in any statute or constitution, what particular acts shall constitute misdemeanor in office. And it never has been done. No tribunal, no framer of statutes or constitution has ever attempted to write down in black and white, the specific outlines of of what would constitute an impeachable offense, and what not. But all have said that misdemeanor or misbehavior in office shall constitute an impeachable offense; and that is what we charge by the tenth article.

Now, we claim we can prove the charges contained in this article in two ways. In the first place we claim we can call witnesses and ask the general question: "What has been the general course of conduct of Judge Page towards the officers of his court?" We also claim that we have the right to illustrate such course of conduct by bringing forward individual witnesses. The delivery of a bill of particulars, if we are required to furnish it, will not be amendment of this article.

You, gentlemen, remember the language of the learned author whose work I cited first, that when a bill of particulars is rendered it is no part of the pleading, no part of the record; and though insufficient itself, cannot be demurred to; and a prosecutor, who in obedience to the mandate of the court does render a bill of particulars, does not amend his pleading; he does not make a new pleading, he does not make a pleading at all.

The learned counsel who has preceded me has spoken of the power of the managers. If the theory of the gentleman is true, that the House of Representatives can delegate no authority to the managers, then all you, gentlemen, have to do is to adjourn *sine die*, because the House of Representatives alone can prosecute this impeachment, and if the theory of the gentleman is true, that it cannot delegate its power, the House of Representatives is not here to day, and the court cannot proceed, because the prosecutor is not before it.

But that question was up and fully determined in the case of the prosecution of Seeger. I claim that it is an established principle in the law of this State that the House of Representatives can delegate its power for the purpose of impeachment and for the information of the Senate. I will read a resolution which the lower house passed:

"Resolved, That the board of managers selected by this House to prosecute articles of impeachment against Sherman Page, judge of the tenth judicial district, be, and they are hereby authorized and empowered to appear at the bar of the Senate, sitting as a court of impeachment, and prosecute the said impeachment as well when the House is not in session as when the same is in session.

Resolved, further, that the said board of managers, be, and the same are hereby vested with all the power of this House in the prosecution of such impeachment necessary for the due and effectual prosecution of the same, to be exercised as well when the House is not in session as when the same is in session."

Now, gentlemen, that question of the power of the managers is not now up for discussion; but when it is up for discussion, I think the managers will have no difficulty whatever to convince the Senate that they have the right and power, if they choose to do so, to produce additional articles, which have not been referred to in any of the preceding articles. But that is not the question which is before the Senate. The question is, whether the tenth article charges an offense. We claim that it does, and we claim that the very gist of the offense lies in being an improper and illegal course of conduct and habit.

Mr. DAVIS. Mr. President, and gentlemen of the Senate: I have been listened to upon many occasions in this trial with so much patience and consideration, that I rise with a feeling of considerable unwillingness, after what I have already said upon the particular subject under consideration, to renew my connection with it. I shall not attempt to obscure the learned and luminous argument of my associate by traversing the ground which he has so ably covered. I shall endeavor to

cest what I have to say in the mould furnished by the argument of the gentleman who has just concluded.

Whether this article stands or falls is not in itself a material matter, but except as a precedent for an exercise of the power of accusation which does not accuse, and of trial for an act with which a respondent has not been charged, which will pass into after years to be a guide in other proceedings, and it will work a far greater injustice than it can work here. My learned friend proposes to test this matter by the light of the common law. I supposed they would reoccupy that ground, and upon that ground we are perfectly willing to meet them. I assume that the managers have concluded, and that this Senate is now convinced that this is a court and not a caucus, and that the respondent can look with entire confidence to those ancient precedents and modes of proceeding which have protected other men in former times, against the arbitrary attacks of power.

Now, gentlemen of the Senate, I call your attention to the substantial and uncontroverted fact that with all the spirit of research with which my learned friends have been inspired since Saturday, not one single instance has been brought to the attention of this Senate where partisan spirit, reckless oppression or party malice has ever appeared before Parliament or Senate with such a charge as this, except in the instance cited the other day; neither from the records of star chamber or parliament; neither from the history of corrupt times or enlightened times, has one such precedent as that been presented, except in Prindle case, where the ruling was as we have stated—a ruling with which the Senators are familiar.

In the Prindle case the judge, was charged with an habitual course of conduct, extending over a period of six or seven years, in taking illegal fees. In the Senate of New York sitting under the guidance of the judges of the court of appeals the article and the testimony under it were quashed and disallowed upon high, legal and constitutional grounds. This is the only precedent; it is in our favor; nothing is produced to gainsay it, except obscure legal principles applicable to exceptional cases only, and limited by the peculiar necessity which exists for the definition of such crimes.

Now, clearness of apprehension and definition is very improtant in such discussions as this. To assume, as my learned friend did, that the respondent is impeachable for a course of conduct, is to beg the very question in controversy. Article 13 of the constitution provides,

"That officers may be impeached for crimes and misdemeanors, and corrupt conduct in office."

To any one at all familiar with the history of impeachments, the meaning of that phraseology is very plain. In constitutions which read merely that officers may be indicted for crimes and misdemeanors, it has long been a vexed question, sometimes decided one way, and some times the other, whether such crimes and misdemeanors must not be offences indictable at common law, and so, the framers of the constitution of this State provided that not only shall an officer be indictable for crimes and misdemeanors, but also for corrupt conduct, for corrupt acts, which may not sink to the depravity of crimes or misdemeanors. Hence I urge that my learned friend is mistaken in assuming that the constitution of this State has given the power to impeach for a course of conduct or habit.

If his assumption is correct, that a man can be accused in two lines with an habitual demeanor, with general naughtiness, what is the necessity

of any specific articles of impeachment? Why would it not have been sufficient, if the House of Representatives had, through their managers, presented themselves at the bar of the Senate and said that, in the name of the good people of the State of Minnesota, we impeach the respondent of habitual oppression to suitors and officers of the court. The exigences of the argument which my learned friend has been coerced to present here, will, most undoubtedly, drive him to say that that would be a sufficient for impeachment, if the House had seen fit to adopt it. But when he does say that, he reduces to absurdity the argmment which he presents, and the practice which he asks you to adopt.

Now, referring to the cases which my learned friend has brought to the attention of the court, the citation from Bishop, and from the 13th Pickering, I wish first to remind the court that the commentator and the court prelude what they have to say by the general principle that it is true that in all criminal proceedings, the accused must be informed of the nature and cause of the accusation against him, the time, place and specific act must be given. But the exigencies of society, have compelled the recognition of certain exceptional crimes. The needs of society require that its members shall not carry on certain vocations without having complied with certain conditions precedent.

The exigences of society have required that persons shall not be permitted to adopt and lead a forbidden course of life; the exigencies of society have raised a conclusive presumption of character as against persons who occupy bawdy houses or who are common scolds or barrators. Take the case of a common dealer in liquors. He cannot complain if he is charged, with carrying on the business of a liquor dealer without having procured a license, if there is a statute against which he has offended. He has a place of business; he is to be found there; he carries on his trade there.

Under the internal revenue law, as it formerly existed, suppose a person had been accused of carrying on the business of an attorney without having paid the tax of ten dollars? Why, most undoubtedly it would be a sufficient proof that he carried on the business of an attorney, because the crime is the carrying on of the business. Not the exceptional instance, but the daily life of the man, is in question in such a case. But there is another class of cases, the largest in the category of crimes which depend upon special and isolated acts.

To accuse and convict this judge of corrupt conduct in office, more must be shown than peevishness. A case must be put, stated and proved, and then the question presents itself to the judicial mind whether in this state of facts the respondent has conducted himself corruptly. The rule by which we judge each other in the walks of daily life is not by the exceptional infirmities of our dispositions. One may be quick to take offense, he may be passionate, he may at times forget the dignity of his position, and still the conduct of that man in social life and official station may be above all taint of corruption. If we are judged by our infirmities instead of our specific acts of right and wrong, in what judgment shall any of us stand?

Suppose an indictment for highway robbery were under consideration, and that the indictment charged simply that the defendant was an habitual highway robber, and had been for five years. Upon demurrer to such an indictment my learned friend, if he were on that side, would say, that it is a crime to be habitually engaged

in highway robbery, and if we prove that this is an habitual highway robber, of course, the greater comprehending the less, we have proved the specific instances. And so in regard to any crime whatever, which can present itself to judicial consideration. If the position of the managers is correct the whole law of indictments, based, as it is, upon the idea of certainty as to the act, time and place, gives way and is annihilated in a moment.

Suppose at the close of the rebellion General Lee had been indicted for treason, and it had been charged that from 1861 to 1865 Robert E. Lee had habitually committed treason, counsel might claim that nobody was hurt, that the world knew his connection with Gettysburg, with Antietam, with Richmond, Chancellorville and Appomatox. He might say "We shall prove all this, the greater includes the less; if he has been an habitual traitor of course he has been a special and specific traitor.

Now, gentlemen, no court that ever sat, no judge who ever dedicated himself to conviction, would entertain such an indictment as that for a moment.

The case of the Commonwealth against Pray, cited from 13 *Pickering*, was a case under a statute which provided that it should be a crime for a man to engage in a certain course of business. The statute of Massachusetts in question, in that case, denounced certain penalties upon common sellers of liquors who failed to comply with certain conditions crecedent. Pray was indicted for carrying on a business of that kind.

Did you ever hear of such a crime as a habit of oppression? As a habit of insolent behavior? As a habit of insolent demeanor? So in regard to the common barrators and common scolds, one act of barratry does not make a common barrator. One act of scolding does not make a common scold. In order to constitute corrupt conduct in office there must be a specific act charged. Perhaps they intend to go further and without notice to us put in testimony of specific acts of the respondent as to the officers of Mower County, andas to all other persons, all through his district, or all over this State.

The laws of our State empower the Attorney General to proceed against a corporation in case its perpetrates acts of usurpation. It would be a most dangerous doctrine, even in a civil proceeding of that character, if the Attorney General were permitted to state in his information simply that such and such a company has habitually usurped franchises that did not belong to it. No court would permit such pleading, no court would entertain it; and yet it might be said that if the corporation done it habitually, it must have been done specifically, and it amounts to the same thing.

My learned friend says that the object of this trial is not to punish, I had not proposed in the consideration of these interlocutory questions to attract the mind of the Senate at all to what the consequences of its final decision may be, but as the remarks of counsel invite me, let us see whether the object of this prosecution is not to punish.

Article 13 of the constitution denounces the penalty. If the respondent is found guilty, his office must be vacated, and the office is one of great dignity and profit. Is not that punishment? It goes further than that, and I think it requires the judgment of this Senate, in case he be found guilty, that he shall be debarred forever from holding any office of trust or profit. Is not that punishment? A person sentenced to the penitentiary for the commission of a felony loses his existence as a civil being for the time, but when his term expires he emerges into citizenship upon the mere certificate of the governor of

the State. But the sentence inflicted in cases like this is the endless hell of terrestrial punishment. By constitutional provision the governor cannot pardon. By limitation upon legislative power the legislature cannot absolve the sentence, and the person convicted takes his solitary way through life stripped of that which makes citizenship valuable, of the right to win the applause of his fellow citizens—the right to have them free to say whether he may be exalted to offices of trust or profit. Exiled from his fellow-citizens like the lepers of the Sandwich Islands into a place by himself—is not that punishment?

Do not these consequence splead loudly for our solicitude that our clients hall be informed of the charges upon which he is to be tried? If the respondent has been oppressive in specific instances, then those instannces are enough and constitute offenses by themselves; if he has been guilty of any specific instances, then it is not necessary to establish a habit; and if he has not been guilty in enough specific instances to establish a habit, then the very foundation upon which our learned friend asks this court to decide this article slides from beneath his feet.

But my learned friend says that the word "misdemeanor" as used in the constitution is naughtiness; that because in some book of synomyms, misdemeanor means misbehavior; therefore, if Judge Page has been naughty and made faces, that he has committed a misdemeanor.

Gentlemen of the Senate I appeal to a higher rule of construction than the mere juggle, which consists in tracing fancied indentity in the meaning of words. Crimes and misdemeanors, as used in a legal sense, have a well settled legal meaning. A misdemeanor in the law, is any crime of less grade than a felony.

My very learned friend went to considerable length in maintaining that this board of managers, under the powers delegated to them by the resolution which he has read, have the right, of their own motion, to bring into being independent articles of impeachment. I deny it. It took a stretch of the constitution to empower the managers to prosecute after the adjournment of the House. That has passed, however, into a settled constitutional construction in this State, and we do not now dispute that, pending the adjournment, these managers may prosecute.

During the eight years which were occupied by the trial of Warren Hastings, the House of Commons attended at the bar, in a body, upon the House of Lords, and in the name of the Knights, Commons and burgesses of Great Britain, prosecuted their impeachment. When adjournments came, the court rose; when sessions were resumed the court convened, and the House of Lords heard the Commons through their managers, all being present. That has been deemed unnecessary in this country, but I assert that the power of the managers has been limited to the power to prosecute the articles which the house has adopted, and to put in their charge. Otherwise, it would be sufficient to pass a resolution: "We will impeach a public officer on general principles, and we wlll confide it to five or six eminent men to look it over to see what articles shall be presented, and we, the House, will adjourn."

But the constitution ot the State provides that impeachment must be by a vote of the majority of those who are elected to the House of Representatives. That means the personal judgment of a majority. It does not mean a delegated power. As my associate has remarked, this matter has been under the consideration of the House of Representatives. They have informed this Senate under what articles they wished this

respondent proceeded against. To the tenth article we say: that it charges no crime, that it violates the constitutional provision that every person accused shall be informed of the nature and cause of the accusition against him; that it is without precedsnt, that it has no foundation in reason, As to the right to amend or to prefer new articles, we repeat the managers have no authority under the constitution or in the powers which have been delegated to them by the resolution of the House.

With these remarks we submit this very important question to the judicial consideration of the Senate.

On motion the Senate went into secret session.

On resuming business in open session, Mr. Nelson offered the following :

Ordered, hereby that the respondent's motion to quash the 10th article be, and the same is overruled ; but that, unless the managers shall, on or before the 1st proximo, furnish and file in the case a bill of particulars to said article ten, then no evidence shall be received under the said article.

Mr. Gilfillan C. D , moved to insert after the words "bill of particulars," the words "relating to the official conduct of the respondent while in the official discharge of his duty." The question being taken on the amendment.

The roll being called, there were yeas 15, and nays 22, as follows:

Those who voted in the affirmative were—

Messrs. Clement, Donnelly, Edgerton, Gilfillan C. D., Houlton, McClure, McNelly, Mealey, Morton, Pillsbury, Rice, Smith, Waite, Waldron and Wheat.

Those voted in the negative were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Deuel, Doran, Edwards, Finseth, Gilfillan John B., Goodrich, Hall, Henry, Hersey, Lienau, Macdonald, McHench, Morehouse, Morrison, Nelson, Remore, Shaleen and Swanstrom.

Mr. Hall called for a division of the question, and the question was taken upon the words following the word "overruled."

The roll being called, there were yeas 20, and nays 17, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Bailey, Bonniwell, Clement, Donnelly, Edgerton, Edwards, Gilfillan C. D., Gilfillan John B., Houlton, Lienau, MacDonald, McNelly, Mealey, Morton, Pillsbury, Rice, Smith, Waldron and Wheat.

Those who voted in the negative were—

Messrs. Armstrong, Clough, Deuel, Doran, Finseth, Goodrich, Hall, Henry, Hersey, McClure, McHench, Morehouse, Morrison, Remore, Shaleen, Swanstrom and Waite.

So the second division of the question was adopted.

The question recurring upon the resolution as amended, and

The roll being called, there were yeas 21, and nays 17, as follows :

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clough, Deuel, Doran, Edwards, Finseth, Gilfillan John B., Hall, Henry, Hersey, Lienau, Macdonald, McHench, Morton, Nelson, Rice, Shaleen and Swanstrom.

Those who voted in the negative were—

Messrs. Clement, Donnelly, Edgerton, Gilfillan C. D., Goodrich, Houlton, McClure, McNelly, Mealey, Morehouse, Morrison, Pillsbury, Remore, Smith, Waite, Waldron and Wheat.

So the resolution, as amended was adopted.

On motion, the Senate took a recess until three o'clock P. M.

AFTERNOON SESSION.

Upon re-assembling, the court being in open session, the President announced the decision of the court upon the motion of the respondent to quash the tenth article.

Are the Honorable Managers ready to proceed?

Mr. Manager CAMPBELL. Mr. President: Before proceeding with the testimony I would like to have the Senate determine the order of testimony. It is the desire on the part of the Managers, if agreeable to the Senate and to the other side, that we introduce our testimony under each article separately. For instance, to take up article one and introduce all the testimony we have upon that point. If the witness comes on the stand we wish to say that we do not desire to exhaust his testimony, but to have the privilege of recalling him on other articles; that I think is customary; it is like several counts in an indictment or a pleading that we introduce testimony upon one point and have the permission of the court to recall that witness. If there is no objection that is what we desire.

The PRESIDENT. If the Manager will make a motion I will present it to the Senate.

Gov. DAVIS. I will enquire how many witnesses the Managers have at present to be examined?

Mr. Manager CAMPBELL. We have now not to exceed five.

Gov. DAVIS. I hardly think the point is worth contesting: I think the better way will be to make a motion so as to make it a matter of record.

Mr. Manager CAMPBELL. In regard to the witnesses that have been sworn, they probably will not be required again, and with the consent of the counsel for the respondent, I think they should be discharged. Of course we will have to get the consent of the opposite side, as they would have the right to recall them.

The PRESIDENT. Perhaps it would be well for the counsel when they have finished with a witness to notify the court of that fact, if there is no opposition on the part of the counsel for the respondent.

Mr. Manager CAMPBELL. Is there any objection to Mr. Mollison being discharged?

Gov. DAVIS. We can answer the question sometime this afternoon.

Mr. Manager CAMPBELL. Very well, any time in the course of the day, a Senator has suggested to me that you have already a rule that whenever a witness leaves the stand, his pay stops unless otherwise ordered by the court.

The PRESIDENT. That is, unless the counsel indicate a wish to recall the witness.

Mr. Manager CAMPBELL. If that is the case that settles the matter, I was not aware of that rule.

The PRESIDENT. Manager Mead, are you ready to proceed with the testimony?

The managers submitted the following by Mr. Manager Campbell:

Ordered, That testimony bearing upon the several articles, be taken in regular order as the said articles were presented, with full privilege of re-calling witnesses upon other articles when desired.

The roll being called there were yeas 31, and nays none as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Baily, Bonniwell, Clement, Clough, Deuel, Doran, Drew, Edwards, Finseth, Gilfillan C. D., Goodrich, Hall, Hersey, Macdonald, McClure, McHench, McNelly, Mealy, Morehouse, Morrison, Morton, Nelson, Pillsbury, Remore, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

So the order was adopted.

D. W. Cameron, sworn and examined on behalf of the prosecution, testified as follows:

Mr. Manager MEAD. Where do you reside?

A. At Austin, Minnesota.

Q. What is your business?

A. Lawyer.

Q. How long have you resided there?

A. Twenty-one years

Q. Engaged in the practice of your profession during that length of time?

A. Yes sir.

Q. Do you know D. S. B. Mollison?

A. I do.

Q. State whether you have been accustomed to practice in the district court of Mower county?

A. Yes sir.

Q. Do you remember the circumstance of Mr. Mollison being arrested upon indictment for libel in 1873.

A. I do.

Q. At what point in the history of that indictment were you called upon by Mr. Mollison?

A. After he had been called and pleaded to the indictment.

Q. How long?

A. Three or four hours perhaps.

Q. That would be on Monday, the second week of the September term of 1873, would it not?

A. I don't recollect the date.

Q. Did you appear for him in court at that term upon that matter?

A. I did.

Q. Were you present in court at the time of his arraignment?

A. I was not.

Q. Now state, Mr. Cameron, what you did with reference to that matter at that term of court.

A. I think I moved the court to withdraw the plea of "not guilty" and interposed a demurrer to the indictment, that is my memory of it.

Q. Was your motion—application granted?
A. It was not.
Q. Anything further occurred with reference to this indictment with which you were connected?
A. Not that I recollect of.
Q. What, if anything, had you to do with the arrangement of the bail bond?
A. I think I drew up a bond for Mollison, he was admitted to bail.
Q. Do I understand you to say you had nothing further to do with that during that term of court?
A. Nothing further at that term.
Q. What was the next step that you took with reference to appearing for Mollison in the matter?
A. I think I appeared for him on one occasion when he was absent, and then again at the time he was tried.
Q. Last Fall?
A. Last Spring.
Q. What was the nature of your employment, the extent of it by Mr. Mollison in respect to that case?
A. There was no definite arrangment made in regard to what I should do for him; he spoke and wanted I should assist him, and I did so.
Q. Were you a general or special attorney in that matter?

GOV. DAVIS. Wait a moment, the distinction between general and special appearance as an attorney is well settled, and an answer to that would be merely a conclusion of the witness.

THE PRESIDENT. The objection is well taken by the counsel for the respondent; it is competent to show in what capacity he acted.
Q. To witness. State whether you were employed for a specific or a general purpose?

GOV. DAVIS. We object. It is the same question.

THE PRESIDENT. It is the same objection. I think if you will ask the witness what he was employed to do, it will be a proper question.

Mr. Manager MEAD. What services were you employed by Mr. Mollison to do with reference to that indictment?
A. When he spoke to me first he said he was under arrest and wanted I should assist him to get bail; I think he asked me what he thought I had better do with regard to it, and I told him there was no definite arrangement made as to any particular act to be agreed upon.
Q. State what, if anything, you did at the March term, 1874—the general term?
A. Not anything.
Q. What did you do in the September term of 1874?
A Not anything.
Q. What, if anything, in the two terms in the year 1875?
A. Nothing.
Q. The two terms of 1876?
A. The same.
Q. I wish to be informed whether you were his attorney during these years that you did nothing in regard to this matter?
A. There was nothing said between him and myself that I recollect of?

Q. Did you during these years act as his attorney—1874, 1875 and 1876—in this matter?

A. I think at one term of the court in 1874, a special term, that was held in July.

Mr. Manager MEAD, (interposing.) I am speaking now—

Gov. DAVIS. I insist on the answer.

Mr. Manager MEAD. I am now asking you if in the year 1874, 1875 and 1876, of the general term of the district court of Mower county, you appeared as the attorney of Mollison in this matter?

A. I did not.

Q. Now you will state, if you please, what you did at a special term of court?

A. At a special term of court held in July, Judge Mitchell was there, and Mollison was not in court, and when the criminal calendar was called, Mr. Wheeler, I think, spoke to me in regard to it; and I think at his suggestion the case passed the term. There were no jury cases tried at that term.

Q. Who was Mr. Wheeler, that you refer to?

A. The county attorney.

Q. Was there any criminal cases tried at that special term?

A. No jury trials. There were some motions I think.

Q. No jury empanneled?

A. I think not.

Q. State whether or not you appeared in this matter for Mr. Mollison, at the general term of that court during the year 1877.

A. I did not.

Q. State whether or not you were present in court during these terms which you refer to?

A. I was present in court at every term perhaps except one. I am not certain that I was present at the March term of 1875.

Q. Were you present in the court room at that term of court, when Mr. Mollison rose up and demanded a trial of his case?

A. I was there at that time.

Q. Will you state how it occurred?

A. I don't recollect particularly, excepting that he wanted a trial.

Q. In what manner did he express his desire for a trial?

A. What words he used?

Q. What words he used?

A. I do not remember. I think he desired the case to be tried.

Q. Do you remember what response the judge gave to his demand?

A. Not particularly. I think that he indicated that he could not try it.

Q. You say you drew that bail recognizance. From whom did you learn the amount of bail that would be required in that case?

Mr. LOSEY. That we object to on the ground of its immateriality.

The PRESIDENT. I suppose the counsel will not insist upon it.

Mr. Manager MEAD (to the witness), Are you familiar with the practice of Judge Page in that court as to the amount of bail that is usual for him to require in criminal cases?

A. I am.

Q. What was required during 1873 and prior thereto by Judge Page? What amount was required for felony?

Mr. LOSEY. We object.

Mr. Manager MEAD. We offer the testimony under the resolution adopted by the Senate yesterday for the purpose of showing the bail required in the case, as far in excess of that required for other and higher crimes by Judge Page during that year.

Mr. LOSEY. We do not understand, your honor, that this comes within the rule that was laid down yesterday to govern us in the future in the introduction of evidence. There is no complaint that the bail was excessive in this case. Nothing said about it in these articles of impeachment, and besides all that, it is known to every member of this Senate that in the matter of bail it is a matter so largely in the discretion of the court, and is so governed by the circumstances surrounding each case as it may arise, that what may have been required in one case is no evidence of any facts existing in another case. Now, in an ordinary matter brought up where a person is required to get bail it depends entirely on the circumstances of the party, and it depends also on the conditions that surround him, that is, the sort of crime that he is charged with. Now, a man brought up for stealing a horse we will say, $500 bail might be heavy for him, and ten thousand dollars might be light for another man under the same circumstances.

It is simply a matter of discretion—a discretion that is to be judicially exercised, of course, but nevertheless it is a simple matter of discretion on the part of the court, and there is no fixed rule in that regard.

Gov. DAVIS. Mr. President, I would like the permission of the Senate to state what I understand to be the proceedings of the Senate yesterday, not to argue it. I understand that yesterday it was attempted to go into the question of the amount of this bail for the purpose of showing that it was exorbitant, and from that to authorize the Senators to infer malice. My recollection is, although the proceedings of yesterday were somewhat confused, that upon that point the sense of the Senate was taken, and that testimony as to bail was decided to be incompetent. This opened another discussion upon the testimony of Mr. Davidson, whether the Senate would hear what took place between Mr Davidson and Judge Page prior to the finding of the indictment, with a view of establishing the feelings of the respondent towards Mollison; and upon that sole point as to what took place prior to his indictment, for the purpose of characterizing the animus—if any existed—the sense of the Senate was, that Mr. Mollison might be interrogated and might answer. That manifestly is not this case, for this case took place subsequent to the finding of the indictment, and it does seem to me was covered by the Senate yesterday in our favor.

Mr. Manager CAMPBELL. The point decided yesterday on this bail matter, was entirely different from what our object is in asking this question now. Our question now is, what has been the usual custom of the court in Mower county in regard to bail for felony, for several years, that is as to the amount required in felonies. We do not ask this question on the ground that we claim that bail was excessive; and it was overruled by the Senate yesterday, as I understand from the ruling, simply because in our allegations, and that was the argument of the counsel, that we had made no allegation that the bail was excessive. We ask it now for the purpose of showing that this judge made a discrimination against this man Mollison. That where there were horse thieves, forgers and others guilty of felony, the bail was put from five hundred dollars up to six hundred dollars, something like that, and that

the bail in this Mollison case, where it was simply a libel against the respondent, was placed at the sum of fifteen hundred dollars;

Now we offer it, not that the bail was excessive, because Mollison could give this bail without any trouble,—he being an honest man—but we ask it for the purpose of showing malice, and that the judge did discriminate against this man Mollison, who was accused of an offense against the court simply—simply a libel against the court—that he discriminated against him, in favor of men who were guilty of horse-stealing or larceny, in other cases; whose bail was fixed at a moderate rate, while Mr. Mollison's was put at a larger sum, showing that he had malice against Mollison; otherwise he would have put it at a moderate sum. We admit the position of the learned counsel, first up, that bail is in the discretion of the court, unless ii gets excessive, and violates the constitution. We admit that portion.

We do not admit that the bail here was excessive, but we do claim to show that Mr. Mollison was a man living right in the vicinity, a farmer, with no possibility or probability of his leaving the State ; a man that would have been there to have attended his trial, without any bail ; and from him he demanded fifteen hundred dollars simply because he had made a libel against the respondent ; when, if he had stolen a horse, or committed forgery, the bail would not have been over five hundred dollars, showing direct malice in this case on the part of the respondent. Now what is bail taken for. Simply and solely that the party accused of the offense shall be present in court. That is all bail is required for. It is not to punish the person Now we intend to follow this up, for we have already shown that Mollison was there, living in that vicinity, a respected citizen. and there was no necessity of bail at all, and this judge did discriminate against him. It is for the purpose of showing malice, and the rule of this court was that we might show by implication—by his acts, malice before and after the act. And for that reasou we think it comes within the rule.

The PRESIDENT. I think it is a proper question. If there is no objection on the part of the Senators, the question will be asked.

The Witness. A. I dont recollect any instances of his fixing bail prior to 1873.

Q. During 1873 ?

A. Or during that year. Since that time I have known instances.

Q. What amount was required ?

A. In some instances, five hundred dollars; in some instances a thousand dollars.

Q. What are the specific crimes to which you alluded, wherein five hundred dollars and one thousand dollars bail was fixed by Judge Page?

A. One crime of forgery,—forging a deed of real estate and five hundred dollars was the amount.

Q. What was the character of the grade of the five hundred dollars bail, fixed for felonies ?

A. Larceny, some of them.

Q, Do you recollect of any other ?

A. No, sir.

Mr. Manager MEAD. That is all we have of this witness, on this charge.

The PRESIDENT. The counsel for the respondent will take the witness.

Mr LOSEY. [To the Managers.] Do you purpose to re-call Mr. Cameron, on other charges?

Mr. Manager CAMPBELL. We do; several of them.

Mr. LOSEY. That is what I want to know.

Cross examination by Mr. Losey.

Q. How many years have you known Mr. Mollison, Mr. Cameron?
A. Since '56.
Q. How many years have you known Judge Page?
A. About twelve.
Q. When you appeared in court for Mr. Mollison the day you spoke of what announcement did you make to the court?
A. My memory of it is that I asked leave to withdraw the plea and plead a demurrer to the indictment.
Q. Did you see anything else to do at that time, if so, what was it?
A. I don't know that I did.
Q. Did you announce to the judge that you appeared especially for that purpose?
A. I don't think I did.
Q. Was your name entered as the attorney for Mollison in that matter?
A. Upon the records of the court, I cannot state whether it was or not.
Q. Was Mollison sued in a civil action?
A. I think that he was, I am not positive as to that.
Q. Did you appear as his attorney in that action?
A. I don't remember whether I did or not.
Q. Did you notify Judge Page at any time that you were not generally retained by Mollison?
A. No.
Q. Had you appeared in court in other matters for Mollison, and did yon during this year?
A. I could not state. I do not remember of any instances.
Q. You stated you had no definite arrangement with Mr. Mollison as to what you were to do in the case?
A. No.
Q. What did he employ you to do; to attend to the case?
A. No, I cannot say he employed me to attend to it. He came into my office and wanted to know what he should do.
Q. He told you to look into it, and you did?
A. He did on one occasion.
Q. You considered yourself engaged to handle the case in court, didn't you?
A. I did not, because he had talked with other attorneys in regard to it.
Q. When the case was called in court, did you deem it your duty to answer?
A. I should if he hadn't been in court.
Q. When Judge Mitchell appeared there was there a jury in attendance?
A. I think there was a jury there, but I am not positive as to that.
Q. Have you refreshed your memory from the records of the court in relation to that?
A. No, not in regard to any of these matters.

Q. Is it not a fact that the jury was called in the morning by Judge Mitchell and that they appeared and answered to their names, and no case being ready for trial they were discharged to appear there in the afternoon?

A. Perhaps it was, if that is the fact.

Q. Did you not, at that term, consent to a continuance of Mollison's case?

A. I think I did. I think Mr. Wheeler suggested a continuance.

Q. Are you sure?

A. I am sure that I never made a motion.

Q. Are you sure that you did not consent upon the case being called in court without any motion being made on the part of the prosecution?

A. I assented to it; that was my memory of it.

Q. Upon the calling of the case?

A. I think upon the calling of the criminal calendar.

Q. Were you ever discharged by Mr. Mollison?

A. No.

Q. Do you pretend to be able now to state what occurred in court at the time Mollison says he demanded a trial?

A. No. My memory of that is that he asked to be tried, and that the judge informed him that he could not try the case, that is my memory of it, it is not distinct.

Q. Was there anything unusual that attracted your attention, that occurred in court at that time.

A. I don't recollect that there was.

Q. Nothing that fixed the matter particularly in your memory?

A. No.

Q. Where was Mollison sitting in the court room at the time you recollect that he made this demand?

A. I cannot state where he sat.

Q. Was he back in the body of the house among the audience?

A. I cannot state.

Q. Was he within the bar?

A. I would not state whether he was or not.

Q. You have no recollection concerning that?

A. No.

Q. Then you are not very firm in your memory as to what did occur there?

A. Nothing more than I remember of his asking for a trial.

Q. What was said, what was done?

A. I cannot state just what was done in regard to it.

Q. Were you of the opinion, or did you advise Mr. Mollison that Judge Page could not properly sit and try that case?

A. I was not of the opinion that he could properly sit and try it. I don't know whether I advised Mr. Mollison or not.

Q. You was not of that opinion?

A. I was not.

Q. Then you think he could not properly sit?

A. That was my judgment of it.

Q. You would have considered it very improper for him to sit on the trial of that case, would you not under the circumstances?

Mr. Manager MEAD. I don't know as that is cross-examination.

Mr. LOSEY. All right, we will withdraw it.

Q. Did you, as the attorney of Mollison, ever demand a trial of that case during the time Judge Page was on the bench?

A. No sir.

Q. Did you, as the attorney of Mollison, ever make any preparation for the trial?

A. A little, at the last term of court.

Q. Never during the time Judge Page sat upon the bench?

A. I did not.

Q. Did you know that a special term was to be held by Judge Mitchell in July?

A. I knew that before court.

Q. Didn't you know that at the adjournment of the March term that year?

A. I did not know that there was to be any jury cases tried at the adjourned term.

Q. Didn't you know, as a matter of fact, that the jury was adjourned without a trial, and that the court was adjourned to July?

A. I think the court was adjourned to July, with the understanding thrt Judge Mitchell was to come there, if some other Judge could not be obtained.

Q. For what purpose?

A. Holding court.

Q. And trying cases which Judge Page was incompetent to try?

A. Some of them.

Q. Any that might be ready for trial?

A. I should say so, but my impression with regard to the jury is that it was discharged, still I am not positive as to that.

Q. When?

A. At the March term.

Mr. LOSEY. I think you will find that the record shows you are mistaken, Mr. Cameron.

A. That is only my impression.

Q. Was there not another jury summoned that was discharged?

A. I am under the impression that another jury was summoned, if that one was discharged.

Q. Do you recollect the fact as to whether they were in attendance or not at that July term?

A. I think that they were.

Q. When Judge Page went upon the bench, what was the condition of the calendar as to his being an attorney in different cases on the calendar?

A. He was an attorney in quite a number of civil actions.

Q. Was he not an attorney in a large proportion of civil cases on the calendar?

A. I presume so. I could not state exactly as to that, there was a large number of cases against certain parties, in which he was the attorney in a number of them.

Q. Did you make a motion before Judge Page for a reduction of the bail of Mollison, while you were his attorney?

A. I should say not that I recollect of.

Q. Did you make any complaint there as to the amount of bail?

A. I did not.

Q. You drew the bond, I believe you stated.

A. I think I did. That is my memory of it.

Q. Did you ever make any motion, to dismiss the action on behalf of Mollison?

A. I think not.

That is all.

Re-direct examination by Mr. Manager MEAD.

Q. What do you mean by saying you think a jury was in attendance at that special term in July, 1874; that the jury was in attendance from time to time, or that there was a jury on the morning of the first day?

A. I think there was a jury there at the opening of the court on the first day of the term, and there might have been a jury on the second day. I don't remember particularly as to that.

Q. The regular jury, you say, had been discharged at the March, preceding term.

A. That is my impression. I think so, but I am not positive.

Gov. DAVIS. I will notify the counsel now, that so far as we are concerned the witnesses Mollison and Cameron will not be required by us.

Senator DEUEL. Mr. President, is my understanding of the witness, if I understand correctly, that he advised Mr. Mollison to withdraw his plea of not guilty?

The witness. Not guilty is what I meant.

R. O. HALL sworn and examined on behalf of the prosecution.

Mr. LOSEY. With the indulgence of the court, I would like to ask Mr. Cameron another question about the bail matter.

The last witness, Mr. Cameron, thereupon resumed the stand.

By Mr. LOSEY. Q. You spoke of bail, Mr. Cameron?

A. Yes.

Q. You spoke of forgery of deeds to real estate. Where did that case arise?

A. In Freeborn county.

Q. Do you know anything about the facts connected with it?

A. I think I have seen the bond.

Q. Do you know anything about the circumstances of the party indicted? Did you at the time know anything about it?

A. I did not.

Q. Did you know anything about the circumstances of the party at the time the bail was fixed?

A. I only know that this party was charged and accused, in Mower county, with forging deeds to land.

Q. I am speaking now of Freeborn county, and confine myself to that particular time.

A. I know that at that time this bail was fixed, he was in the Preston jail, I think, or had been confined there. He could not have been in jail at the time the bond was drawn, for he was taken to Freeborn county to testify. He was charged with forging deeds in Freeborn county, and they were after him in Mower county for crimes of the same nature.

Q. At the time the bail was fixed, were they after him in Mower county?

A. Yes, sir.

Q. Do you pretend to say that the Judge's attention was called to that fact, or that he knew about it?

A. I cannot state.
Q. Were you there in Freeborn county?
A. No sir, I was not.
Q. Then you cannot pretend to say what knowledge the judge had of it?
A. I cannot state what knowledge the judge had of the Freeborn county matter.
Q. You cannot state what occurred in court?
A. No, sir.
Q. What other things did you speak of?
A. There were several cases in which bail was fixed by the judge in our county at different dates.
Q. What was the title of the cases?
A. I won't undertake to give the title of the cases.
Q. Was not bail fixed in different cases at different times?
A. Yes, sir.
Q. Dependent entirely on circumstances surrounding the case?
A. I should say so.

Mr. LOSEY. That is all.

Mr. Manager MEAD. Q. Was this person charged with forging deeds to real estate, a transient man—a stranger—or a permanent citizen?
A. He was a transient man.

The PRESIDENT. I would like to enquire of the managers if they are through with Mr. Mollison? I would like to state here for the information of such witnesses as there are in court, that when they are disposed of on the stand, they will apply to the secretary and get their pay.

Mr. Manager MEAD. I desire to offer in evidence the indictment and bond of Mr. Mollison's case. It is a certified copy.

Gov. DAVIS. Let us see it.

[After examining paper.] We have no objection.

Thereupon a certified copy of the indictment against D. S. B. Mollison, in the district court for the county of Mower and State of Minnesota, bearing date the 16th day of September, A. D. 1873, was received in evidence, there being no objection on the part of the respondent. It was marked "Exhibit A."

Also a certified copy of a bond given for the appearance of D. S. B. Mollison before the district court of Mower county and State of Minnesota, bearing acknowledgment the 52d day of September, A. D. 1873. It was marked "Exhibit B."

The two papers, above mentioned are as follows:

EXHIBIT "A."

The District Court for the County of Mower and State of Minnesota.

THE STATE OF MINNESOTA,
vs.
DAVID S. B. MOLLISON.

David S. B. Mollison is accused by the Grand Jury of the county of Mower by this indictment, of the crime of Libel, committed as follows:

The said David S. B. Mollison did on the 28th day of August, A. D. 1873, at the city of Austin in said county, wilfully write and publish in a newspaper known as the Austin Register, printed and published in said city of Austin, a certain false, scandalous and malicious defamatory libel, of and concerning one Sherman Page,

who was at that time and is now judge of the district court of the tenth judicial district of said State, and acting as such judge, which said libel is contained in an article written and signed by said Mollison, entitled, "Mr. Mollison propounds a few questions to the two judges," and published in said newspaper as aforesaid, and is as follows, to wit: * * * * *

"Let us see how their (meaning among others the said Sherman Page) purity will stand an examination in Mower county. The head leader (meaning the said Sherman Page) said in his stump speech three years ago, at the stone school-house south of Austin, that they were sifting out the pure elements from the corrupt in this county, that the people might rely with confidence on the men who were to run the different offices of this county."

"Now let us see: The first act was against G. W. Bishop, county commissioner. He had some six or seven hundred dollars in his possession that belonged to this county they (meaning the said Sherman Page among others) said. But their action proved only a blind to the people, for they (meaning the said Sherman Page) with drew the action upon Mr. B. resigning his office. They (meaning the said Page) let him go with the money that belonged to the county, and bribed him with as much more, that their dear purifiers" (meaning among others the said Page) "might have full sway" (meaning and intending by the language aforesaid to accuse and charge, and thereby then and there accusing and charging the said Sherman Page with bribing a public officer, to wit: George W. Bishop, one of the county commissioners of Mower county, Minnesota, and with compounding a feloneous crime, which he said Bishop had committed.)

"Now that they have the reins in their hands, how comes it that our taxes are no lighter than they were four years ago? A large amount of back personal property tax was collected last year, and there is one-fifth more taxable property in the county and yet there is no reduction. What is the matter? Are they salting it down in bank so that the Mower county purifiers shall have sufficient funds on hand for the fall election? The next time: The salary of the superintendent of common schools is doubled. Is that gentleman a more faithful officer than any of his predecessors? We think not, for some of the schools have not been visited by him for the two last terms, yet his salary has been doubled, making it eight hundred dollars instead of four. The county attorney's salary has gone through the same multiplying process, and let anyone who wish, ascertain whether that gentleman's services are worth more than any of those who formerly held that office. Now all this increase of salary was brought about by the pliant tools in the shape of county commissioners, who dare not disobey their head purifier" (meaning the said Sherman Page), "who now acts as district judge, resting from his arduous labors in purifying this county and recuperating his exhausted strength at the expense of the dear people, whom he sympathized so much with three years ago" (Meaning and intending by the language last aforesaid, then and there to charge and did charge thereby the said Sherman Page with the exercise of corrupt, inproper and unlawful influences upon the county commissioners of said Mower county, whereby the salaries of public officers were increased to the prejudice and injury of the citizens of said connty)

"But what are his" (meaning the said Sherman Page) "acts as judge? There was an act passed by the Legislature last winter, taxing certain railroad lands, and every honest thinking man will say amen to it. But as our righteous judge" (meaning the said Sherman Page) "has been plowing with the railroad heifers of this State, he has issued an injunction forbidding the officers whose business it is to collect such tax, from doing so in this district. Now this same judge (for it was him that wrote the article entitled "Political" in the Transcript of the 14th) by this one act has robbed this county of more than he can bring against Mr. Smith in his seven years services, and he (the judge) has been only about six months in office. When you take into account the amount that will be lost to this district, will fifty thousand cover the loss?" (Meaning and intending by the language last aforesaid, to charge and thereby charging him, the said Sherman Page, with corrupt conduct in the discharge of his duties as judge of the tenth judicial district of the State of Minnesota, and with being unlawfully and corruptly influenced by the railroad companies doing business in said State, to grant and issue a writ of injunction, restraining the levy and collection of taxes within the several counties composing said judicial district, upon land belonging to said railroad companies, and which land the Legislature of said State had by their act authorized to be taxed, and by which said malfeasance in office the people of said judicial district had been robbed by him the said judge of the sum of fifty thousand dollars, contrary to the form of the Statutes in such case made and provided, and against the peace and dignity of the State of Minnesota.

Dated at Austin in the county of Mower this 16th day of September, A. D. 1873.

W. B. SPENCER,
Foreman of the Grand Jury in and for Mower county.

The names of the witnesses examined before the Grand Jury on the finding of the foregoing indictment are as follows: A. E. MIEGS,

W. B. SPENCER,
Foreman of the Grand Jury of said county of Mower.

CERTIFICATE OF TRANSCRIPT.

State of Minnesota, County of Mower,—ss.

I, A. W. KIMBALL, clerk of the district court in and for the county of Mower, in the State of Minnesota, do hereby certify that I have compared the foregoing with the original indictment—State of Minnesota vs. David S. B. Mollison—remaining on file in my office, and that the same is a true and perfect transcript of said original.

In testimony whereof, witness my hand and the seal of said court at Austin, in said county, this 7th day of February, A. D. 1878.

A. W. KIMBALL,
Clerk of the District Court.

Endorsed on the back: State of Minnesota, vs. David S. B. Mollison. Indictment. A true bill. W. B. Spencer, foreman of the grand jury. Filed September 16th, 1873, John F. Atherton, Clerk, E. O. Wheeler, County Attorney. Let a bench warrant issue. September 17th, 1873. Sherman Page, Judge District Court.

Endorsed on the back: Filed May 28th, 1878. Chas. W. Johnson, Clerk of Court of Impeachment.

EXHIBIT "B."

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

THE STATE OF MINNESOTA,
vs.
DAVID S. B. MOLLISON.

Know all men by these presents, that we, David S. B. Mollison, as principal, and Ira Jones, J. B. Yates and George Sutton, of Mower county, as sureties, are held and firmly bound unto the State of Minnesota, in the penal sum of fifteen hundred dollars, which sum well and truly to be paid we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Signed, sealed and delivered this 22nd day of September, 1873.

The condition of this obligation is such that whereas the above bounden David S. B. Mollison has been indicted by the grand jury of the county of Mower, on a charge of libel, and is held to bail in the sum of fifteen hundred dollars for his appearance at the next general term of said court to be held in said county.

Now, therefore, if the said David S. B. Mollison shall appear at the next general term of the said District Court to be held in said county of Mower, and abide the orders of the court therein, then this obligation to be void, otherwise to remain in full force and effect.

D. S B. MOLLISON, [Seal.]
GEO. SUTTON, [Seal.]
IRA JONES, [Seal.]
J. B. YATES. [Seal.]

Signed, sealed and delivered in presence of G. M. Cameron and George Baird.

State of Minnesota, Mower County—ss.

Ira Jones and George Sutton, each being duly sworn, says that he is worth the sum of fifteen hundred dollars over and above all homestead exemptions and liabilities, and each for himself acknowledged the above bond to be his voluntary act.

D. S. B. MOLLISON,
IRA JONES,
J. B. YATES.

Taken, acknowledged, subscribed and sworn to before me, this 22nd day of September 1873.

G. M. CAMERON,
Notary Public.
[SEAL.]

CERTIFICATE OF TRANSCRIPT.

State of Minnesota, County of Mower—ss.

I, A. W. Kimball, Clerk of the District Court in and for the county of Mower, in the State of Minnesota, do hereby certify that I have compared the foregoing

with the original bond in case of the State of Minnesota against David S. B. Mollison remaining on file in my office, and that the same is a true and perfect transcript of said original.

In testimony whereof, witness my hand and the seal of said court, at Austin, in said county, this 28th day of January, A. D. 1878.

A. W. KIMBALL,
Clerk of the District Court.

Endorsed on back: Filed Sept. 26th, 1873. John F. Atherton, Clerk.

Endorsed on back: Mollison's bond. Filed May 28, 1878. Chas. W. Johnson, Clerk of Court of Impeachment.

Mr. R. O HALL. The witness just sworn then took the stand.

Q. Where do you reside, Mr. Hall?

A. In Austin, Minnesota.

Q. How long have you lived there?

A. About five years.

Q. What is your present business?

A. I am sheriff of that county.

Q. How long have you been sheriff?

A. Since January, 1875.

Q. State whether or not you were present at any term of the District Court, during the years 1875 and 1876, when Mr. Mollison demanded trial in his case for an indictment for libel?

A. Yes sir.

Q. Will you state to the court what transpired, what Mr. Mollison said, and what reply Judge Page made?

A. I think, at one time, when his case was called he answered, "ready for trial."

Q. What response was made—given by the court?

A. I do not think there was any thing at that time.

Q. Do you remember what year that was?

A. I do not.

Q. The first term of the first year of your term of sheriff?

A. I am inclined to think it was, but am not positive.

Q. State whether or not Mr. Mollison's bail surrendered him up to you, and when was it?

Mr. LOSEY. That we object to, as not being the best evidence.

The PRESIDENT. I think you can prove that by better evidence than this witness.

Mr. LOSEY. It is an assumption that the bail was surrendered.

Mr. Manager MEAD. I would like to know what is better evidence than the physical fact that the bail surrendered him up.

Mr. LOSEY. We object to it, because it calls for a conclusion.

The PRESIDENT. You object to the form of the question as I understand the counsel.

Mr. LOSEY. Now what Mr. Mollison's bail did in regard to Mr. Mollison wo do not object to, but we object to the conclusion that the counsel comes to, that it amounted to a surrender.

The PRESIDENT. The question that I think is proper for the managers to submit is what the bail did.

Q. By Mr. Manager MEAD. What did the bail of Mr. Mollisons do with respect to surrendering him at any time?

A. Two men presented themselves to me with Mr. Mollison.
Q. When was this?
A, I think in the fall of '77.

Mr. CLOUGH. I should like to enquire of the Senators in the rear of the hall whether the witness can be heard or not?

Several Senators responded in the negative.

Witness (repeating.)

Two gentlemen presented themselves with Mr. Mollison to me wishing to surrender Mr. Mollison, and saying that they did not wish to be held any longer on his bail.

Q. What are the names of those persons?

A. Mr. Ira Jones and George Sutton. I think I told them that there was another man, that that would not be sufficient. In fact I referred the matter to Judge Page. He said that Jerry Yates, the other one on the bail was good enough, and I so reported to the other two men.

Q. What next transpired with reference to that?

A. They presented me with a written surrender, or whatever you might call it. A letter.

Q. Now was that the same day?

A. The same day I think; I took him into the court room or he followed me, and I went to the judge and handed him this paper.

Q. Have you that paper, Mr. Hall?

A. I have it in my possession; not here.

Q. Have you a copy of it?

A. No sir.

Q. What did Judge Page say when you preiented him with that paper?

A. After looking it over he handed it back to me. I asked him what I should do with it; he says put it in your pocket, it is nothing to you. I did so.

Q. Anything further which you have—any knowledge with referenceto the surrender—to this matter of that paper?

A. No Sir.

Q. State whether or not the respondent, Judge Page, made any order or direction in regard to the bail.

A. No, sir, not further than that he told me to put it in my pocket—the paper.

Q. State whether or not Jude Page made any order then as to the custody of Mollison.

A. No sir; he did not.

Q. Or at any subsequent term?

A. Not to my knowledge.

Q. One more question. What was the manner of Judge Page when you handed that paper to him and called his attention to Mr. Mollison?

Mr. LOSEY. We object.

The PRESIDENT. What is the object of the question?

Mr. Manager MEAD. We want to show he acted in an unbecoming manner, and I presume—I am informed—it will bear upon the question of his treatment of Mr. Mollison when that case was brought up, showing his disposition to become angry.

Mr. LOSEY. Will that come under the bill of particulars?

Mr. Manager MEAD. Very likely.

The PRESIDENT. I think that is hardly competent under this tenth article.

Cross-examined by Mr. LOSEY.

Q. What term of court was it, Mr. Hall, that the case was called and Mollison answered?

A. I could not tell you; my impressions were it was in 1875; the first term.

Q. Where was Mollison sitting in the room at the tme he answered?

A. My impression is that he was back about four or five seats from the front.

Q Among the spectators?

A. Yes sir.

Q. Where was his attorney, Mr. Cameron, at that time?

A. I could not tell you.

Q. Was the calendar being called, at that time?

A. I think so.

Q. Was the bar pretty generally in attendance?

A. I could not say as to that. There was quite a number in the room

Q. Quite a number of attorneys in the room, within the bar, were they?

A. I could not tell you how many attorneys there was there. There was quite a number in the room, attorneys and all.

Q. What day of the term was this?

A. I could not tell you.

Q. Was it the term at which Mollison was arraigned, or a subsequent term?

A. It certainly must have been a subsequent term. I was not sheriff then.

Q. At the time you offered this paper to Judge Page, can you remember distinctly just what he stated to you

A. Well he might have said something else, but then that is the order that I got—that is the answer that I got.

Q. You stated the answer was "Put it in your pocket, it is nothing to you?"

A. Yes sir.

Q. Are you quite positive that that was the answer?

A. I am not positive. That is what he directed me.

Q. Didn't he state to you that it was nothing to him, instead of nothing to you?

Q. You stated, I believe, that he gave you no order or direction?

A. He stated just what I have stated there, and I think it is every word he did say.

Mr. LOSEY. That is all.

Mr. Manager MEAD. We shall need this witness again.

Lafayette French, sworn and examined on behalf of the prosecution, testified:

Direct examination by Mr. Manager Mead:

Q. Where do you live, Mr. French?

A. At Austin, Mower county, Minnesota.

Q. How long have you resided there?
A. Nearly seven years.
Q. What is your business?
A. I am an attorney at law.
Q. How long have you practiced as an attorney in the District Court of that county?
A. Ever since I have been there, nearly seven years.
Q. What official position, if any, do you now hold in that county?
A. I am county attorney of that county.
Q. How long have you been county attorney in Mower county.
A. Since July, 1874.
Q. Were you residing in Austin at the time the indictment was found against one D. S. B. Mollison, for libel?
A. I was.
Q. Were you present at the time of his arraignment?
A. I was, yes sir.
Q. Were you present the Saturday—the time he was brought in under arrest by the Sheriff, the Saturday preceding the day he was arraigned?
A. I have no recollection as to that.
Q. Now will you state to the court just what occurred at the time Mr. Mollison was called upon to plead to that indictment?

Mr. Mollison was requested by the county attorney to step forward, and Mr. Wheeler commenced reading the indictment to him, and while Mr. Wheeler was reading that portion of the indictment which purported to contain a portion of the article published, Mr. Mollison nodded his head, as he was reading along, in that shape. (Witness here illustrates.) Page rapped on the desk, and requested Mr. Wheeler to stop, and he asked Mr. Mollison what he was nodding his head for. Mr. Mollison made some reply; I do not recollect what it was; and he asked him again what he was nodding his head for, and Mollison said something about his head being his own; I don't recollect exactly what it was, or "that he had no right to ask him that question." Then Judge Page asked him if he intended by nodding his head to assent to the truth of the matter of the charge in the indictment.

That is as I take it, that he wanted to know that if, by shaking his head, or nodding his head, he intended to assent to the truth of that portion of the article which was set out in the indictment? Mollison said in reply that he did not, and then they proceeded with the arraignment.

Mr. Wheeler continued reading the indictment, and after Mr. Wheeler concluded reading the indictment, the judge stated that the bail would be fixed at fifteen hundred dollars. Mollison then said something about being ready for trial, that he would not give bail, and Judge Page said that he could not or would not try that case; my impression now is that he could not try that case. Mr. Mollison then turned to take a seat, as I supposed, and before he took his seat however, he turned to the judge and asked him if he could speak, Judge Page told him he could not, and to be seated. That was about all I saw at that time.

Q. State what the manner of Judge Page was when speaking to Mr. Mollison at the time he was arraigned.

Mr. LOSEY. That we object to.

The PRESIDENT. I think that is proper under the order of yesterday to show the animus.

Q. The court direct that you shall answer that question.

A. I thought that Judge Page was excited.

Q. What language did Judge Page give at the time he spoke to Mr. Mollison on that occasion? I want his exact language and the manner in which he gave it.

A. Oh! I can't give his exact language; as nearly as I recollect it now, it was, "Mr. Mollison, what are you nodding your head for?" And he asked him that question once or twice; and then he asked him if he intended by nodding his head to assent to the truth of the matters contained in the indictment.

Q. What did Judge Page say, if anything, when Mr. Mollison desired to speak, asked him the privilege of speaking?

A. He told him, no, sir; to sit down.

Q. What was Judge Page's exact language, if you remember, in answer to that request?

A. I have stated what I recollect about it.

Q. State whether or not Judge Page appeared to be angered on that occasion?

Mr. DAVIS. We object to that question; we are perfectly willing that the demeanor be asked about.

The PRESIDENT. I think the objection is well taken.

Mr MEAD. We withdraw the question.

Q. You may state what the demeanor of the judge was and how he appeared when making these replies to Mr. Mollison?

A. Well, he was decidedly stern; I don't know whether he was angry or not. I am pretty well acquainted with Judge Page but—

Q. State what his manner was, mild or otherwise?

A. He was not mild, decidedly stern in regard to that matter.

Q. State whether or not you were present at every term of the district court held in that county after Mr. Mollison plead to that indictment up to 1878?

A. Yes sir, I have been present at every term of court held in Mower county, general or special, since I have resided there.

Q. State whether or not if you know Mr. Mollison has appeared in person at each of those terms?

A. I have seen him there at a number of terms, in fact most every term.

Q. State whether or not you know if Mr. Mollison at any time demanded a trial of this cause, during any of those terms?

A. I recollect that at one time when the criminal calander was being called, the case of the State against Mr. Mollison was called, of Mr. Mollison answering in court and saying that he was ready for trial.

Q. What year was that?

A. My recollection is that it was in the year 1876. At the September term of 1876; still I would not be positive as to that.

Q Were those cases called at each subsequent term of court?

A. They were called in this way, after that the judge would say "numbers one, two and three let be continued," sometimes I recollect that at the September term of 1876, he said "let numbers one, two and three be adjourned to the adjourned term," which he expected to hold in October with Judge Dickinson there.

Q. What was the number of the case of the State against Mollison on the calendar?

A. Number one.

Q. Do you know anything regarding the appearance of bail of Mr. Mollison to surrender him to the court or sheriff?

A. Except what some of his bondsmen said to me, that is all.

Q. Were you in attendance at a special term of court held by Judge Mitchell during the year 1874?

A. I was.

Q. What business was transacted at that term of court?

Mr. LOSEY. The record is here.

A. [Interrupting.] There was a demurrer interposed in the case of the State against C. H. Davidson and H. O. Bassford.

Q. Never mind Mr. French, state whether or not there were any jury trials at that term?

A. There were no jury trials at that term.

Q. How many cases in all were disposed of at that term?

A. My recollection is that there was one or two cases heard by the court and several motions disposed of. Judge Mitchell was there two days, I think; very short.

Q. State what amount of bail Judge Page has been in the habit of fixing for the appearance of persons indicted for felony in that county?

A. I don't know, sir, except that portion of the time while I have acted as county attorney, that is, since July, 1874.

Q. Well, state.

A. I was going to ask you, Mr. Mead, what you intended by that question for me to state.

Q. The amount required by him in various felonies; what bail he usually required for the appearance of persons indicted for forgery?

A. Two hundred, three hundred, five hundred, a thousand, twenty-five hundred and fifteen hundred.

Mr. LOSEY. Is that all in cases of forgery?

A. No, sir; those are libel suits and cases of rape.

Q. We ask you particularly in cases of forgery. You may confine yourself to the crime of forgery—the bail that was fixed by Judge Page for that class of crimes.

A. I don't know of but one case where the bail was fixed by Judge Page; that was fixed at five hundred dollars.

Q. The case of forgery you are now speaking of?

A. Yes, sir.

Q. State whether the accused in this case, where $500.00 bail was fixed, was a permanent resident of that county or a transient man?

A. He was not a resident of that county; was of this State, I think.

Q. In how many cases was twenty-five hundred dollars required?

A. One case.

Q. What offense was that?

A. The charge of rape, I think after the jury had rendered a verdict of conviction.

Q. What cases did he require fifteen hundred dollars bail that you named?

A. The case of the State against Davidson & Bassford, two cases, and against Mr. Mollison.

Q. That is the libel cases based upon the articles here inevidence?

A. Yes sir.

Q. State whether or not you ever made any motion to the court in the Mollison case as county attorney or otherwise.

A. No sir.

Q. State whether you made any motion or at any time consented to their continuance in open court or otherwise.

A. I never said anything with reference to that case but twice; that was at the special term when Judge Dickenson was there, and at the March term following, that was the only time I mentioned the case.

Q. Now state what occurred at the time Judge Dickenson held a special term with reference to the Mollison case.

A. As I went into the court room in the morning, General Cole was making a motion to dismiss the cases of the State against Davidson & Bassford, that is I took it those were the cases; and he then stated to the judge that he had recommended to his clients that they retract a certain portion of the article that they had published, and he thought that would be satisfactory to Judge Page, and that the cases ought to be dismissed.

Q. To whom was that conversation addressed?

A. It was addressed to the court and myself. I told Gen. Cole that he had better see Judge Page, and the cases were passed, by Judge Dickenson, for the present, and I afterwards saw General Cole and Judge Page conversing together at the lower end of the court room, and they walked up to the rear and they motioned for me to go forward. I did so and Mr. Davidson and General Cole, Judge Page and myself were there, and we had some conversation with reference to the dismissing of those cases. Mr. Davidson said to me at that time: "This will include Mollison's case, also, will it?" and I told him I supposed so.

Q. State whether that was in the hearing of Judge Page?

A. I suppose so; we were all sitting there on the box right there; this was in a loud tone of voice. That was the only conversation I had with reference to the Mollison case at that time. But that case was not called unless it was called in my absence. There was nothing further said in reference to the matter, and I supposed it was to be dismissed with the Davidson and Bassford cases at the March term; that was the understanding that they were to publish the article in the meantime, and that I would not dismiss the cases till the next March term. At the next March term of court, near the close I said to Judge Page, "I suppose, in accordance with the understanding, that a *nolle* is to be entered in 1 2, and 3," and he said, "the understanding is that it shall be entered in two and three, but not in No. 1."

Q. What case was No. 1?

A. No. 1 was Mr. Mollison's case. That was the only conversation I ever had with Judge Page in reference to that case.

Q. You have already stated you never moved in this case for a continuance. Now state what Judge Page did during these terms while you were county attorney when he called the criminal cases.

A. As he called the criminal calendar he would say those cases would have to go over because he would not try them until he got another judge; he could not try them; seemed to be unwilling to try them himself.

Q. You speak of that time at which Judge Dickenson presided. Was there a jury in attendance at that term?

A. I have no recollection of a jury being present at that term, still there may have been; I would not state positively with reference to that matter. I have tried to refresh my recollection since last evening, but I don't remember of any jury being present in the court room. I recol-

lect of some talk of Judge Dickenson issuing a special venire for a jury, but I have no recollection of any jurors being there.

Q. State whether or not there was any jury present at the special term held by Judge Mitchell in 1874.

A. Well, that is the term I suppose you called my attention to. Did you refer to the special term held by Judge Dickenson?

Q. I am speaking of the time that Judge Mitchell presided in July, 1874. Now I call your attention to the time that Judge Dickenson held the court there.

A. Yes, thas was in February, 1877; there was no jury at that time; a referee was appointed in the case of the county commissioners against Sylvester Smith; Judge Dickenson there with a specirl reference to appointing that at that time.

Cross-examination.

Mr. LOSEY. You say that at the time Mr. Mollison was brought into court, he nodded his head at that portion of the indictment which contained the libel.

A. He did, yes sir.

Q. Had you noticed his nodding his head previous to the time when that portion of the indictment was reached?

A. No sir, I had not noticed it. I had not noticed it in fact until the Judge spoke.

Q. Did you notice it afterwards during the reading of the indictment?

A. No sir; he did not nod his head any more after the judge spoke to him.

Q. In the case you spoke of, of rape, where bail was required, was the bail not fixed at the sum of $5000.00 after the conviction was had in the case?

A. I think it was fixed at more than I stated; at three thousand dollars.

Q. Are you quite sure, Mr. French, that it was not five thousand?

A. I am quite sure it was not, still I may be mistaken. I am quite positive that it was fixed at three thousand dollars.

Q. Where did the defendant, in that case, reside?

A. In Mower County.

Q. In Austin, did he not?

A. Yes, sir.

Q. Had lived there some time, had he not?

A. A year, eighteen months, or such a matter.

Q. Have you ever had a forgery case in Mower county since you became district attorney?

A. Yes sir.

Q. What was the case?

A. The case of the State against A. A. Harwood.

Q. Did Judge Page fix the bail in that case?

A. No sir, Justice Robinson fixed it; it was before Justice Robinson; it was never in District Court: never any indictment found.

Q. Now the case you spoke of in which the judge required five hundred dollars bail, did not arise in Mower county?

A. No sir, the indictment was found in Freeborn county.

Q. Answer my question, did the indictment rise in Mower county.

A. No sir, I presume not.

Q. Was you present at the time the bail was fixed?

A. I was not.

Q. Do you know anything concerning it except from hearsay?
A. I do.
Q. How about the bail?
A. I—yes sir—I have seen the bond.
Q. Wait one moment—
A. And I—
Q. I have not called on you to answer any questions except the one you have already answered?
A. Well, I misunderstood you.
Q. You stated you were not in court at the time the bail was fixed.
A. No sir; I was going to tell you; I think there was an application to raise the bail.
Q. That is another matter that we have not questioned you about. In the conversation that occurred between yourself and the respondent, or rather between yourself and Mr. Bassford, I think you stated, or Mr. Davidson, I don't know which—
A. Mr. Davidson.
Q. And Gordon E. Cole in the court house. Please state what that conversation was again.
A. Answer in full?
Q. Yes.
A. Yes: After I came up where General Cole and Mr. Davidson and Judge Page were, Gen. Cole remarked that he had drawn up a retraction for Mr. Davidson to publish, and that that would be satisfactory to Judge Page. I then asked Judge Page if it was perfectly satisfactory to him, if he was willing to dismiss those cases. He says, I want it understood that so far as I am concerned that I am perfectly satisfied; I have no disposition to prosecute those cases, yet I want it understood that you have charge of that matter and, it is not for me to say. Well I told him that I did not propose to dismiss those cases, unless it was satisfactory to him; and he made nearly the same reply, that he did not propose to say whether they should be dismissed or not.
Q. Do you know as a matter of fact that Gordon E. Cole swore before the committee last winter that no conversation was ever had between yourself and Judge Page and himself, or that no conversation was ever had by you with Judge Page, in which any allusion was made to the criminal action of the State against Mollison?

Mr. MEAD. We object to that question.

The PRESIDENT. I hardly think that is competent.

Q. Are you positive in your recollection of what occurred there at that time?
A. I am, sir; yes sir.
Q. Did you make the same statement in answer to the question asked you that you made in answer to the question that the manager asked you in relation to that conversation? Do you think your two statements here are alike?
A. I don't remember as to that; I think I stated in substance what I have stated here.
Q. Did you have two separate conversations in regard to this matter of Judge Page?
A. No sir.
Q. Did you have two separate conversations in regard to the matter with Gordon C. Cole?
A. I did; yes sir.

Q. Did you have two separate conversations in regard to the matter with Gordon E. Cole and Judge Page together?

A. No sir.

Q. Now in this conversation that you have alluded to, as occurring between yourself and Gordon E. Cole and Judge Page, was there any allusion made to the civil actions?

A. I don't know as to that. I was not interested in any way as an attorney, and I don't know whether there was anything said or not. There may have been something said by Mr. Davidson and General Cole, and Judge Page with reference to that, but that did not interest me, one way or the other.

Q. Then you heard no conversation in relation to the civil actions?

A. I did not so state; There may have been such a conversation; now I have not given all the conversation that took place there between General Cole and Judge Page; there may have been further conversation in reference to this matter.

Q. Well you say you have not related all the conversation that took place then. I have asked for all of it. Go to work and state it all.

A. My impression is that there was—

Q. Not impressions, I want that conversation.

A. Well sir, there was something said—there was something said with reference to a marked article containing this retraction being sent to General Cole; that when that was done, that General Cole was to notify Mr. Davidson; something of that kind said; I don't recollect just exactly what it was; I paid very little attention except to that portion which related to the dismissal of those criminal cases; in those I was interested.

Q. Anything further that you remember?

A. No sir, not that I think of now.

Q. Who was Mr. Gordon E. Cole acting as attorney for all that time?

A. Messrs. Davidson & Bassford.

Q. No one else?

A. No sir.

Q. How many actions were pending there in court in relation to this libel, and how many civil actions at the time you had this conversation.

A. I don't know anything about that.

Q. Don't you know as a matter of fact that there were two civil actions pending on the calendar; one against Mr. Mollison, and one against Davidson & Bassford?

A. I don't; I know that there were no civil cases for libel on the printed calendar used by the attorneys, or any calendar that I saw there.

Q. You don't know then whether there were such cases in court.

A. Except by hearsay; I understood that there was some such cases, I think that there was something said at that term about a civil case.

Q. Between whom?

A. I think it was Davidson & Bassford and Mr. Mollison, and Judge Page that had sued them.

Q. When was this?

A. In the court room at Austin.

Q. Was Mr. Mollison present at that conversation?

A. No sir, I don't think he was.

Q. You did mean to connect him with it then?
A. No; I meant by that, that he was one of the defendants in the suit, that is, I heard he was.

Q. You expect to recall this witness, do you not, Mr. Manager Mead?

A. Mr. Manager MEAD. Yes sir.

Mr. LOSEY. One more question. Was there anyone present, acting for Mr. Mollison at the time you had this conversation with Gordon E. Cole?
A. No one appeared for Mr. Mollison at all, at that time.
Q. That is all?
A. There was not anyone there.

Redirect examination by Mr. Manager MEAD.
Q. Why were not those cases dismissed at that term of court, when you say this conversation was had?

Mr. LOSEY. That we object to.

The PRESIDENT. What is your objection?

Mr. LOSEY. The objection is that it is an improper question, what occurred in relation to the cases there can be no objection to, but as to why they were not dismissed is a matter that calls for a conclusion.

The PRESIDENT. I think it is competent for him to say why he did not dismiss them.

A. For two reasons: one was because Judge Page did not desire it, and the other reason was that I wanted the retraction published first. I stated to General Cole that I thought it was due to Judge Page; that Mr. Davidson make a retraction so far as that article related to his deciding that railroad case. I so stated in open court before Judge Dickenson at the time this motion was made.
Q. Did Judge Page assign any reason why he did not want them dismissed at that term of court?
A. Not that I remember of. He may have done so.

A. W. Kimball, sworn and examined on the part of the prosecution, testified:
By Mr Manager MEAD:
Q. Where do you live?
A. I live in Austin, Mower county.
Q. What, if any, official position do you hold in that county?
A. I am the clerk of the district court of that county.
Q. How long have you known the respondent, and resided in Mower county?
A. A little more than six years.
Q. Have you examined the calendar and records of that court, so as to enable you to state whether the case of the State against Mollison was on the calendar?

Mr. DAVIS. O, If there is a calendar, put it in.

The witness here produced the court calendar.
Q. What book have you there?

A. This is the court calendar of the district court for Mower county.
Q. State what period of time that book covers in respect to the criminal calendar in Mower county.
A. From the September term 1872, up to and including the adjourned term in February, 1877.
Q. I will ask you this question. State if the case of the State against Mollison appears upon that calendar.
A. It does, in several places.
Q. Have you examined the different terms, the record of which was kept in that book, to see whether that case is of record each term?
A. I have seen that it was on them; I think every term. I am quite positive.
Mr MEAD. We offer the record in evidence.
Mr. DAVIS. Well, what page—let us know.
The witness. The first entry is on the 72d page. That is of the March term of 1874.
Mr. MEAD. I offer that in evidence.
Mr. DAVIS. We have no objection to that, and you might read the entry.
The witness. March term, 1874, under the head of number of cause and attorneys is E. O. Wheeler, county attorney, that is on the part of the State, and the cause is number three, under the head of "parties to suit" is the State of Minnesota vs. David S. B. Mollison, under head of "title of cause" "libel on bail," and under the head of "memoranda of proceedings in case," "continued to adjourned term July 7th, 1874." That is all the written record there is of it.
Q. Is there any entry of attorney appearing for defendant?

Mr. DAVIS. He has read all there is.

Q. Will you turn now to the page that shows the record of the adjourned term.
A. On page 98, adjourned term July 7th, 1874, is the entry of the case of the State against Mollison.

Mr. DAVIS. Well, read the entry?

A. Under the head of number of cause and attorney, is E. O. Wheeler on the part of the State, and Cameron & Crane on the part of the defendant. No. 2, under head of parties to suit, the State of Minnesota *vs.* David S. B. Mollison under the title of cause, "Libel on bail" under memorandum of proceedings of case "Continued by consent."
Q. State whether or not the writing showing the appearance of attorneys is in different hand writing from the rest of the entry?

Mr. DAVIS. Now, hold on! Do you propose to impeach the record after introducing it?

Q. State whether or not the handwriting is not different?
A. I should say it was a different hand.
Q. Do you know whose handwriting it is; the words "Cameron & Crane?"
A. No sir, I do not.
Q. Is it the same handwriting as the entry there under the head of memorandum "Continued by consent?"
A. No sir. I should not call it so by any means.
Q. Is it in the hand writing of the former clerk, Mr. Elder.
A. No sir, it is not.

Q. Is not the entry there of "continued by consent," in the hand writing of Judge Mitchell?

A. I don't know it, I could'nt tell; it was under the head where the judge usually makes his remarks.

Q. Will you turn to the next term of court?

A. The next entry I find is on page 108 of the same volume.

Q. What term of court is that?

A. September term, 1874.

Q. You may read the entry.

A. Under the head of number of cause and attorneys appears Lafayette French, on the part of the State. No. 2. Under the head of parties to suit, State of Minnesota vs. David S. B. Mollison, under the head title cause, "libel on bail," and under head memoranda of proceedings in cause, "continued by consent."

Q. Is there any attorney on that page, appearing for defendant?

A. There is not.

Q. Turn to the next term.

A. The next entry I find is on page 142.

Q. What term?

A. The March term of 1875.

Q. Read the entry of that case.

A. Under the head of number of cause and attorneys appears Lafayette French on the part of the State. Number two, under the head of parties to suit, The State of Minnesota vs. David S. B. Mollison. Under head of title of cause, "libel on bail;" and under head of memorandum of proceedings in cause, "continued."

Q. Any record of proceedings of any attorney of the defendant?

A. None, sir.

Q. Turn to the next term, the September term.

A. The next entry I find case of the State against Mollison, page 176, September term, 1875. Under the head of No. of cause and attorneys is county attorney on the part of the State. Cause is numbered one under the head of parties to suit, the State of Minnesota vs. David S. B. Mollison; under the head of title of cause, "libel on bail." Under the head of memorandum of proceedings in cause, held over to adjourned term, second Tuesday of January, 1876.

Q. The next?

A. The next entry is on page 205 of case adjourned term, January 11th, 1876: under the head of member of cause and attorneys, appears nothing but a figure; under the head of parties to suit, the State of Minnesota vs. David S. B. Mollison; under the head of title of cause, libel on bail; under the head of memorandum of proceedings on cause, continued to general term.

Q. The next term?

A. The next term entry I find is on page 210, March term, 1876; under the head of number of cause and attorneys, is county attorney on the part of the State, numbered one; under the head of parties to suit, State of Minnesota vs. D. S. B. Mollison, under the head of the title cause, "libel on bail"; under the head of date of filing, September 16, 1873; under the head of memoranda, "continued."

Q. Turn to the September term of 1876.

A. Page 242, September term, 1876, under the head of Number of Cause, and attorneys, is county attorney on the part of the State, numbered one, State of Minnesota, vs. D. S. B. Mollison, under the head

of Title of Cause, "Libel on bail,' under the head of date of filing, Sept. 16th, 1873; under head of memoranda of proceedings in couse, "Continued to adjourned term."

Q. Turn to the adjourned term.

A. Page 279, adjourned term, Feb. 13th, 1877; under the head of Number of cause, and attorneys, simply the figure one, no attorney for either side mentioned under the head of parties to suit. The State of Minnesota vs. D. S. B. Mollison, under the head of title to cause, "Libel on bail." There's no entry in the memoranda of proceedings.

Q. March term, 1876.

A. On page 16, of Calendar B., March term, 1877, names of parties under that head. State of Minnesota vs. D. S. B. Mollison, under the head of issue, "Libel," under the head of date of issue, September 16th, 1873, under the head of attorneys, county attorney for the State. under the head of clerk's notes "continued," no other entry.

Q. September term, 1873.

A. Page 33. Under the head of No. 1, names of parties under that head, State of Minnesota vs. D. S. B. Mollison. Under the head of charge—libel on bail. Under the head of issue, September 16, 1877. That is the record here. I presume it is a mistake. The date of issue is 1877, when it should be 1873, I think. Under the head of Attorneys is County Attorney ; no other attorney mentioned. No memorandum made under the head of Clerk's Notes or Judge's Notes.

Q. Have you examined the records of the District Court so far as they contain entries of this case, of the State of Minnesota against Mollison?

A. I have, somewhat ; not thoroughly, however.

Q. Have you found any other case, except at this term, where Judge Mitchell presided, where there is any records of attorneys appearing?

A. I have not, to my knowledge ; I may have seen them, but I cannot remember distinctly enough to state whether there is in the course of the journal any record of any attorney appearing.

Q. Have you the journal here?

A. I have sir.

Q. Is the book you have in your hand one of the official books and records of the district clerk's office of the county of Mower?

A. Yes sir.

Q. State whether or not you were a member of the grand jury in 1873, which found the indictment against Mr. Mollison.

A. I was.

Q. State whether or not the respondent, Judge Page, gave a charge, and if you heard it?

A. I did. He gave a charge and I heard it.

Mr. LOSEY. When was this?

Mr. MEAD. In September, 1873.

Q. What if anything did the court charge you at that term, upon the subject of libel?

A. I cannot remember the words that the judge used at that time; I know, however, he did charge us, and a great portion of his charge was on the matter of libel. I remember that distinctly; it was the first grand jury I had ever been on, and I remember it well.

Q. State whether he charged you with anything as to the probability of libel cases being brought before you.

Mr. DAVIS. Well, that we object to; It is clearly leading, and the witness stated that he could not remember the language used.

Q. State as near as you can the language that Judge Page used on that occasion with regard to libel—with respect to the libel?

A. I cannot remember the language; I can remember the substance of the matter that he mentioned.

Q. That is what we desire you to state.

A. Particularly I remember because it was fresh in my mind, if I may be allowed to state why I remember it, that he mentioned the matter of publishing libels, and writing libels to be published, and told us what constituted a libel in those matters; and cited authorities; or read some law books; I don't know now what they were at that time to the grand jury; I remember it, because I had heard some talk on the street before this of this matter, that had been published in the Austin *Register*, and written by Mr. Mollison; heard some talk on the street, that they would probably get into trouble about that, because it was probably a libel on the Judge; and I remember the Judge charged the jury, at that time particularly on libel cases; I should judge nearly half of his charge was made up of that matter—of that subject of libel.

Q. State whether or not you were present in the grand jury when this matter was investigated—I don't ask you to state what occurred.

A. I was.

CROSS-EXAMINATION.

Mr. LOSEY. Did the Judge, at that time, call your attention to any specific libels, or mention any particular cases?

A. I think not, sir; not to my remembrance, except that.

Q. He read somethink about the law of libels from books?

A. Yes sir.

Q. Are you positive about that?

A. Yes sir.

Q. That he read the law of libel in relation to the duties of the grand jury?

A. It may have been from the statute; I am pretty positive that he had more than one book, and read from more than one book.

Q. Are you sure he read any thing to you upon the law of libel?

A. Yes sir, I feel very sure of it.

Q. Do you mean to swear that he used any book except the compiled statutes of the State?

A. I am not positive that he read from any book except the revised statutes or from them, but he had one or two books there, or more, I am positive in my own mind now.

Q. Does he always read from the statute while upon the bench charging the grand jury?

A. I think so; when I have been on the grand jury he has read the law to the grand jury. I have been on several times since then.

Q. From the statutes?

A. I presume so.

Q. Have you made an examination of the record to see whether the names of the attorneys are generally entered opposite criminal cases?

A. Well, I have not looked with an eye single to that.

Q. You have only looked for this specific case?

A. I think that is all; I could not say I have for any other; I have not looked for these until to-day.

Senator GILFILLAN C. D. I would like to ask this witness one or two questions.

The PRESIDENT. Let the Senator propound his questions in writing.

Q. by Senator GILFILLAN. At what time was the first court held for March, 1874? Was it an adjourned or special term? If an adjourned term, was the jury of the preceding term dismissed?

A. I could not state, sir, without seeing the record, positively.

Mr. DAVIS. I will state, Senator, that we shall cover that point fully.

Mr. Manager CAMPBELL. We have subpœnaed Mr. Yates, Mr. Jones, and Mr. Sutton. We do not desire to call them on this charge.

The PRESIDENT. Do the counsel for the respondent desire to call these witnesses?

Mr. LOSEY responded in the negative; and the President thereupon announced that the witnesses would be excused from further attendance on the court.

Mr. WEST. This ends all testimony on this article with the exception of a paper referred to by Sheriff Hall.

Thomas Riley, sworn and examined on the part of the prosecution, testified:

Mr. Manager WEST:

Q. Where do you reside?

A. Austin, Mower county, Minnesota.

Q. How long have you resided there?

A. About eight years.

Q. What is your business or occupation?

A. Chief of police.

Q. State whether, in 1875, you were acting as deputy sheriff of Mower county.

A. I was.

Q. By whom were you appointed?

A. R. O. Hall, sheriff.

Q. State also, whether in 1875, or at any other time, you served subpœnas in the cases of Beisecker, Walsh and John Benson?

A. I did.

Mr. LOSEY. That is objected to; the return on subpœnas is the best evidence.

The PRESIDENT. Oh! I don't think there is any special objection to it.

Q. How many did you serve in each case?

A. I don't remember.

Q. Do you remember what your fees were?

A. Yes sir.

Q. State.

A. Forty-three dollars and sixty cents.

Q. State whether you presented your bill to the county commissioners for serving of subpœnas?

A. I did.

Q. Now state when you did it?

A. The first term after 1875, the first session of the county commissioners.

Q. Now sir, state what took place at the time you presented your bill; state in the first place whether Judge Page was present at the time or not?
A. He was not.
Q. State whether your bill was allowed or not?
A. It was not.
Q. State when you presented it again, if you did so?
A. At the next session of county commissioners.
Q. When was that?
A. I believe it was the same year.
Q. 1875?
A. I think it was.
Q. Now sir, what occurred when you presented your bill?
A. I was not present when the bill came up. R. O. Hall came after me. The sheriff came after me and told me I had better be there.
Q. State when you presented it again?
A. I went up there and the county commissioners offered to allow me $20 on the bill.

Mr. DAVIS. Wait a minute Mr. Riley, if you please. We object to any proceeding before the county commissioners not in the presence of Judge Page.

The PRESIDENT. I don't think it is material.

Q. State if Judge Page was present before the commissioners when you was present?

Mr. WEST. Do I understand the President to rule that no evidence can be received on this point except when the Judge is present?

The PRESIDENT. That is the impression of the chair; that it is not proper to introduce testimony except in his presence.

Q. State whether you employed any one to attend to this matter for you before the county commissioners?
A. I did.
Q. Who did you employ?
A. C. C. Kinsman, attorney at law.
Q. Resident at Austin?
A. Yes sir.
Q. State whether you are acquainted with the respondent, Judge Page, or not?
A. I am.
Q. How long have you been acquainted with him?
A. About eight years.
Q. State whether you are on friendly terms with him or not?
A. I am not. [Laughter.]
Q. Since how long has that state of feeling existed?
A. Since the crusades. [Great laughter.]
Q. When was that?
A. In the year 1874.
Q. About what time in the year 1874?
A. In May.
That is all.

CROSS-EXAMINATION.

Mr. LOSEY. That is all.

LAFAYETTE FRENCH, recalled on the part of the prosecution, testified.

Mr. DAVIS. Let us look at those subpœnas, Mr. Clough.

Mr. CLOUGH. We offer in evidence the entire record in those criminal cases.

Mr. DAVIS. No objection.

Mr. WEST. State Mr. French if you were the county attorney of Mower county, during the year 1875?

A. I was.

Q. State whether you were present at the session of the county board of county commissioners of that county in March, year of 1875?

A. I was before the board several times during the session at that time.

Q. Was the respondent, Judge Page, present at any of those times?

A. He was.

Q. State what occurred there while Judge Page was present in reference to Mr. Riley's bill, if anything.

A. Mr. Riley presented his bill in the evening.

Q. When was this?

A. It was in the fore part of March, 1875. Whether some member of the board called my attention to the bill, as to whether it was legal, or Judge Page I don't remember. I know there was some conversation in which Judge Page partipitated with reference to that matter, and in which he stated that the bill was not a just charge against the county. The reason that he assigned at that time that I remember was that there was no issue of fact joined at that term of court; that a demurrer had been interposed to the indictments, and hence that there was no need of any witnesses being subpœnaed; he then made some allusion as to this officer being appointed under a corrupt agreement between the sheriff in which he connected myself, that is, stated that I was knowing of it. I stated to Judge Page that it was false; and he stated that it was true; and that I was a party to that agreement, that is that this officer was a democrat, and in consideration of supporting the sheriff who was a republican and working for his nomination etc, that he was to receive the appointment of deputy sheriff, that was the agreement, and there was a good deal loud talk between Judge Page and myself; a good deal of anger manifested both on my part and on the part of Judge Page. I don't remember all that was said.

Q. State what he said to the county commissionors in relation to allowing of the bill.

A. He stated that the bill wasn't a legal charge, should not be allowed.

Q. Who was the officer that had not been properly appointed?

A. Mr. Riley.

Q. Thomas Riley?

A. Yes sir, the deputy sheriff.

Q. The man that was just upon the stand?

A. Yes sir.

Q. State whether the bill was allowed or disallowed, at that time.

A. My recollection is that I took the bill, or gave the bill to the auditor, and I don't know what disposition was made of it at that time. I think the board did not transact any business at all until that evening; there was considerable excitement; I know both of us apoligozed to the board.

Q. State when the bill came up again before the county commissioners.

A. The bill came up again in June following.

Q. Was Judge Page present?

A. No, he wasn't present at that time, the bill was presented again in January—at the January session of 1876. In the meantime I had requested Mr. F. A. Elder to write to the Attorney General to get his opinion. He has also presented a bill for his fees. The demurrer to the indictment had been—

Mr. DAVIS. Wait a moment. What is the particular question before the Senate to which the witness is responding?

Mr. WEST. I am asking the witness to relate as to the matter of the bill coming up in 1876.

Mr. DAVIS. We object to any other matters of outside history however interesting.

Mr. CLOUGH. If, your honor, the Senate please, it will be found when the answer of the witness is all out it was what occurred before the session of the board.

Mr. DAVIS. The objection is withdrawn upon the assurance of counsel.

The witness. The demurrer interposed to the indictments which were argued at the March term, 1875, had been submitted, was filed along in September, and the case was not submitted to the grand jury, neither was my order made as to the disposition of the cause. Mr. Riley spoke to me and I told him that I had considered the matter, and that the clerk had received a letter form the Attorney General and for him to present his bill; it was done at the January session, 1872. Mr. C. C. Kinsman appeared for him also on that occasion before the board.

I suggested to the commissioners the propriety of allowing only a portion of the bill, that is, that they could compromise with Mr. Riley, and save so much to the county; they had some conversation with him with reference to the matter, and he agreed to take $20 for his fees. This was just before the board adjourned for dinner. Some one of the commissioners, I think it was Judge Felch, suggested that that matter lay over till the afternoon. In the afternoon Judge Page came in. I was then discussing this matter. This matter was before the board. He says, "I understand that this bill of Thomas Riley's is before the board again;" some one told him that it was. "Well," he says, "I supposed that matter had been disposed of a long time ago;" and he went on to state that the charge was illegal, that he had had a similar case over in Houston county, or Fillmore county that had come before him, and that he had examined the law very carefully with reference to that matter; and that the bill ought not to be allowed.

Some of the commissioners then stated to Judge Page that they wanted to do what was right in the matter; they did not intend to allow any bill but what was just and proper, but that they had got my opinion that I thought it was correct, and that I had also got the opinion of the attorney general with reference to the matter. Judge Page said "that he did not care for the opinion of a little man with no brains, or a big man with small brains;" that he knew what the law was with reference to the matter. And he then discussed the matter. The most

of the conversation, however, took place with Commissioner Kimball. I did not engage very extensively this time in discussion with him, but Mr. Kimball, one of the commissioners, asked him the grounds for disallowing the bill, and he replied the same as he did before. He said that there was no issue of fact joined; that there was no need of any witnesses being subpœnaed; that a demurrer had been interposed and there was no need of any witnesses. And he stated that he understood that these subpœnas were issued to make services for a deputy "that he would not have in his court room."

Q. Who was present at the time?

A. The county commissioners, R. O. Hall, C. C. Kinsman, Judge Page and myself. After Judge Page had said what he did to the commissioners I did not propose to engage in any discussion in regard to the matter myself, and I told them, "You can disallow the bill if you see fit, but Mr. Kinsman informs me that he proposes to sue the county." I think Mr. Kinsman so stated that he proposed to sue the county in case the bill was disallowed. Judge Page says; "Let him sue the county if he wants to—let him sue." There was a section of the statute read with reference to the payment of costs in cases where the prosecution fails, or where the prisoner escapes or is insolvent, &c., that is, that it shall be paid by the county unless otherwise ordered by the court.

Mr. Kimball asked Judge Page if an order had been made, and if he had made an order.

Q. What kind of an order?

A. For the payment of the costs; that is, if he had made an order directing that the costs should not be paid by the county. Some talking about an order, and Judge Page said that he had not made any order yet, but that he might do so.

Q. Any conversation had at that time, if so, state what it was, between Mr. Hall and Judge Page?

A. Yes; he then branched off into this "corrupt agreement" between the sheriff and his deputy, Thos. Riley, and Mr. Hall remarked to the judge that he wanted to make some explanation or something to him, or wanted to know if he alluded to him, [the sheriff,] and the judge told him "if the coat fitted, to put it on." And then he asked him a question: "if a process was placed in an officer's hands for service, whether it was not his duty to serve it without asking the court whether it was a proper case in which the process should be served or not." Judge Page told him he would answer his question in court; he was not there to answer his question.

Q. Who asked this question?

A. Sheriff Hall asked the question.

Q. State whether the bill was allowed at that time or not?

A. The bill was then disallowed, and Judge Page left.

Q. Well, state whether the proceedings were commenced against the county?

A. A short time after that Mr. Kinsman brought an action for Mr. Riley before justice Griffith.

Mr. CLOUGH. We offer the record of those proceedings in evidence.

Received without objection.

The witness. I appeared for the county, and in my answer set up the same matters that Judge Page assigned before the commissioners in disallowing the bill. I drew it nearly word for word. The reasons he assigned, that is, for my answer; judgment was rendered against the county, and I took an appeal to the district court. I took an appeal in behalf of the county. By stipulation of the parties, the case was to be tried before Judge Page. In that action, a stipulation was made between Mr. Kinsman and myself. We stipulated as to certain facts; that is, that there was no dispute about. On the day the case was to be tried we appeared; I appearing for the county, and Mr. Kinsman appearing for Mr. Riley. In that stipulation, among other things, it was stipulated that no order—

Mr. LOSEY. I suppose the stipulation will show for itself.

Mr. CLOUGH. Read the stipulation you refer to. [Stipulation handed witness.]

Q. Is that the original stipulation?

A. This is the stipulation in my own handwriting, yes sir. Among other things in the stipulations was this: "That said judge has not made prior—

Senator NELSON. I would like to hear the whole stipulation.

The PRESIDENT. Read the whole stipulation.

The Witness. [Reading.]

State of Minnesota, County of Mower—In Justice Court—Before L. N. Griffith.

THOMAS RILEY,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF MOWER COUNTY.

STIPULATION.

It is hereby stipulated by and between the parties to this action and their respective attorneys that no evidence either documentary or parol need be introduced by either party to show the following facts; that it is hereby admitted by both parties that the following are a portion of the facts in this case, viz.:

1st. That at the times stated in plaintiff's complaint, that R. O. Hall was duly elected, qualified and acting as sheriff of said county of Mower. That plaintiff, during said time was duly appointed and acting as deputy sheriff—as stated in the complaint.

2nd. That at the times stated in plaintiff's complaint, F. A. Elder was clerk of the District Court in and for said county, and elected, qualified, and acting as such clerk of court, as stated in plaintiff's complaint.

3rd. That at a general term of the District Court held at the court house in the city of Austin, in and for said county of Mower, indictments were duly found by the grand jury of said county against one John Benson, C. N. Beisicke and John Welsh, on which they were arraigned and gave bail for their appearance at the next general term of said District Court to be held in March, A. D. 1875. That defendants Benson, Beisicke and Welsh, on their arraignment to said indictment, by counsel demurred to the indictments. That said demurrers were not brought on for argument until said March term of court, 1875. That before the argument of counsel on said demur-

rers put before the decision of the court therein, the said subpœnas were issued and served by plaintiff on the witnesses named therein.

4th. That on the argument of said demurrer, it was agreed by and between said Benson's, Beisicke's and Welsh's counsel and the county attorney, with the consent of the court, that the judge of said court should pass upon said indictments and demurrers in vacation. That the order sustaining said demurrers was signed and filed by the said judge in September, 1875. That said order sustaining the demurrers did not provide that said case should be so submitted to the grand jury.

5th. That said judge has not made, prior to the commencement of this action, an order stating whether the county or defendant should pay the costs, or what disposition should be made thereof.

That the plaintiff presented a bill for services for serving said subpœnas, to the board of county commissioners of Mower county while said board was in session that day prior to commencement of this action. That action was taken thereon by said board, and said claim disallowed by said board in whole at the time and manner as alleged in defendant's answer. That no appeal has been or was taken by said plaintiff from such decision of said board within thirty days, as allowed by law.

Dated April 5th, 1876.

LAFAYETTE FRENCH,
Attorney for Defendant.

C. C. KINSMAN,
Attorney for Plaintiff.

Senator NELSON. Mr. President, when the witness gets to that point that was struck out by Judge Page, I wish he would notify us, so that we may know as we go along.

The Witness. I will do so. That portion that was stricken out reads as follows: "That said judge has not made prior to the commencement of this action an order stating whether the county or defendant should pay the costs, or what disposition should be made thereof."

Q. State what conversation took place, if any, at the time that stipulation was read in the district court, between yourself, the Judge and Mr. Kinsman.

A. I think that Mr. Kinsman requested me to read the stipulation, as it was in my handwriting; when I came to that portion of the stipulation which is stricken out. Judge Page said "That the stipulation was correct, except in one particular; that there was one thing stated there that was not a fact;" I asked him what that was; he said that portion of the stipulation which said that the Judge had not made an order, was not true. I told him I desired to state just the facts in the case, but I did not understand that any order had been made. He said that an order had been made, but had not been entered, or something of that kind. The clerk had neglected to enter it, and that he could not allow that stipulation, or could not allow the stipulation to stand as it was, and he took his pen and scratched it out.

Q. Who took the pen?

A. Judge Page.

Q. Struck out that part of the stipulation?

A. Yes sir.

Q. Was there any conversation had at that time between Judge Page and Mr. Kinsman as to his saying before the county commissioners that there was no order made?

A. There was at that time; Mr. Kinsman said something with reference that Judge Page had no right to strike out the stipulation that the parties had agreed upon. I don't remember exactly what it was, but Judge Page said it was not a fact and that he would not allow it or tolerate it.

Q. State whether you and Mr. Kinsman consented for that part of the stipulation to be stricken out at thet time.

A. Well sir, I have stated just the conversation which occurred there. I could not tell whether he consented or not. I can tell you what Mr. Kinsman said.

Q. Well, state.

A. Mr. Kinsman did not want it stricken out. He asked the Judge if he would be allowed to call the county commissioners to show that he had stated when before them on the occasion referred to by me, that he stated to the commisioners that had not made any order. Judge Page told him, "No sir, he would not allow any thing of that kind; he never stated any such thing," or something of that sort.

Q. I will call your attention to a conversation that was had at the first meeting of the county commissioners in relation to what Judge Page said in relation to Thomas Riley, whether you heard the conversation.

A. Yes, I was present at that time.

Q. State the remarks. Did he say that he was a contemptible Irishman?

A, I dont remember of his using that expression, that he was a contemptible Irishman, I don't recollect it. I know that he said Riley was unfit to be deputy sheriff, and that he had been appointed under an agreement between Mr. Hall, &c., and that is how this difficulty between Page and myself commenced. We had been good feiends up to that time. I told him the campaign was run about as straight as when he used to electioneer; we did'nt go over the county representing things that were not so. And that is what made me angry.

Mr. Manager WEST. That is all.

On motion the Senate adjourned.

Attest:

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

FOURTEENTH DAY.

ST. PAUL, WEDNESDAY, MAY 29, 1878.

The Senate was called to order by the President.

The roll being called the following Senators answered to their names Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Hersey, Houlton, Macdonald, McClure, McHench, McNelly, Mealey, Morrison, Morton, Nelson, Pillsbury, Remore, Rice, Shaleen, Smith, Swanstrom and Wheat.

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

The sergeant-at-arms having made proclamation,

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

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

The journals of proceedings of the Senate, sitting for the trial of Sherman Page upon articles of impeachment, for Thursday, May 23 and Friday, May 24, were read and adopted.

The PRESIDENT. Mr. French will take the stand.

Mr. French resumed the stand.

Mr. LOSEY. Do the managers expect to recall Thomas Riley?

Mr. CLOUGH. Possibly.

Mr. LOSEY. He has been discharged as I understand it. We would like to ask him a question at some future time.

Cross examination by Mr. LOSEY.

Q. How many years did you state you had been a practicing attorney.

A. Nearly seven years.

Q. Do you know how often Riley's bill was before the board of county commissioners?

A. No sir, I do not. That is, I mean by that, I know of its being before the board a certain number of times; it may have been brought before the board at other times that I don't know of.

Q. Do you know as a matter of fact that it was ever brought before the board more than once?

A. I do, yes sir; three times.

Q. Do you know, as a matter of fact, that it was brought before the board officially more than once?

A. I do, yes sir.

Q. Did they act upon it each time?

A. They did, twice.

Q. Act upon it twice?

A. Yes sir.

Q. Then you mean to say as a matter of fact you knew it was brought before the board twice?

A. It was brought before the board three times. At the first time it was withdrawn—that is my recollection of the matter—before any action was taken in reference to the matter. Twice it was acted upon officially by the board.

Q. You have given two conversations occurring between you and the respondent before the board of commissioners, have you not?

A. I have.

Q. Where did the first conversation occur?

A. The first conversation occurred in the auditor's office.

Q. Was Riley's bill under consideration at that time?

Q. Riley's bill was before ———

Q. Answer my question!

[Question repeated.]

A. I don't know what you mean by the word consideration, if you mean if the Board was acting upon it or taking official action, I don't think it was.

Q. Did you know that Judge Page had any knowledge that the bill was before the board being acted upon or discussed at the time of this conversation?

A. No sir, I do not.

Q. Was it mentioned in his presence—the matter of the bill?

A. Yes sir.

Q. At that time?

A. Yes sir.

Q. Have you examined the records of the county commissioners to know how often the board acted on Riley's bill?

A. I have.

Q. Does the record show that the bill was ever before the board more than once?

A. It does.

Q. When did you make that examination?

A. Some time last winter, after I gave my testimony before the judiciary committee, I went home to examine the records.

Q. Are these records here?

A. They are; I expect they are.

Q. Who was present at the time the conversation, in the auditor's office, occurred.

A. Mr. Richards, Mr. Felch, Mr. James Grant, I think Mr. R. O. Hall, and either Mr. McIntyre, or Mr. J. P. Williams. I don't remember which.

Q. Give the initials of Mr. Richards and Mr. Felch, so that we can identify them.

A. William Richards and C. J. Felch.

Q. Who composed the board at that time?

A. C. J. Felch, William Richards, James Grant, A. J. French, and, I think, F. W. Kimball, it may have been Mr. Tanner, I won't be positive, I think Mr. Kimball, however.

Q. How did this conversation you have spoken of commence?

A. Judge Page was speaking about Mr. Riley's serving those subpœnas, presenting the bill, and as I stated yesterday, he made some comments on the merits of the bill—that there was no need of subpœnas being issued; that there was no issues of fact joined, and that they were issued for the purpose of making business for a deputy; "that he would not have in his court room a man that had been appointed by sheriff Hall, under a corrupt agreement." I think at that time he made some statement and he linked me in with the sheriff; that is, that I was a party to this agreement. That is how this conversation between Judge Page and myself came about.

Q. I asked you how the conversation commenced? Was Judge Page asked a question by the commissioners first to explain anything?

A. My recollection is now that Judge Felch asked Judge Page something about that bill.

Q. Now, sir, was it not something about the Baird bill?

A. No sir; Mr. Baird's bill was not before the board at that time. He had sued the bill and the cause was pending in court at that time.

Q. Didn't the judge, at that time, when asked the question by the commissioner, point out some item in the bill which he stated he considered as being illegal?

A. In this bill of Riley's I don't remember any such thing.

Q. Now, was not Baird's bill presented to him by one of the commissioners, and didn't he point out where there were charges which he stated to the commissioners were illegal charges?

A. No sir, that was at the January session. At the March session Baird's bill was not before the board. He had taken the bill before the March term.

Q. Now, didn't a conversation arise between you and judge Page, something after this manner: Didn't Judge Page point out certain items in the Baird bill which he stated to the board he considered illegal, and some of which items he advised the board were illegal, and did you not then get angry.

A. No sir, the conversation didn't commence that way.

Q. Do you mean to say this conversation occurred at the time when the court was in session?

A. Yes sir, that is this conversation between Judge Page and myself.

Q. At the time in the auditor's office?

A. Yes sir.

Q. It occurred at the time the court was in session?

A. Yes sir; I recollect it distinctly; I know from circumstances that took place the next morning in court.

Q. Did you at that time charge Judge Page with being corrupt?

A. I did not charge him——

Q. Answer my question. Did you or did you not?

A. I would like to state what I did state to him.

Q. Answer *Yes* or *No*.

A. I did in a certain manner.

Q. Didn't he state to you that it was the first time any person had ever charged him with corruption in office?

A. I think he did.

Q. And that he was sorry that you had seen fit to do that?

A. I don't think he said that.

Q. Now, you spoke of an apology made to the board there. Didn't Judge Page after he had made the remark to you that I have stated, state to the board that he didn't know they were in session, his attention not being called to the fact, or he would have said nothing?

A. At the time Judge Page made his apology to the board?

Q. Answer my question.

A. Yes.

Q. Was that the apology that he made?

A. I will give you his exact language, he says: "Gentlemen, I apologize to you. I had no knowledge that you were in session at the time I had this difficulty or controversy with Mr. French."

Q. You stated yesterday that Judge Page appeared before the county commissioners and talked two or three times concerning the Riley bill. Now is the fact, was he ever there, except once, talking about the Riley bill?

A. Yes sir; he was there at the March session and at the January session.

Q. Was the court in session at the time the board was in session in January?

A. No sir.

Q. Do you know, so that you can testify, under what circumstances Judge Page happened to be before the board a second time? Do you know of your own knowledge?

A. No sir, I cannot tell.

Q. Do you remember that when Judge Page came before the board, what was first said by him?

A. Yes sir, I do.

Q. I am now on the second interview.

A. Yes sir, I remember what he said.

Q. What was the first thing said by him?

A. He said: "Gentlemen, I understand that you have this Thomas Riley bill under consideration again; I supposed that matter had been disposed of."

Q. Didn't Mr. Felch, when Judge Page first came before the commissioners, hand to Judge Page the Riley bill and ask him what the facts were concerning it?

A. No sir, he did not.

Q. Nothing of that kind?

A. No sir

Q. What further was said by Judge Page?

A. At this time he stated that the bill was illegal; that there was no issue of fact joined in the case; there was no need of subpœnas being issued.

Q. Before the commissioners?

A. Yes, that they were unauthorized, that the clerk was unauthorized to issue subpœnas as long as the demurrer was pending. He further stated that the same question had come before him for his decision, either in Fillmore or Houston county, I won't say which, that the matter was discussed very ably by counsel, Col. Colburn, I think, appear-

ing for the county in that case, and that he gave the matter careful attention, and that he examined that question very thoroughly, and that the bill ought not to be allowed.

Q. Didn't the judge state to the commissioners that he considered the bill a fraud upon the court and county?

A. He did, yes sir.

Q. And that when he discovered that a great many subpœnas in that case were being served, he stopped their issuing and gave notice to the clerk that none of the expenses would be paid by the county?

A. I don't think he said that.

Q. Din'nt he in fact say that to the clerk in your presence?

A. Not in that language.

Q. What was the language that he used?

A. He used this language, he says: "Mr. Clerk, what are you doing—

Mr. DAVIS. Mr. French, was that during the time they were issuing subpœnas. Was that just after the indictment was found?

A. No, it was the next term after the indictments were found. Mr. Riley came into the court room; Judge Page and myself, and, I think, Sheriff Hall, were standing there, and Mr. Riley called for some subpœnas, and Judge Page says, "What are you issuing subpœnas for in that cause, there is no issue of fact joined." The clerk then made some reply, and he then told the clerk not to issue any more subpœnas in that case; that they would not get their pay, or their fees would not be paid if they did issue any more subpœnas," or words to that effect.

Q. Can you give us the exact language?

A. I can.

Q. You do not pretend to give us the exact language in any of these conversations that you heard?

A. I do sir, yes sir.

Q. Do you pretend to give us the exact language on these occurrences in court?

A. I do not.

Q. Did you say anything while Judge Page was before the board at that time?

A. I kept pretty quiet that second time.

Q. That don't answer the question.

A. I don't think I said anything to Judge Page.

Q. That don't answer the question. Did you say anything during the time Judge Page was before the board at this second time.

A. I think I did.

Q. Did you say anything concerning this bill?

A. I think I did.

Q. What did you say?

A. I think I told the commissioners that they could take such action as they saw fit; they would have to pay the bill undoubtedly.

Q. Did you advise them of the legality or illegality of the bill?

A. I think I did at that time.

Q. What did you advise them?

A. I had advised them that the bill was a legal charge, at that time. Before that I advised them that it was not; before Judge Page filed his order sustaining the demurrer. before the prosecution failed. I advised them at that time, that the bill was an illegal charge—that was in June, 1875.

Q. But afterwards you advised them it was.
A. Yes, afterwards I so advised them—after the prosecution failed.
Q. Where are the records that you introduced yesterday, of these three cases.

Mr. Manager WEST. The clerk of the court took them last evening; the secretary was not present, and there was no one to take them.

[The records in question were here produced.]

Q. Didn't Judge Page say that cases in relation to costs frequently came up in court, and did he allude to particular instances?
A. He stated——
Q. Answer my question—say yes or no?
A. Yes, he did.
Q. He did state as I have stated to you?
A. He stated that cases had come up.
Q. You have already stated that?
A. Yes.
Q. You are positive that was his exact language before the board at that time?
A. I am positive that that was his language, although it might not have been his exact words.
Q. Do you pretend to give the exact language of Judge Page before the commissioners at this second meeting, or what you think the purport of it was?
A. With reference to that matter?
Q. With reference to anything that occurred there?
Yes, some portions I give his exact language, some portions I do not. I simply give the purport of the language.
Q. Did Mr. Riley subsequently sue the county?
A. He did.
Q. Who acted as Riley's attorney?
A. C. C. Kinsman.
Q. Who acted as Riley's attorney before the justice of the peace?
A. Mr. C. C. Kinsman.
Q. Was it stated before the board, at this meeting, in the presence of the respondent that Riley would sue the county?
A. It was talked.
Q. Riley did sue the county as you stated yesterday; and recovered judgment?
A. He did, yes sir.
Q. Now what was the fact of the meeting before the board as to Riley agreeing to take less than his bill; you stated something concerning it in your direct evidence yesterday?
A. I think I stated to the commissioners that in all probability they could compromise the matter with Mr. Riley, and that he would take less.
Q. Had Riley agreed to take less?
A. He had, I think.
Q. How much had he offered to take?
A. My impression is that he offered to take twenty dollars; I would not be postive.
Q. What advice did you give the board?
A. I advised them that they had better allow it.

Q. Were you then of the opinion that this was a legal bill?
A. I was, yes, at that time.
Q. You previously had been of the opinion that it was illegal?
A. Yes, before Judge Page made his order.
Q. You thought then that the making of the order rendered the bill legal?
A. I did; that the prosecution failed then within the meaning of the statute.
Q. That it fixed the liability of the county?
A. Yes.
Q. What order do you refer to?
A. To the order of Judge Page sustaining the demurrer in the case against Beisicker, Benson and Walsh, where he did not re-submit the matter to the grand jury.
Q. Did you not, when you were before the commissioners, know what Judge Page had said to the clerk in open court concerning those subpœnas?
A. I knew it, but I had given it no thought at all at that time.
Q. You were thinking of the facts connected with this bill, were you not?
A. Yes sir.
Q. And you gave that direction no heed when you advised the board not to pay it?
A. I did not consider it a direction.
Q. No matter what you consider it, you gave it no heed?
A. No sir. I gave it no thought.
Q. Did you examine this stipulation spoken of yesterday, before you signed it?
A. I did; yes sir. I drew it myself.
Q. Didn't it occur to you, as a lawyer, when you put in that part of the stipulation that was stricken out, that you were stipulating away your case?
A. I was stipulating the facts Judge Page had said.
Q. Answer my question. Did it occur to you as a lawyer when you drew that part of the stipulation that you were stipulating away your case?
A. It occurred to me—
Q. Answer my question.
A. No sir, I did not consider I was stipulating away my case at all. I stipulated the facts—
Q. Wait a moment—that is one answer. Did you on the trial of this case in the court below subpœna either Judge Page or the clerk of the court?
A. I did not.
Q. Were they called as witnesses at all?
A. No sir.
A. As I understand the history of the bill, Riley first presented a bill of forty-three dollars. I wish to correct a statement that I made. My impression is that the clerk of the court was subpœnaed in the court below, and that he said no order had been made or was on file; and that was done before I drew the stipulation.
Q. I have not asked what he stated. Was the clerk produced there as a witness?
A. He was not examined as a witness.

Q. And as I understand the history, then, of this Riley bill, he presented a bill of forty-three dollars and offered to take twenty dollars. You first advised the board that it was illegal. You then advised the board that it was legal, and advised them to pay the twenty dollars?

A. No sir, that is not the way of it at all.

Q. Didn't he first present a bill of forty dollars?

A. I cannot state the exact amount. He presented a bill of about that sum.

Q. Didn't he then offer subsequently to take $20.00?

A. He did in January, 1876.

Q. Didn't you then advise the board to pay twenty dollars?

A. I did so advise the board.

Q. Didn't you first advise the board that it was an illegal bill? Answer the question.

A. I don't think I used that language.

Q. Will you swear what words you did use in the place of "illegal"?

A. I told the board that the statute provided for the payment of costs unless otherwise ordered by the court, where the prosecution failed; that the prosecution had not failed; that Judge Page had not made any order and that they could not allow the bill, until we found out the disposition of the case.

Q. That was the advice you gave?

A. Yes sir.

Q. You subsequently advised them that the bill was legal?

A. I did.

Q Did you think that an injustice was being done to Riley when the county was to pay him twenty dollars when he was entitled to forty-three?

A. That was his own matter; if he was willing to take less than the regular amount.

Q. Now when this stipulation came into court was there evidence taken as to what the fact was in regard to an order having been made by Judge Page?

A. There was evidence.

Q. Answer my question. Was there evidence taken on that point?

A. There was testimony taken on that point.

Q. Who gave testimony on that point?

A. F. A. Elder and myself I think.

Q. Did your evidence agree with that of Mr. Elder?

A. No sir, it was not as full as Mr. Elder's.

Q. You are not quite so positive as to what the court stated?

A. No sir, I testified the same as I have stated here this morning.

Q. Was not the evidence in regard to what you have stated, stipulated.

A. It was in regard to a conversation between Judge Page and Mr. Elder.

Q. Was it not in regard to the fact that you had stipulated away the case?

A. I don't know as to that; it was in regard to Judge Page making an order.

Q. You don't know as it related to that fact?

A. I say that it related to the fact of Judge Page—he having claimed that he made an order, and wished to prove that fact.

Q. Did it relate to that fact?
A. It did I suppose in regard to that matter.
Q. When the stipulation came into court, who first called attention to the clause in the stipulation that was stricken out?
A. Judge Page.
Q. You have spoken once before in relation to this matter, have you not?
A. I have; yes sir.
Q. Where were you sworn?
A. I was sworn before the judiciary committee of the House of Representatives.
Q. Last winter?
A. Yes sir.
Q. Did you swear on that examination that when Mr. Kinsman's attention was called to this stipulation that he was willing that it should be stricken out, an evidence taken as to the order that appeared as to whether that fact was true or not.
A. I don't recollect whether I so stated that or not.
Q. If you so stated was it a fact?
A. I hadn't refreshed my memory with reference to the matter.
Q. No matter; was it the fact?
A. No sir, I dont think it was.
Q. Is it not the fact that when that stipulation was read to the court the court called your attention to the fact that the vital point in the case was as to whether he had made an order or not?
A. No sir, no sir.
Q. Was it not a fact that he told you he was unwilling to try the case on that stipulation, because it stipulated the case away?
A. No sir, he did'nt use that language.
Q. Was it not the fact that you stated that if that was so, you desired that it be not permitted to remain to stand in the stipulation.
A. That is not my language.
Q. What was your language in that regard?
A. My language was this, I stated to Judge Page that I did'nt suppose that he claimed that he had made an order, that that was the first time that I had heard any such thing, that I wanted the facts, and that no order was of record, no order appeared of record. I supposed it was a fact, and I wanted the facts to appear in that stipulation just as they were; and he stated those were the facts.
Q. Had not you stood by and heard Judge Page give directions to the clerk in relation to some subpœnas?
A. I heard him make no order.
Q. Answer my question?
A. I heard him have a conversation with Mr. Elder touching this matter.
Q. Did'nt you hear him say that those costs would not be paid by the county?
A. I did not hear it in any such language.
Q. Did'nt you so swear in court at the time of your examination, of your hearing of this Riley case?
A. I did not.
Q. What did you swear to?
A. I swore that I heard Judge Page tell Mr. Elder not to issue any

more subpœnas, that if any more were issued that the county would not pay the costs; that he would not get his pay.

Q. Are you positive to the exact language?

A. I am not as to what Judge Page stated, but I am positive as to what I swore to; I am now swearing as to what I said to Judge Page as to the conversation between himself and Mr. Elder, that is what I swore to; Judge Page may have said so, but I don't know that I did not say so; I say that I understood the conversation so and so.

Q. Then when you swore you were swearing to your best impressions, and you can not pretend to give the exact language given by the judge to the clerk?

A. No. I do not pretend to do any such thing.

Q. This occurred in court in the course of business, did it?

A. Yes sir.

Q. In open court?

A. Yes sir, at the March term.

Q. Were you sworn before the House committee?

A. I was, yes sir.

Q. Did you swear before the House committee that when Judge Page called attention to this objection Mr. Kinsman remained silent—stood mute?

A. I think I did.

Q. Is that the fact?

A. I dont think it is; I don't think he remained mute.

Q. Why did you swear so before the committee?

A. Because I supposed that he did, but have since refreshed my recollection.

Q. What has refreshed your recollection?

A. A conversation I had with Mr. Kinsman, with reference to that matter. I never had any conversation prior to that time.

Q. You are swearing now as to what Mr. Kinsman told you since?

A. No sir, I am now swearing to what transpired then; since then I have refreshed my recollection.

Q. And you have refreshed your recollection and rely upon what some one told you?

A. I do not rely upon what some one told me; I rely upon what I recollect.

Q. After some one has told you what the fact was?

A. Mr. Kinsman didn't make much bluster over it any time.

Q. That don't answer my question. When did you have this conversation with Mr. Kinsman?

A. A short time after I gave my testimony before the judiciary committee.

Q. Did you swear at that time that when you discovered this error in the stipulation you desired to have it stricken out?

A. I do not think I used that language—no sir.

Q. Did you use language equivalent to that?

A. I use the language exactly as I used it then. Wen I learned that Judge Page made the order, I desired to have it so appear in the stipulation.

Q. Did you make any objection to a clause being stricken out in the stipulation?

A. No sir.

Q. Didn't you swear that it was stricken out, in your objection, yesterday?

A. No sir, I did not. They asked if it was stricken out with my consent. I told them they could judge.

Q. Did you consent?

A. I have nothing to say.

Q. Did you consent for its being stricken out?

A. I don't know; I have stated the fact.

Q. Were you willing that it should be stricken out?

A. I was willing, if Mr. Kinsman had no objection.

Q. Were you desirous to have it stricken out?

A. I would liked to have gained the case.

Q. Were you desirous to have it struck out?

A. No sir, I was not particularly desirous, at the same time I was willing.

Q. Then you had no objection to it, either one way or the other?

A. No particular objection—no sir.

Q. Did you go on then and introduce proof as to what the fact was in relation to that point—that order?

A. No sir; Judge Page called Mr. Elder, and had him sworn on that.

Q. I say, did you, as attorney for the county, introduce proof on that point?

A. No sir, I did not.

Q. Did you call witnesses on that point?

A. I called myself after I heard Mr. Elder's testimony. I told Judge Page, and recollect then what he stated to Mr. Elder; and I then made a statement under oath.

Q. You was then sworn as a witness in behalf of the county?

A. Yes sir; I told the judge that I recollected that conversation, but I did not consider it was of any importance.

Q. Didn't you call Mr. Elder?

A. No sir.

Q. Who called Mr. Elder?

A. Judge Page.

Q. Where was Mr. Elder at that time?

A. He was over at the clerk's office.

Q. Where was this case tried?

A. At Judge Page's office, in the city of Austin, at Chambers.

Q. Who went after Elder?

A. I think he sent somebody over after him.

Q. The sheriff, Mr. Hall, after him?

A. I think so.

Q. Did you desire to have him there as a witness in the case?

A. I didn't know whether he was going to testify.

Q. Did you desire to have him there as a witness?

A. I didn't have any desire or any objection.

Q. Did you expect to when they sent after him?

A. Well, I didn't have any expectation at all about it, because I didn't know what he was going to swear to.

Q. Didn't you agree with Mr. Kinsman to take testimony on that point after the stipulation was stricken out?

A. No sir, I did not.

Q. Was you the attorney in that case?

A. I appeared there as the attorney.
Q. Was not you the district attorney at that time?
A. I was.
Q. Did you or did you not desire to take any proof on that point, or take any steps to take proof?
A. I should have probably found out.
Q. Answer my question. You did not desire to take any proof on that point, nor to take any steps on that point?
A. Why certainly, I desired to prove my case.
Q. Did you know any body that you could prove your case by except Mr. Elder?
A. I don't know; I suppose I could prove it by Judge Page.
Q. Did you expect to call Judge Page as a witness?
A. He said he would take judicial notice of it.
Q. Did he tell you so at that time?
A. I think he stated that the court would take judicial notice of it at that time.
Q. By whom was Elder called?
A. I think Judge Page sent for him.
Q. Was there any dispute as to what the fact was then as between you and Mr. Kinsman?
A. With reference to what, Mr. Losey?
Q. With reference to what was contained in the stipulation; the point stricken out as whether an order had been made or not?
A. No sir, there was no dispute. I had no idea that any order had been made, and I so understood it.
Q. Now tell me this. What single step did you take to win that case?
A. I relied upon the law. Judge Page stated—
Q. Now wait. I ask you what single step you took to win that case?
A. I argued it.
Q. That was the step?
A. Yes sir, I appeared before the justice.
Q. I mean after it was in the District court. You got beat in the justice court?
A. Well, I didn't do much in the District court.
Q. Well, you didn't do much in the court below?
A. Yes, I worked hard.
Q. You didn't, in fact, do so much as to subpœna witnesses that were important in the case?
A. It was conceded all around—
Q. No matter, what was conceded, answer my question. You didn't do so much as to subpœna witnesses?
A. I think I did, I think I subpœnaed witnesses.
Q. Whom did you subpæna?
A. I think I had Mr. Elder over there.
Q. Did you examine Mr. Elder?
A. I think I examined him privately.
Q. You did not examine him before the court at all?
A. I thought I hadn't better put him before the court?
Q. His answering to the order was going to be fatal to Riley's case?
A. He was not going to swear to it.
Q. No matter about that, we want the facts.

A. That is what I am trying to give.

Q. You stated yesterday in your evidence, that Judge Page refused to allow testimony before on this question, did you not?

A. Istated words to that effect?

Q. What did you mean by that?

A. I meant that Mr. Kinsman wanted to subpœna the county commissioners to show that Judge Page had stated before it that he hadn't made any order, and Judge Page stated he could not do that—he didn't so state.

Q. What did Mr. Kinsman say to that or before that?

A. He didn't say much, his face colored up, and he kept quiet and didn't say much.

Q. What form was that question put in that Mr. Kinsman asked?

A. Mr. Kinsman says like this: Judge Page had stated that he would take notice of the fact that he had made an order, and knew he had, &c., and Mr. Kinsman says, "Will you allow me to subpœna the commissioners and the sheriff to show that you stated before the board when you were there in the January session that you did not make an order?" Judge Page told him he didn't hear any testimony on that point.

Q. Did you consider that an issue in the case—the impeachment of the judge before whom the case was being tried?

A. I don't know what I did think at that time.

Q. Was not the real issue the question as to whether an order had been made?

A. No, I did not so consider it, nor Judge Page did'nt so consider it, in his finding.

Q. The real issue for a stipulation that was stricken out, was what Judge Page had stated before the commissioners?

A. The real issue in the case was whether where there was no issue of fact joined, a party was entitled to subpœna witnesses.

Q. Then you stated the fact, and knew of the fact of Judge Page deciding that the county was not to be charged with the serving of these subpœnas?

A. Because—

Q. Answer my question, you knew of that fact?

A. I knew he had so stated before the board of county commissioners.

Q. Well that is all on that point. How frequently have you been to St. Paul in connection with the matter of impeachHent?

A. Once before.

Q. How long did you remain at that time?

A. I staid until the evidence was all closed.

Q, You appeared as attorney for whom?

A. No one.

Q. How long a time did you remain here?

A. I remained here, I don't remember, I think it was in the neighborhood of twenty days.

Q Who paid your expenses?

A. I paid my own.

Q. Have you been reimbursed for your expenses?

A. I have not, I wish I had.

Q. Any part of it?

A. No sir

Q. Have you been employed as attorney in this case?
A. I have not.
Q. Have you contributed anything towards the expenses of this impeachment?
A. I have not, except my own time and expenses.
Q. Did you act as counsel before the House judiciary committee?
A. Well I don't know what you would call it, Mr. Losey.
Q. They talked to you some—now answer my question, whether you were counsel or not?
A. I didn't consider I was counsel.
Q. You staid there during the whole progress of the trial and evidence?
A. I did to inform Mr. Clough of what questions to ask witnesses. I did it at his suggestion, and the suggestion of some of the parties interested.
Q. You were there during the secret session?
A. I was, yes.
Q. Were you in Mower county when Judge Page was elected?
A. I was, yes sir.

Mr. LOSEY. That is all.

RE-DIRECT EXAMINATION.

By Mr. Manager WEST.
Q. At the time you had this conversation in the court at the time Judge Page claimed to have made an order, had these subpœnaes been issued in which Riley had sued the county for services?
A. Yes sir, they had.
Q. State whether at that time you were before the county commissioners, when Judge Page was there, whether you read the statutes to the county commissioners in relation to that matter.

Mr. LOSEY. We object.

Mr. WEST. State whether you did or not.
A. I don't recollect whether I read the statute—or rather, I quoted it from memory. I recollect calling their attention to the fact, that whenever the defendants proved insolvent or escaped, or the prosecution had failed, that the prosecution expenses were to be paid by the county, unless otherwise ordered by the court. I base my opinion on the fact, that the prosecution had failed.
Q. In answer to the question asked you by the counsel whether you charged Judge Page with being corrupt, you wished to give an explanation. State what took place at that time.

Mr. LOSEY. I will state that we have been into that fully, twice.

The Witness. I desire to state how I *did* state it to Judge Page.

The PRESIDENT. Go on and state.

The Witness. Judge Page accused me of being a party to this corrupt agreement, and I told him that it was false; he then became angry as well as myself, and he called me a contemptible upstart; and stated I was corrupt. I then said to him, "you are corrupt, you have done just as bad things as that politically." He said it was false, and when

I told him he was corrupt, he said, you are the first man that has used such language to me. I said I didn't care anything about that, if you say I am corrupt you have done corrupt things yourself—something like that. That is the way I told him he was corrupt, at that time.

Q. State whether, before the time or not, this conversation took place in court in relation to this matter, whether you had caused subpœnas to be issued on the part of the State or not?

A. At that March term?

Q. Yes sir.

A. I had; yes sir. I had subpœnas on the part of the prosecution.

Q. State whether you notified the counsel for the defense in those cases?

A. I had talked with Judge Cameron: I told the judge I wanted to press to trial at that term; at least I wanted to dispose of the demurrers. I don't know as I stated that I wanted to get ready, or anything of that sort.

Mr. Manager WEST. That is all.

The Witness. One other matter that I would like to explain, and that is in regard to that stipulation I made. I tried that case before the justice of the peace, and I went before Judge Page on the same theory that the judge advanced before the board and has advanced in the reason given in his opinion, namely: that there was no issue of fact joined at the time these subpœnas were issued, and hence that they were unnecessary and that the county was not liable. It was on that theory that I presented the case to the justice; it was on that theory that I went to Judge Page. It was a theory advanced by Judge Page himself, and I supposed it was good law if he said so.

Mr. LOSEY. To witness:

Q. That is the theory on which it was decided, was it not? It is in the opinion?

A. Yes sir, that is one of the theories.

Q. The opinion so stated, didn't it?

A. Yes, I think it does.

Mr. LOSEY. I desire to call the witness' attention to these subpœnas.

Q. Where does Riley live?

A. In Austin.

Q. Was there more than one Thomas Riley there?

A. No sir, I think not.

Q. John Minnett?

A. He lives there.

Q. Did you ever examine this subpœna to see how many were examined on behalf of defendant?

A. I never.

Q. This Minnett lives in Austin?

A. Yes sir.

Q. Mr. Greenman?

A. He lived there at that time.

Q. Wm. Beadler?

A. He lives in the town of Lansing.

Q. How far from Austin?

A. Perhaps a mile.

Q. M. J. Graves?
A. I think he lived in Austin.
Q. F. Foster?
A. I think he lived at Ramsey or Lansing.
Q. How far away?
A. About three miles or three and a half.
Q. A. Fairbanks?
A. I don't know where he is.
Q. G. F. Cameron?
A. I don't know. I know G. M. Cameron.
Q. C. C. Kinsman?
A. He lives there in Austin.
Q, John Chandler?
A. He lived there.
Q. A. G. Sawyer?
A. I don't know where he lived.
Q. William Ober?
A. He lived there.
Q. Peter Schinder?
A. I don't know where he lived.
Q. A. Rustab?
A, In Austin.
Q. George H. Resting.
A. In Austin.
Q. Joseph Rinssmith?
A. In Austin,
Q. George Ridgefield?
A. In Austin.
Q. C. H. Gates?
A. In Austin.
Q. W. R. Smith?
A. In Austin.
Q. Charles Grant?
A. He lives at Ramsey, about three miles away.
Q. What is his business?
A. I don't know.
Q. John B. Robert?
A. In Austin.
Q. E. Atherton, didn't he live in Austiu at that time?
A. Yes, that is, F. Atherton; he lived there in Austin.
Q. F. W. Allen?
A. He lives at Austin.
Q. James Kinkel?
A. He lives at Austin.
Q. C. R. Atkins?
A. I don't know him.
Q. Mrs. Smith, or M. Smith, guess it was; it is originally written Mrs. and the "r" seems to have been put on?
A. I don't know. There is a number of Smiths there.
Q. Pat Grady?
A. At Austin.
Q. P. Geraghty?
A. At Austin.
Q. T. Degan?

A. He lives at Austin.
Q. S. Anderson?
A. I don't know.
Q. It is Leo Anderson?
A. I think he lived at Austin; I won't be sure.
Q. J. B. Yates?
A. He lives at Austin.
Q. Carlos Fenton?
A. At Austin.
Q. John Brophy?
A. At Austin.
Q. Peter Berkelhaupt?
A. At Austin.
Q. H. E. Anderson?
A. Lives at Austin.
Q. Marcus Driesiver?
A. At Austin, I think.
Q. Owen Bierce?
A. At Austin.
Q. A. M. Fleck?
A. At Austin.
Q. F. Gage?
A. I don't know him.
Q. F. Langham?
A. I think he lives at Armstrong?
Q. T F. Armstrong?
A. At Austin.
Q. R. J. Macdonald?
Q. H. Young?
A. At Austin.
A. He lived at Austin.
Q. F. Biecher?
A. No response.
Q. John Hines?
A. I don't recollect him.
Q. John Wagner?
A. At Austin.
Q. Daniel McAllister?
A; I don't know him.
Q. C. H. Davidson?
A. At Austin.
Q. T. K. Kizer?
A. At Austin.
Q. Walter Sutherland?
A. At Austin.
Q. James O'Malley?
A. At Austin.
Q. George Daniels?
A. I don't know where he did live, I think at Austin though.
Q. G. F. Rudermacher?
A. Lived at Austin.
Q. John Walsh?
A. At Austin.
Q. C. N. Beisicker?

A. Lived at Austin.
Q. E. C. Dorr?
A. He lived at Austin.
Q. G. Schleider?
A. Lived at Austin.
Q. Was John Walsh a defendant in one of the actions?
A. I think he was.
Q. Was Beisicker a defendant in one of these actions?
A. I think so.
Q. Do you know how far Riley had to travel to serve those subpœnas?
Mr. Manager WEST. We object to that.
Q. J. H. C. Huxhold?
A. I don't know where he lived.
Q. H. A. Fairbanks?
A. He lived in Austin.
Q. P. O. French?
A. In Austin.
Q. J. S. Putnam?
A. In Austin.
Q. Joseph Schwan?
A. In Austin.
Q. A. M. Hall?
A. I don't think I know him.
Q. E. M. Engle?
A. I don't know of any such man; I know of F. A. Engle.
Q. I. Loomis?
A. Don't know him.
Q. Jake Onstat?
A. I think he lived at Austin.
Q. A. Galloway?
A. At Austin.
Q. A. Kennath?
A. I don't know him.
Q. Joseph Adams?
A. I think at Austin.
Q. E. W. Fenton?
A. At Austin.
Q. George Hamburg?
A. At Austin.
Q. H. Herzog?
A. At Austin.
Q. L. Degnon?
A. I think he lived at Lansing.
Q. How far away?
A. Oh, four miles, or four and a half.
Q. Thomas McCoy?
A. I don't know him.
Q. Sam. Luxing?
A. I don't recollect the name.
Q. These indictments all grew out of the same transaction—the whiskey riot?
Q. Yes sir.
Q. Was there anybody left in Austin not subpœnaed?

A. Yes, Judge Page and I were not subpœnaed.

Mr. WEST. Q. Mr. French, state whether these subpœnas which were served by Riley, whether they were issued on the part of the prosecution or by the defendants in those three cases, and for which he put the bill in to the county commissioners?

A. They were served for the defendant.

Q. State whether you had anything to do with having those subpœnas issued on the part of defendant?

A. No sir.

Q. Did you know they were being issued?

A. No sir. As soon as I knew it I stopped Mr. Elder.

Mr. LOSEY. As soon as you knew it you stopped it.

A. I did.

Mr. LOSEY. That is all.

THOMAS RILEY recalled on the part of the prosecution, testified.

Mr. CAMPBELL. I wish to ask the counsel if those names he read were all witnesses on the defence?

Mr. LOSEY. All were for the defence but one; the record shows that those served for the prosecution were by R. O. Hall, and those of the defense by Thomas Riley.

Q. State who handed you the subpœnas that were served in these cases.

A. From the clerk of the court.

Q. State the circumstances, how it happened.

A. I went into the clerk's office and he told me here were some subpoenas in the case, "The State against Benson, Reisicker and Walsh," and I want you to serve them; and I took and served them.

Q. State whether you were present at the time your bill came up; whether that was all you had to do with those subpœnas; all you know about it?

A. Yes sir.

Q. State whether you were present at the time the case came up before Judge Page.

A. I was.

Q. Who was present?

A. C. N. Beisicker, R. O. Hall, C. C. Kinsman, Lafayette French and myself.

Q. State to the court the conversation that took place there at that time?

A. The conversation that took place at that time was in regard to the stipulation; in regard to the order that was made by the court. The county attorney and my attorney had stipulated that there was no order made, and Judge Page he stated there was an order made, and my attorney asked the permission to subpœna the county commissioners to prove that he stated before the county commissioners that he had made no order but might make one, and he said you can't do it; you can subpœna the clerk of the court if you want to.

Q. State what the Judge did in relation to the matter.

A. He asked my attorney to strike out the stipulation, and my attorney didn't say much. I think he said that he would not, and the Judge

takes his pen and took the stipulation and scratched it out.
Q. Was Mr. Elder present during any of this conversation?
A. Judge Page had sent for Elder I don't know whether he was present at that time or not.
Q. Who did he send for him?
A. C. N. Beisicker.

CROSS-EXAMINATION.

By Mr. Losey.
Q. Are you positive that your attorney stated he would not strike out that part of the stipulation?
A. I am.
Q. Why did you state then, that you thought then it was that your attorney stipulated?
A. Because I thought he said so. I believe he did say so.
Q. Didn't he consent to this being stricken out before it was stricken out by the Judge at all?
A. He did not.
Q. Did the district attorney demand that it be stricken out?
A. He did not in my hearing.
Q. Who was Beisicker, who was sent after Elder; an officer?
A. He was one of the witnesses subpœnaed to testify.
Q. You need not state what he was to testify. Who sent you after the subpœnas in the clerk's office?
A. John Benson. He did not send me after them, he said there was some subpænas to serve.
Q. He told you to go and get them?
A. No.
Q. Did he tell you where to find them?
A. No sir.
Q. You went and hunted them up?
A. No sir, I went into the clerk's office, and he told me, "here is some subpœnaes, I want you to take and serve them.
Q. Where did this witness reside, Mr. Riley?
A. Some in the town of Lanisng, some in Windom, and some in Austin.
Q. Did you go out of town to serve them?
A. Yes sir.
Q. How far?
A. Six miles.
Q. To serve more than one?
A. One.
Q. Which one was that?
A. Degnon.
Q. How far out of town did you go to the others?

Mr. CAMPBELL. I suppose, Mr. Losey, we might object. It is your case, and not a cross examination.

Mr. LOSEY. It will not be lengthy.

Question repeated.
A. I went out of town for one more.
Q. Who was that, Alonzo Fairbanks. Where did you go for him.
A. Windom.

Q. How far?
A. About six miles.
Q. The others were found in town?
A. Yes sir.
Q. They mostly reside in town?
A. Yes sir. Some were up at Ramsey.

Mr. LOSEY. That is all.

Mr. WEST. Q. These witnesses that you have named, Mr. Riley, were the witnesses for the defendant, or for the State?
A. They were for the defendant in these cases.
Q. Did you serve any subpœnas in those cases on the part of the State?
A. I did not.

C. C. KINSMAN SWORN

and examined on the part of the prosecution, testified:

By Mr. Manager WEST.
Q. Where do you reside?
A. At Austin.
Q. What is your business or occupation?
A. The practice of law.
Q. How long have you lived in Austin?
A. Four years.
Q. How low have you practiced law there?
A. About three years.
Q. Are you acquainted with the respondent, Judge Page?
A. Yes sir.
Q. How long have you been acquainted?
A. I think three years.
Q. State whether you were present at the session of the board of county commissioners for Mower county, at the January session, 1876?
A. I was.
Q. State in what capacity you appeared there before the board of county commissioners?
A. I appeared as attorney for Riley.
Q. State the conversation that took place and the circumstances transpiring at that time?
A. I went before the county commissioners for Mr. Riley to see them about allowing his bill—
Mr. LOSEY. You will have to talk louder.
The Witness. I will commence back a little. Mr. Riley stated to me ———
Mr. LOSEY. We object to that, your Honor, it is immaterial, and at the same time is only taking up time. He was asked to state what took place.
The Witness. It would not take but a minute. Mr. Riley told me he had received a proposition from the commissioners to allow him twenty dollars. He asked me what he should do—he requested me to go before the board, and to accept the proposition for him ; I had some conversation with the board about it, but no definite conclusion was arrived at. I stated to him that if the bill was not allowed that I was instructed to bring an action against the county for the services.
Q. Who was present at that time?

A. Mr. McIntyre, I think, at the time, and Mr. Richards, and some other gentleman I was not acquainted with, and Mr. Grant, with whom I have since become acquainted. Mr. French was present, I think. He came in a few minutes afterwards ; and about the close of this conversation I think. At the time he came in Mr. French, the county attorney, was conversing with the commissioners in relation to this bill, and giving them instructions about it—about the validity of it—but I don't recollect what.

The respondent then came in; some conversation then commenced between the commissioners and the respondent with regard to the bill, whether it was a legal charge or not, and the respondent advised the board of commissioners that it was not a legal charge, and that there was no question of fact at that term of court, that the action was pending upon a demurrer, and that there was no question of fact, and no necessity of subpœnaing witnesses, consequently it was not a legal charge. Some questions were discussed between the commissioners and the respondent and Mr. Hall, in relation to the officer's fees—the process being fair on its face whether it would protect the officer, whether he would not be compelled to serve the process it being fair on its face. I understood the respondent to say that that was no protection, that he was not entitled to his fees because there was no question of fact pending. Mr Hall, the sheriff, asked the respondent a question in regard to the process.

He said he was not there to instruct sheriffs, but if he would apply to him in open court he would give him any information he desired; and then I think the next thing was, Mr. Kimball, one of the commissioners I learned since, it was Mr. Kimball—I didn't think of the man's name at the time, he being a stranger to me—and he asked Mr. Page if they were not obliged to allow the bill, there not having been an order made, otherwise by the court; and asked him if he had made an order.

Mr. LOSEY. [To witness.] Take that paper from your mouth.

The Witness continuing. He said he had it, but he didn't know but he might. I left the man about that time.

Q. State, while you were present at that time, whether you stated to the commissioners that you should commence an action upon that question.

A. I stated to the commissioners that I should commence an action; but it was before the respondent came in. There was a little part of the conversation that I had omitted. The commissioners stated to respondent, after he came in, that Riley would sue the county unless the bill was allowed. He remarked : "Let him sue."

Q. Did the Judge say anything in relation to the bill being a fraud?

A. He said that there was no necessity of the witnesses; and he said something about the subpœnaes having been issued, and the witnesses subpœnaed to make work for a deputy sheriff, that he would not have in his court or around his court; I think that was the substance of the language used.

Q. State what you did; whether the bill was allowed or disallowed, and whether you commenced an action or not?

A. The bill was disallowed; I waited a little while until I had time to attend to it, and then called upon the clerk and asked if any order had been filed or any entered upon the record in relation to those costs, and he stated there had been none, and I then commenced an action to

recover the fees for Mr. Riley, before Squire Griffin. Before the trial of the action, Mr. French, the county attorney, produced a stipulation of facts that he had stipulated—that he had drawn out a stipulation that we need not subpœnae witnesses, and produce expense; I made a little alteration, or requested him to make a little alteration in the stipulation in one little part, and I think it was done by interlining; and he then signed it as a stipulation of facts, and upon that stipulation and the evidence of two or three witnesses, we tried the case before the justice.

The case was appealed by the county attorney, and at the next term of court after the appeal was taken, we stipulated in writing, or in open court, I don't know which, to continue the case, and try it in vacation before the judge at chambers; and did so. Some time after—I don't recollect the exact time—in the trial there, I commenced to read it and it being in Mr. French's handwriting, he said he would read it for me; he commenced to read, and read along until he came to the stipulation that there had been no order made by the court, and the respondent stopped him and says, "That is not a fact," and went on and stated that he had made an order—made an order in open court—at the term in which these witnesses were subpoenaed at the same term—I don't recollect at what term—it was at the same term at which they were subpoenaed, that he made an order in open court, directing that these costs should not be paid by the county. I was a little surprised at the way the thing came up, and did'nt know how to proceed for a moment, but I finally contended that this was the stipulation of facts that was made by the attorneys for the parties and that the court must receive it for what it was worth.

He stated he could not do it. He knew it was not a fact himself and he should not receive it at all, and he requested me to strike it out. I told him I didn't care to strike it out, or I would not—I don't recollect exactly what I stated, but he struck it out himself, he stated I could subpœna Mr. Elder to prove whether he made an order or not. I told him I didn't care as the case stood, to prove whether he had made an order. They might prove on the other side that he had made an order, if they wanted to, but my opinion was that the case was good enough as it stood. I asked him—not claiming it was a material issue in the case, but there was a question—he had made some talk of it before the commissioners, I don't remember what that talk was. He stated he hadn't said so before the commissioners.

I stated that I so understood him and had relied upon that and had brought my action relying on the statements that he made there, and the statement that the clerk made to me that he hadn't made an order afterwards, and I asked to subpœna the commissioners and the persons who were present, or call them before him to settle that question, that it was a misunderstanding between us, not claiming that it was a material issue in the case. He said he could not allow it, or would not. I then introduced my witness to prove the facts—I think Mr. Biesicker simply—I am not certain but that Mr. Biesicker was on the other side. I introduced Mr. Riley and Mr. Hall, and the respondent sent for Mr. Elder, the clerk. I am not certain who went after Mr. Elder, but some one that was there. He came over and gave testimony in the matter. When we were through we discussed it quite freely and left it with the Judge, and he took it under advisement, and some time after filed his order, reversing the order of the justice below.

Q. State whether you considered that that part of the stipulation should be stricken out.

A. No sir, I did not.

Q. What was the Judge's manner at this time?

A. Pleasant

Q. Do I understand you to state that the judge sent for Mr. Elder?

A. Yes sir.

Q. Who examined Mr. Elder when he was sworn as a witness?

A. The judge asked him some questions, and I don't know but what Mr. French asked him some. I asked him if there was any order filed in his court or entered in his minutes. I also asked him if I called his attention at the time I commenced the action and if he recollected of it; he answered that he did. I think that was all the questions that I asked him,

Q. Was you present, Mr. Kinsman, during any conversation between the respondent and Mr. French when they had their quarrel?

A. Yes sir.

The PRESIDENT. The counsel will take the witness.

CROSS-EXAMINATION.

By Mr. LOSEY.

Q. Where was this stipulation signed that was made by Mr. French and yourself.

A. I am unable to say.

Q. By whom was it drawn?

A. By Mr. French, with the exception that I might have interlined. I don't know but he did the interlining.

Q. Did you examine it carefully before signing it?

A. Yes sir, I did.

Q. What was said to Judge Page when you and Mr. French came in for trial, by either of you?

A. I think one or the other of us said that we had appeared to try the case; that we had stipulated to try it before him.

Q. You state you commenced reading the stipulation and Mr. French finished it up.

A. Yes sir.

Q. Now when you come to that part of the stipulation which was stricken out, what was said?

A. I think that the first that was said, was said by the respondent, "that that was not a fact."

Q. That it was not true as was stated in the stipulation, that no order had been made?

A. Yes sir, that it was not true.

Q. What next was said?

A. I think the next that was said was that he made an order at that term of court on which the subpœnas were returned that this bill was for the service of; I think that that was the time that he claimed he had made an order?

Q. What was the next thing said there?

A. I think the next thing that was said I said myself; I didn't so understand that that was a fact that an order was made.

Q. Now hadn't the question arisen before the commissioners as to whether the order was made, or whether it had been filed in the office of the clerk?

A. I understood Mr. Kimball to ask him if he had made any order?

A. Now didn't you swear on this same matter once?

A. Yes sir.

Q. Didn't you swear then that your first impression was that Mr. Kimball had filed the order?

A. No sir.

Q. Where was this that you testified?

A. It was in Austin.

Q. Before whom.

A. It was before a bar committee.

Q. What was your statement before that bar committee?

Q. I don't recollect distinctly, but I think my statement was that my best recollection was, that he inquired if any order had been made, if he made any order?

Mr. WEST. Who inquired?

Q Mr. Kimball.

Mr. LOSEY—

Q. Didn't you say before that meeting, when you testified, that you understood Judge Page to say that he didn't file an order?

A. No sir, I think not.

Q. When Judge Page said that it was not a fact that it had been stipulated in the stipulation, what reply did you make?

A. I stated to him that I understood it to be a fact, and had called on the clerk, and had also understood him to say that he hadn't made any order in the case.

Q. Didn't you concede the fact that you didn't know whether he stated he made an order or filed an order before the commissioners?

A. I think not. I don't think there was anything said that time after we finished.

Q. What claim did he make in regard to the stipulation when Mr. French's attention was called to that matter?

A. I don't think he made any claim.

Q. Didn't he then and there claim that he had been mistaken, and didn't he call the attention of the court to strike out that stipulation.

A. I don't recollect of his saying it.

Q. Will you swear that he didn't say it?

A. I will swear that he didn't say it.

Q. Did he make any claim in regard to that being stricken out?

A. I cannot swear positively to what words he used. I could tell something, perhaps, what my impressions were of what he did say.

Q What are your best impressions as to what he did say?

A. My impressions were that he was not very particular about it one way or the other.

Q. You considered it very vital to your particular case?

A. I did.

Q. You considered that the case was to turn very largely on that point in the stipulation?

A. Yes sir.

Q. He said that clause was in the stipulation?

A. No sir, he drew that.

Q. Was that one of your interlineations?
A. No sir.
Q. French put that in there himself?
A. Yes sir.
Q. You thought it was a good thing?
A. Yes sir, I thought it was a fact—to save proving it.
Q. You finally failed in proof didn't you?
A. I didn't try to prove it.
Q. You didn't try to prove the fact that the judge hadn't made an order?
A. No sir.
Q. Did French try to prove the fact that he had made an order?
A. I did'nt know as he did.
Q. Well, witnesses were called, were'nt they on that subject?
A. Mr. Elder was called, and Mr. French took the stand himself.
Q. You knew of no other witnesses cognizant of the fact?
A. I did not.
Q. That was the reason you did'nt call them?
A. No sir.
Q. When the matter came up as to the striking out of the stipulation, did you object to its being stricken out?
A. I don't think that I interposed an objection, a serious objection.
Q. You just remained silent?
A. I think not; I think the court asked me to strike out and I refused to do it, that is all.
Q. Mr. French took the paper did'nt he?
A. Drew the paper
Q. Was it handed to you before it was stricken out?
A. I don't think I had it in my hand at all.
Q. What you mean to say then is substantially this, that the court required proof in that matter?
A. I did'nt think that.
Q. And would not consent to Mr. French stipulating away the case?
A. I think the court said this: that I might subpœna Mr. Elder if I wished to prove all that.
Q. He left it then open for proof?
A. Yes sir.
Q. As the truth might be concerning that matter?
A. Yes; I might subpœna Mr. Elder if I wished to.
Q. Now, didn't Mr. French say at the time when his attention was called to this stipulation that if the facts were not stipulated accordingly, he wanted the items stricken out?
A. He might have said so but I did not hear it, sir.
Q But he might have said it however?
A. He might, but I have no recollection.
Q. Who had the stipulation when the matter was suggested about striking it out?
A. I think the court had it. When he stopped him from reading I think the stipulation was handed to the court by Mr. French, but I am not positive.
Q. Did Mr. French object to its being stricken out?
A. I think not.
Q. Did he express a desire to have it stricken out?

A. I have no recollection.
Q. Did he seem willing to have it stricken out?
A. As I said before, he didn't seem to care.
Q. You both stood mute then, did you?
A. Well, yes.
Q. And the court said that the stipulation would be stricken out that part of it, and proof taken on that point?
A. I don't think the court said that proof should be introduced. I think he said I might call Mr. Elder if I wished.
Q. Didn't you tell Mr. French that he might introduce proof.
A. I don't remember.
Q. Was not the remark stated to both if you that you might introdnce proof on this matter?
A. I don't recollect in that way.
Q. Was there any refusal, on the part of the court, to receive proof on that point?
A. No sir.
Q. The court received all that was presented?
A. Yes sir, and asked questions himself in regard to that matter.
Q. Did the attorneys ask questions?
A. I did; I don't remember if Mr. French did.
Q. What did Mr. French do to protect the county, during that trial?
A. Before the respondent?
Q. Yes?
A. I don't know.
Q. Didn't it rather occur to you, from his actions, that he was willing to give the case away?

[Objected to and withdrawn.]

Q. Did he make any adjournment on it?
A. I think not.
Q. Did you?
A. I think I might. I suggested with regard to the order.
Q. About how long did it take you to make the suggestion?
A. Two minutes.
Q. You made a two minutes speech?
A. I think so.
Q. Did Mr. French reply?
A. I think not; I think I made no argument.
Q. Did either of you bring in any authorities?
A. Nothing but the statutes.
Q. Did Mr. French produce the opinion of the attorney general before the court?
A. I guess I am mistaken; I think I did introduce the 14th Minnesota or a Wisconsin case.
Q. Did Mr. French introduce the letter of the attorney general?
A. I think not; I think I showed that to the court myself, afterwards, the next day before the decision.
Q. Will you swear that you did.
A. I will not; I think I did, but I will not swear to it, I had it in my book for that purpose, but whether I showed it to him or not I can not say; I didn't at that time, I will state that.

Q. You knew the facts in this case at the time you made this stipulation, did you?
A. I think I did.
Q, Well, you knew the facts about Judge Page having been before the commissioners?
A. Yes sir.
Q. You was there as you have stated?
A. Yes sir.
Q. You was there as the attorney for Mr. Riley, was you not?
A. Yes sir.
Q. Do you think the court was prejudiced at the time you made that stipulation?

Mr. Manager WEST. We object to that.

Mr. LOSEY. I think we have a right, your honor, to know what he did. The matter is charged here, that the respondent had improper motives at the time he made this decision. Now I propose to prove what his conduct was; what the opinion of this witness was.

The PRESIDENT. You can show, I think, what the respondent did, and form your own opinion of the matter.

Q. [To witness.] How did the respondent conduct himself during the progress of that trial?
A. Quietly, as usual.
Q. Fairly?
A. I don't know anything unfair, with the exception of not allowing——
Q. Did you consider that he conducted himself improperly?

Mr. Manager WEST. Let the witness answer.

Q. You have already told us what was done, have you not?
A. I have told you some; I don't know that he conducted himself impartially; I could not say that.
Q. Didn't you state before the bar committee that you had fault to find with the conduct of the Judge?
A. I don't think I did.
Q. Didn't you state you had no fault to find with the judge in that matter?
A. I don't think I did.
Q. Do you swear that you didn't so state?
A. To the best of my knowledge, I didn't so state; I don't think I ever made such a statement.
Q. You spoke of some evidence proposed to be offered by you in relation to what had been stated before the commissioners?
A. Yes sir.
Q. Did you at that time consider that material to the case?
A. No sir, I asked it as a favor.
Q. It was a collateral matter which the court refused to hear?
A. Yes sir.
Q. You didn't think that it bore upon the case one way or the other?
A. I did not; I stated so at the time.

Q. You knew, as a lawyer, that it could have no bearing upon the case?

A. Well, that was my opinion.

Q. Did you hear all that was said before the county commissioners by Judge Page?

A. I suppose not; I left him there and went away.

Q. You knew his views ot the case when you agreed to try it before him, did you not?

A. Yes sir.

Q. You believed that the interests of your client would be fully protected, didn't you?

A. I did, at that time.

Q. I will ask you one question. Did you take down the testimony of Mr. Elder, given by Mr. Elder before Judge Page?

A. I did not.

Q. Do you remember what he said?

A. I have heard him tell the story so many times that I cannot tell which time.

Mr. LOSEY. That is all.

Mr. WEST. Tell what the clerk said.

A. I could not remember.

Q. Did he state that an order had been made?

A. No sir.

Q. Did he not state that there hadn't been?

Mr. DAVIS. If the witness didn't know what he did state—

Mr. Manager WEST. He stated positively that the clerk did not state that an order had been filed, as I understood him.

Mr. DAVIS. We object to the form of the question.

The PRESIDENT. I understand the objection.

Mr. Manager MEAD. State what he did say?

A. I remember that he stated that there had been no order filed in his office and that none appeared in his minutes that he knew of.

Q. At the time that this stipulation in this case was made to the judge that the stipulation was ready, how long was the matter discussed before the judge struck out that part of the stipulation, if the matter was discussed at all?

A. Not but a very short time; very little said about it.

Q. You state that you have testified about this matter once before, where was that?

A. Before the bar committee.

Q. You have been asked if you did not state so and so; state what you have stated at that time in relation to this matter, if you remember!

A. Which? with regard to what he said before the commissionors?

Q. Yes, that point.

A. As nearly as I can recollect, I understood him to say that he had made no order with regard to those fees in these cases, but he did not know but that he might do it sometime."

Mr. WEST. That is all.

CROSS EXAMINATION.

Mr. LOSEY—

Q. Did you tesitify before the bar committee to all you have sworn to here.

A. I think not.

Q. In relation to that transaction?

A. I think not.

Q. Didn't you pretend to give a statement of all the facts before that bar committee.

A. No sir.

Q. Relating to this case?

A. No sir.

Q. You did not?

A. No sir.

Q. Weren't you sworn in relation to this case?

A. I don't think I was sworn.

Q. Was you not examined in relation to it while under oath?

A. I don't think I was; I might have been; I don't remember, but I will state why I did not tell the whole story, if you wish.

Q. Well, it don't make any difference; you did not.

A. No sir, I did not.

Mr. LOSEY. That is all.

Mr. Manager WEST. Well, we would like to know the reason why?

Mr. DAVIS. We object.

The PRESIDENT. I don't think that is competent.

William Richards, sworn and examined on behalf of the prosecution, testified:

Mr. Manager WEST:

Q. Where do you reside?

A. At Austin.

Q. How long have you resided there?

A. Between ten and eleven years.

Q. How long have you been acquainted with the respondent, Judge Page?

A. Ever since I have been in Austin.

Q. What is your business or occupation?

A. I have been in the lumber business ever since I have been there.

Q. State whether you hold any office in Mower county.

A. I am county commissioner there.

Q. How long have you been county commissioner?

A. Since January, 1875.

Q. State whether you were present at the meeting of the county commissioners when Thomas Riley's bill came up, at any time.

A. I was; I was present when he presented several bills.

Q. Well, when he presented a bill for serving some subpœnas in the cases of Walsh, Benson and Bisecker?

A. Yes sir.

Q. Was the respondent present at any of those times?

A. Yes sir.

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

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

Q. Go on and state what disposition was made.

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

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

Q. Well go on and state what disposition was made of the bill.

A. The bill was either rejected or we done nothing with it; I don't know whether there was any particular record made of it or not, but we did not allow it.

Q. Well state when it came up again, if it ever did.

A. The bill came up again the next year; I believe it was the January session, 1876 Mr. Kinsman was there and pressed the bill; said "if the bill was'nt allowed he was going to sue the county." Before that time or during that session there was a communication came from the Attorney General, we had enquired concerning that bill expecting it would be before us, and he [Attorney General] thought the bill was just; and our county attorney told us the same thing, and told us he thought we had better compromise it if we could; if we could get anything off from the bill to save the county, he thought it would be better to settle it. I myself, I believe, at that time talked with Mr. Riley, and it was suggested by the board to see if we could not get off by allowing him $20.00 on it, and we thought we would, rather than have any trouble or go into court; so we talked the matter over and Tom Riley was not willing for a considerable time, and he finally says: well rather than spend money into the court—

Mr. LOSEY. Was this in the presence of Judge Page what you are now stating?

A. No.

Mr. LOSEY. Oh, we object to what occurred there.

The witness. Judge Page will come in after a bit.

Mr. DAVIS. Well go on, let's have the truth of history here.

A. I told the county attorney that I thought Tom. Riley would agree to it. I was then acting chairman of the board. Judge Felch, one of the commissioners made a motion, said, "I will make a motion to allow Tom. Riley twenty dollars on the bill." And after he made the motion he made the remark, "Well, it is pretty near noon, and I will agree (or something to that effect,) that we will lay this over, and not take the vote on it until after dinner." After dinner, in the afternoon session, the board was all present; Judge Felch came in and turned to something in the statutes—turned to some page, and started to read something, and about the time he opened the book Judge Page entered. Judge Page made the remark of something to this effect, "that he had been informed that that Riley bill was before the county board again." And he was notified that it was. And from that we entered into a general talk about the bill. The commissioners inquired of Judge Page concerning it; asked him questions.

Mr. Kimball, one of the commissioners, took an active part in it; he was back adjoining to where Judge Page was in that part of the room, and after some five or ten minutes Mr. Kimball asked of Judge Page if there was any order made in regard to that bill for those subpœnas and so on. He (Judge Page) said there was not, but we didn't know yet but what there would be one. R. O. Hall asked him some questions in regard to the subpœnas; what he had the right to do and so on, when the subpœnas was put in his hand. He told R. O. Hall that he would answer that in court, in open court, or something to that effect. After some time, a good deal of talk over it, I called Judge Page's attention and I told him that our county attorney—we had come about to a compromise to allow about so much on the bill, I think about twenty dollars; and if we didn't allow it the county would be sued, and make trouble and costs; and our county attorney advised us to settle, and we had also received a communication from the attorney general, and he thought the bill was just.

Judge Page made the remark "that he didn't care what little men with no brains, or large men with little brains said; that there was a bill similar to it, that he had down either in Houston or Fillmore county, and there wasn't a dollar allowed on it," or something to that effect. Upon that the bill was soon after rejected, the vote was put and the bill rejected. There was considerable more conversation there, but I could not recollect everything.

Q. State what the reason of rejecting the bill was; state why it was that the county commissioners rejected that bill?

Mr. LOSEY. We object to that.

MR. WEST. We wish to show that the county commissioners rejected this bill simply because Judge Page appeared there and advised them to disallow the bill, and disallowed it on what Judge Page said to them.

Mr. MEAD. That the bill was disallowed in consequence of the opinion and counsel of Judge Page.

Mr. LOSEY. I think that is immaterial.

The PRESIDENT. You may state.

A. It was; we thought Judge Page was the best judge.

Q. State whether Mr. Felch, the county commissioner, had called your attention to the law before, at any time till this time.

A. Not concerning that bill.

Q. You state at the last time the Judge was present before the county commissioners, when he came in came in the Judge said that he was informed that the Riley bill was up. I ask you to state if the Judge stated, who had notified him.

A. He didn't say who notified him.

Q. State whether the Judge, when he was present before the county commissioners, at any time refused to answer any questions propounded to him by the county commissioners?

A. I think he most always answered when the county commissioners asked him any questions.

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

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

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

A. No.

CROSS-EXAMINATION.

Mr. LOSEY. Q. When he appeared it was on bills connected with matters that had occurred in his court was it not?

A. Yes sir.

Q. Have you given us all that occurred in the commissioners' office the first time when Judge Page was there, as between Mr. French and the respondent?

A. I don't think I have, because it would take me a long time to do it, and I could not recollect of half of it.

Q. You can't recollect of half of it?.

A. Because there was some fast talking done there.

Q. Have you testified here the same as you testified before the committee of the House on this matter subsequently?

A. No, not everything I don't think; I will tell you one circumstance—

Q. Well I haven't asked you for the circumstance, I have asked you a question, and you have given me an answer. You have not testified then to all matters you testified to before the committee; have you testified to all the matters you swore to before the committee in relation to what occurred in the auditor's office before the commissioners?

A. I could not say whether I have or not.

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

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

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

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

Q. Now, who was present at that time?

A. Judge Page was present.

Q. You have sworn to that already?

A. Lafayette French and the county commissioners.
Q. Any other persons present?
A. I am not certain, but I think that R. O. Hall was present.
Q. Who were the county commissioners then?
A. Judge Felch, Mr. Tanner, Mr. French, and Mr. Grant and myself.
Q. Was the subject of Riley's bill up for discussion then?
Yes sir.
Q. It was up for discussion?
[The witness nods assent.]
Q. You are positive of that?
A. Yes sir.
Q. Didn't you swear on your examination before the committee, that Riley's bill was not up for discussion at that time, but that it was Baird's bill.
A. That is the statement I was going to correct here; going to speak of. I thought that communication started with Judge Page and Lafayette French on Mr. Baird's bill at the January session, but on refreshing my memory afterwards, I saw it was in March that Judge Page was present at Baird's bill.
Q. How did you refresh your recollection in relation to this transaction since you were sworn below?
A. By looking at the records and seeing the dates of the bills.
Q. The record showed that Riley's bill was then under consideration, did it?
A. The record did not show that Riley's bill was up in the January session.
Q. Well sir, did the record show that Riley's bill was under consideration at the meeting where you have testified Judge Page used these expressions?
A. I don't recollect that it does.
Q. Then how could you refresh your memory from it and swear now that Riley's bill was under discussion when you swore before that the Baird bill was under discussion?
A. Well, I thought it was the Baird bill that came out at that time.
Q. Well, you swore so, didn't you.
A. I swore so.
Q. Now, have you not refreshed your recollection in relation to this matter by talking with Layfayette French?
A. I don't know that I have materially.
Q. Have you talked with him as to what occurred then?
A. We have all talked a little over it; these matters.
Q. Who do you mean by "we."
A. Well, different members of the board.
Q. You and Mr. French have talked considerable, about this matter, haven't you?
A. I don't know but we have talked about it.
Q. What relationship does French bear to you?
A. He has married my daughter since.
Q. He is your son-in-law.
A. Yes sir.
Q. How long since?
A. About six or eight months.

Q. Haven't you discussed this matter a great deal since he became your son-in-law?
A. No sir.
Q. Haven't you frequently talked with him concerning it?
A. No sir.
Q. Don't you think you have refreshed your memory from talks with him, rather than from examining that record?
A. No sir.
Q. Do you swear that that record shows that the Riley bill was under consideration at that time?
A. No, I do not.
Q. What was the expression of Judge Page used before the board at that time. You say he came in there after dinner, when the Riley bill was under consideration, in relation to his having made an order?
A. Mr. Kimball, our commissioner, called his attention; asked him if there was an order made, and he says "there was not, or he didn't know yet"—or something to that effect—"but what there might be one made." I won't say exactly them words, but the substance of it.
Q. Who was present at that time?
A. I could not be positive—the commissioners.
Q. Who were they?
A. Mr. Kimball, Judge Felch, and, I believe, Mr. Spencer and Mr. French.
Q. You can't be positive as to just what was said there at that time, can you?
A. I can be positive about what I have just stated that those words were.
Q. Are you positive that Judge Page said that he had made no order?
A. That Judge Page had made no order; but he didn't know but what he might make one.
Q. Now didn't he say "that he had *filed* no order," and wasn't that question the question that Mr. Kimball asked him?
A. I don't think it was.
Q. Well, sir, might it not have been that way?
A. I could not say; I would not be positive on that point.
Q. It might have been that way?
A. It might possibly but I understood it to be.
Q. Well I understand that you understood it as you have sworn.
Q. Did Mr. Hall have bills pending before your body at that time as sheriff?
A. I believe he did.
Q. There was nothing said about Mr. Hall's bill at that time?
A. Not while the judge was there, he merely asked for information.
Mr. LOSEY. That is all. [Mr. Losey continuing]
Q. Where did you say you resided—how long have you lived there?
A. Between ten and eleven years.
Q. What is your business?
A. Lumber business.
Q. Have you contributed money towards this prosecution?
A. Not a cent.
Q. Not anything?
A. No sir.
Mr. LOSEY. That is all.

On motion, the court took a recess till 2 o'clock.

AFTERNOON SESSION.

MAY 29th, 1878.

G. R. Cameron recalled on behalf of the prosecution, testified:

Mr. Manager WEST. Mr. Camerom, state to the court whether you were the attorney in the case of the State against Busicker, Benson and Walsh.

A. I was.

Q. State whether or not you carried subpœnas to be issued for the March term of court, 1875.

A. I did.

Q. State what you did.

A. A day or two before the term, the defendants came to me and talked the matter over, and I told them to get out subpœnas and be ready for trial. I understood at the time the State was going to try the cases.

Q. State to the court whether you subpœnaed any more witnesses than was necessary in the trial of the causes?

A. In my opinion I did not.

Mr. LOSEY. To that we object.

Mr. DAVIS. That is something for the court?

Mr. WEST. You have gone on quite extensively—

Mr. DAVIS. We have not asked that question—we have proved the fact. We move that the question and answer be stricken out.

The PRESIDENT. I don't think the question is competent, you may strike that answer out.

Mr. MEAD. Do I understand the court to presume that the witnesses were necessary from the fact that he was the attorney in the case, and required them to be subpœnaed.

The PRESIDENT. It is the impression of the chair that it is not competent for the witness to state that he subpœnaed no more witnesses than were necessary—he has stated that he was the attorney in the case and you can prove by him how many witnesseses he subpœnaed; it is for the court to infer whether he subpœnaed more than was necessary.

Me. WEST. The subpœnaes shows how many were subpœnaed.

The PRESIDENT. Well, then, that is the best proof.

Mr. WEST. May it please the court, the court does not have these cases before them, the only way that we can prove as to the necessity of witnesees will be by experts, something like an attorney in the case.

The PRESIDENT. Well, the chair has made the ruling. At the suggestion of the managers the chair will submit the question to the court, whether the question is a proper one to be put.

The PRESIDNT then submitted the qestion to the Senate, and his ruling was sustained.

Mr. WEST. State, Mr. Cameron, whether Mr. French or Mr. Riley had anything to do with the issuing of these subpœnas?

Mr. DAVIS. We object.

The PRESIDENT. What is your object?

Mr. WEST. They set up in their answer here that these subpœnas were issued for the purpose of giving Mr. Riley some business, and that it was a put up job; I propose to show by the witness that no one knew anything about it, excepting the attorney and the defendants.

Mr. DAVIS. That is a matter that can be rebutted, if sustained by proof.

The PRESIDENT. I think Mr. Riley has testified on that point.

Mr. Manager WEST. That's all.

R. O. HALL, recalled by the prosecution testified:

Mr. Manager WEST. State, Mr Hall, if you were present at the meeting of the board of county commissioners, at the time when Thomas Riley's bill came up; if so, when it was and who was present.

A. I was present at one time when the bill was talked over by the commissioners, and when there was twenty dollars sort of agreed upon —that if he would take that, they would pass his bill.

Q. State who was present at that time?

A. Well, while I was in there, I can't say that there was any one excepting the commissioners. I might not have been in all the time, because I know I went out and saw Mr. Riley and told what the commissioners—

Mr. LOSEY. Well, you needn't go on and state that. We object.

Mr. WEST. Were you not present at any time when the respondent, Judge Page, was present?

A. I was.

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

A. I went into the room where the commissioners were in session. Judge Page, Mr. Kinsman and the county commissioners and the county attorney were present at that time.

Q. When was this?

A. I cannot fix the time exactly. I never looked up and carried the date.

Q. Well, about when?

A. Oh! I should think it was in '75 or the winter, perhaps, of '76 it might have been; I think nearly a year after I took my office. They were discussing, talking about the bill when I went in.

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

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

Q. Go on and state what it was?

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

Q. State whether you were present or not at the time the matter was submitted to the judge in the district court after the action was commenced.

A. I was a witness I think in the case.
Q. Will you state what had transpired?
A. Well I know very little of what transpired there, only that I gave my testimony on one certain point I think; I was not in the court room but a very little while.
Q. State how long Mr. Riley was deputy sheriff of that court.
A. Two years.
Q. What years were those?
A. 1875 and 1876.
Q. State whether or not at any time Judge Page refused to allow Thomas Riley, deputy, to be in court.
A. He did so refuse.
Q. State what he said in relation to the matter.
A. He would'nt have him in his court room.
Q. State whether that was before or after the bill came up.
A. Before.
Q. State to the court what reason he gave, if any, for the reason that he would not have him in court.
A. Well he had spoken to me upon that subject more than once, and I can't give all the reasons; he did not consider him fit, a fit man; he would not have him in his court room.
Q. State what occurred, if anything, a short time before you appointed Mr. Riley, state if you had any conversation with Judge Page in relation to the matter, and if so, what it was.
A. I did.
Q. Well state when it was?

Mr. LOSEY. We would enquire what is the object of this evidence. We object to it.

The PRESIDENT. State your objection, Mr. Losey.

Mr. LOSEY. Article second under which they complain of the action of the judge, simply concerns his conduct in relation to a bill. I object to the evidence on the ground that it is not pertinent to the issue; any conversations that he may have had with Judge Page not connected with this matter a long time previous to its happening.

The PRESIDENT. Do the managers expect to connect it with this bill in any way?

Mr. Manager WEST. We expect to show that Judge Page had a feeling of hostility against this deputy sheriff, and to show malice on the part of the judge; and to show it under the rule that has been adopted here by the court.

The PRESIDENT. I think perhaps under the rule that is admissible. If the Senate desires evidence upon it, I will submit it; if not, I will rule it is admissible; you may ask the question.
Q. You may go on, Mr. Hall.
A. I met him one day, this was before I had taken the oath of office, and he says to me, "I understand that you propo seto appoint Tom Riley deputy," and he went on to state there was great objections to his being appointed, and wanted to know if I dared to do such a thing in the face and eyes of all this opposition.
Q. Give his language?

A. Well, he says, after telling me that there was a tremendous opposition to his being appointed, and we had a considerable conversation about it, he says, "Do you dare to do such a thing in the face and eyes of all this opposition?" Shall I give my answer?

Q. Yes sir.

A. My answer to him was, I dared to do it and would do it if I lived until the time came. I knew nothing objectionable to Mr. Riley.

Q. State what position, if any, Mr. Riley held at that time.

A. Mr. Riley was constable at that time, and was night watchman, employed by the merchants of the city of Austin.

Q. Has he been ever since?

A. He has been chief of police ever since.

Cross examination.

Mr. LOSEY. Q. When was this that you appeared before the commissioners?

A. The first time?

Q. Yes, when Judge Page was present?

A. I never was before the commissioners when Thomas Riley's bill was up but once when Judge Page was present.

Q. When was that?

A. Well, that I can't state exactly. I think it was some time in the winter of 1875–6.

Q. Who came there first, pou or the judge?

A. The judge was there when I went in.

Q. What did the judge state at that time, in relation to the bill, give the whole of the conversation and the language he used?

A. I could not give it, sir.

Q. Do you pretend to give his language in any of these conversations?

A. Ye sir.

Q. Do you pretend to give his language in the conversation that occurred there between him and the commissioners.

A. Not all of it.

Q. Well, what part of the language you have used, is his language?

A. When Mr. Kimball asked him if there had been an order made, and he said that he had not made an order.

Q. Did he say he had not made an order or had not filed an order?

A. I am going to state that I can't swear which he said.

Q. You don't know?

A. I don't know, but he made one of those assertions, either one or the other, that he had not filed one, or had not made one.

Q. Now what is the next thing he said?

A. Well, I don't know, excepting that which was directed to myself; that I remember and always shall. (Laughter.)

Q. That that was directed to yourself was that he would answer you in court upon proper application?

A. Yes; well I don't know any thing about the application, that was the end of it.

Q. Did you suppose that if the defendant placed a subpœna in your hands in a State case that the county had got to pay the expenses, no matter how many subpœnas were placed there?

A. No sir, I did not.

Mr. WEST. We object to that.

The Witness. I didn't know anything about it.

The PRESIDENT. Strike that out.

Q. Didn't you claim to Judge Page at that time that if a subpœna was placed in your hands, by a defendant in a State case, you had a right to serve it, and to call on the county for the fees, no matter what the circumstances? (No answer.)

Q. Didn't you claim that—didn't you make that claim then and there, and didn't he tell you that he would answer you in court?

A. He told me that he would answer me in court.

Q. Didn't you claim that?

A. Well, you'r putting the question in that style—

Q. Well, you can answer it the way I put it?

A. Well, I don't hardly know how to answer that question because that question comes in such a shape that a subpœna might be handed me by a boy or somebody else.

Q. Wasn't that the precise state of facts involved in the Beiseicher case.

A. I didn't so understand it.

Q. Then you say it was not the precise state of facts?

A. I did not so understand it.

Q. Did not the respondent claim that the privilege had been abused, and a great many witnesses subpœnaed who were entirely unnecessary in the case, for the purpose of giving Riley a job to do?

A. I think, sir, that is a fact.

Q. You think that is a fact?

A. I think that is what he claimed.

Q. There then?

A. I think so, yes.

Q. And that the county was not obliged to pay the fees under such circumstances?

A. I think that was a part of his argument.

Q. Was there any thing further that occurred in your presence before the commissioners, in connection with the respondent, except what you have stated?

A. There might have been; they were in there when I went in.

Q. Nothing further that you can remember of?

A. I don't remember.

Q. Where did you have this conversation with Judge Page, in which he told you that he would not have Riley in the court room?

A. Well, I don't know as I can tell you exactly; I am not positive that he told me at the time he objected to his appointment, that he would not have him, but I think he did then. But after that, some time, at some point or other, he told me that he wouldn't have any of my regular deputies in the court room.

Q. On the ground that they were unfit to do the business of the court, incapable?

A. Well the first—this conversation about Riley—

Q. Please answer my question, on the ground that they were unfit to perform the duties required of them in court. Was that the ground he put it it on?

A. I don't think he did ever in respect to Mr. Riley?

Q. What ground did he put it on with Mr. Riley?
A. That he was not—that he was no man at all.
Q. Didn't you swear in your direct examination, that the Judge told you he wasn't a fit man?
A. Certainly.
Q. To fill the place?
A. To fill any place?
Q. To fill that place?
A. Yes sir.
Q. That's what the Judge told you?
A. Yes sir.
Q. What further did he tell you in relation to Riley. State just the language he used, not your impression.
A. Well that he was a low-lived man; that he wasn't a fit man for any position of that—
Q. Of that dignity and importance?
A. Yes sir.
Q. Was that the first language the judge used?
A. Well, pretty nearly the language if not precisely.
Q. Can you give, Mr. Hall, the exact language of any conversation after a year or two has elapsed, without your attention being particularly called to it?
A. There is some language that Judge Page has directed to me that I shall remember as long as I live.
Q. I am asking you a general question; can you remember conversations that occurred a year or two ago where your attention has not been called to them particularly, so as to give a specific and detailed account of them?
A. I might not be able to give a detailed account of a long story, but a striking instance I might remember.
Q. Well, it is a striking instance of your being here and being sworn?
A. Yes sir.
Q. Tell me the first question the manager asked you on the direct examination?
A. The first one that was asked me yesterday?
Q. To-day, this afternoon.
A. Yes sir; I guess I can tell you.
Q. Well, gives us the first question?
A. I think that he asked me if I was present at any of the meetings of the board of supervisors.
Q. That was the question, was it?
A. I think it was; I may be mistaken.
Q. Now, was there anything else said by the Judge to you at the time this conversation occurred, than what you have stated just now?
A. What conversation do you refer to?
Q. I refer to the one where he objected to the appointment of Riley.
A. Oh! There was considerable said at that time; I don't remember it all.
Q. Well, you may repeat it over again.
A. What he said?
Q. At what you said?
A. Well, he says, "I understand that you are going to appoint Thomas Riley deputy." I told him I was. He wanted to know if I was aware of the opposition to his appointment. I did not give you all

the conversation that I can remember now; I can give you some more if you want.

Q. Well, we will take the whole of it this time. You were called upon before for the whole of it; now make your addition?

A. I told him that I was not aware—that the only opposition I knew of was from him; and he said there was a tremendous opposition to his appointment. And in the conversation, I told him that I knew nothing but that he was eligible to that place; on the contrary, that he was being employed by the merchants of the city, and I didn't know anything why he couldn't fill the place acceptably. And he says, among other things—the winding up—and he says, "do you dare"—and said he,——

Q. We want the whole thing—not "among other things;" now give us the whole of it.

A. Well, we talked a good deal there at that time, and among the other things, about the winding up, said he, "Do you dare do such a thing in the face and eyes of all this opposition!"

Q. Well, I want that talk that occurred between this last and the closing remarks you have given.

A. Well, I can't give it.

Q. Well, the whole conversation there did not impress you so deeply as that you can remember it?

A. No sir.

Q. But you can remember what you consider some of its salient points. Was that the only topic of conversation between you and the Judge at this time?

A. I think that in regard to his appointment was the only thing; that I remember.

Q. And you can't tell when this occurred; sometime along in the fall I believe you stated.

A. It was before I took my office.

Q. Well, that is what you state, you can't tell just when?

A. No sir.

Q. Can you tell where?

A. Yes sir, I can tell where.

Q. Where was it?

A. In the office of Mr. Engle, in their flour and feed establishment.

Q. Who was present?

A. W. W. Engle.

Q. Did he hear the whole conversation?

A. I can't say whether he did or not, he was at his desk writing.

Q. How far were you from him?

A. Oh we might have been ten or twelve feet.

Q. You think it probable that he heard it?

A. Yes, I think he heard it.

Q. Did he participate in it?

A. I don't think he did.

Q. Did he participate in any part of it?

A. I don't know that he did.

Q. Well, are you sure that he did not?

A. I am not sure.

Q. You can't testify one way or the other in regard to it?

A. Not as regards his participating.

Q. You do not remember anything that Mr. Engle said in that conversation?

A. No sir, not while Judge Page was in; I talked some after he went out.

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

A. Yes sir.

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

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

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

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

Q. Now we have unearthed a new conversation, as I understand it. When did this new conversation take place?

A. I could not tell when it took place.

Q. Who was present when it took place?

A. I don't remember; it might have been in his office.

Q. What was this last conversation that you are now alluding to?

A. Why, that he appointed the deputies.

Q. Do you mean to say that Judge Page claimed the right to appoint deputy sheriffs?

A. That is, court deputies, not deputy sheriffs, to act in the court.

Q. Are you familiar with the statute of this State that requires the judge to limit the number of court deputies?

A. I am now, sir; I was not at that time.

Q. You can't tell when nor where this last conversation that you allude to occurred.

A. No sir, I don't remember.

Q. Can you tell what that conversation was?

A. Well, the conversation was that my deputies, my regular deputies, were not serving in the court room, because I had one come from the far end of the county, expecting to serve and he did not serve.

Q. When was that?

Q. I think it was the first term of court.

Q. In court?

A. No sir, it was not in court that we had the conversation.

Q. Who was this deputy, that you spoke of, that came from the far end of the county?

A. His name was Louis something, it has gone from me now, he was deputy but a short time. He left the county; he was from Racine.

Q. Can you state when and where it was that the judge told you this?

A. I cannot.

A. The Judge objected, did he not, to the regular deputies drawing extra pay for their attendance on court as court deputies, wasn't that his objection?

A. No sir.

Q. It was not?

A. It was not. Why should he if they had never been in the court room?

Q. You did not have them in the court room?
A They had never been in the court room.
Q. You didn't want them in the court room?
A. He would not have them in the court room.
Q. That was the orders he gave you?
A. That was the orders he gave me.

James Grant sworn and examined on behalf of the prosecution testified as follows:

Q. Where do you reside?
A. Le Roy township.
Q. What county?
A. Mower county.
Q. State whether you was county commissioner for Mower county during the years '74-5-6?
A. I was.
Q. State whether you were present at a meeting of the county commissioners for that county in March, 1875, when Thomas Riley's bill came up?
A. I was.
Q. Go on and state to the court the proceedings that were had by the county commissioners of that county while you were county attorney in relation to that matter. In the first place you may state who were county commissioners when you were ———

Mr. DAVIS. That has been three or four times stated.

Mr. LOSEY. Will you confine this question to what occurred when Judge Page was present?

Mr. WEST. Yes sir; I did not understand who the county commissioners were. You need not answer that question. Go on and state what occurred with reference to this bill when the respondent, Judge Page, was present

A. We had the bill under consideration, I think, in the forenoon. I would not be certain when this was. We had the bill up twice, and I think the first bill was up in March; I remember Jones' trial was going on at the time. The second time, or some time afterwards—it might be the next meeting of the board, and it might be six months afterward, I am not positive—and it was understood, at least I understood, that the bill was not a legal bill. We talked that matter over, and the bill was laid over until after dinner; and after dinner Mr. Kinsman and Mr. Riley came in there. I don't know as I can remember exactly all that was said.

Q. Go on and state what you can remember that occurred at that time.

A. Mr. Kinsman said that he was going to sue the county.

Q. Go on and state what the Judge said at that time if he said anything in relation to that matter.

A. I understood by what the Judge said——

C. State what the Judge did say.

A. The Judge said the bill was not a legal charge against the county

Q. Did he give any reason why?

A. I think he stated that it was not necessary to have those witnesses subpœnaed at all.

Q. State what the board did in relation to the matter while the judge was present. State, Mr. Grant, whether anything was said at that time by Mr. Kinsman in relation to the bill?

Mr. LOSEY. We object to the counsel leading the witness.

The Witness. There was a good deal said. Mr. Kinsman got the law (I know we had the statutes there) in regard to the payment of the bill. The county attorney said it was a just bill, for he had a letter, I think he said, from the attorney general, and he said that it was a legal charge against the county, and that the bill ought to be paid. Mr. Kimball had most of the conversation, because I understood it was a bill that was up before, and I supposed it was a legal bill; but Mr. Kinsman had the statute, and he wanted to know if there had been an order drawn, and the judge said there had not. Mr. Kimball contended that if there had not it would be a legal bill, and there was some little disagreement among them. Mr. Kimball thought that the whole bill ought to be allowed, but the bill was rejected.

Q. Was this the first or second time that the bill came up?

A. That was the second time.

Q. Now state what occurred and what took place the first time when it came up when the judge was present?

A. Well it was about the same thing in regard to the legality of the bill, that it was not necessary to subpœna so many witnesses.

Q. State whether you heard any conversation between Judge Page and Lafayette French at that time.

A. Yes.

Q. Well, state what it was.

A. I could not use the language.

Q. Well, state it as nearly as you can.

A. It was something in regard to the manner in which they conducted their elections. It was brought about by the conversation in regard to the parties issuing so many subpœnas, and as though he was in collusion with the other party. That is what brought it up.

Q. Well, state what the Judge said to Mr. French at that time, and what Mr French said?

A. Well, I couldn't tell you half of what was said.

Q. Well, tell us all you remember.

A. He stated that there was a bargain among them, that they had sold out the party, or something, and that the election was conducted in a corrupt manner; and Lafayette made the remark, that they were conducted about as they had been in elections previous. There was at good many words said.

Q. Is that all you remember in relation to the conversation at tha time?

A. I don't know as I can remember anything in particular

CROSS-EXAMINATION.

Mr. LOSEY. What time was this first meeting of the commissioners, that you have spoken of?

A. It was in the winter time; I think it was in March.

Q. Of what year?

A. 1875, I think it was.

Q. Where were you at that time? What room were you convened in?

A. In the auditor's office.

Q. In the court house building?

A. In the court house building.

Q. Do you mean the first meeting you speak of, or the first in order of time, the first conversation in order of time?

A. I mean the time that Lafayette French and the Judge had the first words I know of.

Q. That was at the auditor's office, was it?

A. That was at the auditor's office.

Q. The other conversation occurred when? That in relation to the bill.

A. That occurred, I think, in what is called the sheriff's room, it is over the jail.

Q. You met there at that time, did you;

A. We did.

Q. When was that?

A. That was sometime afterwards.

Q. Can you state when?

A. I would not be positive, it might be six months afterwards, may be more or less.

Q. What was this question that was put to the judge by Mr. Kimball concerning that order.

A. The question put to him?

Q. Yes?

A. What brought it about, Mr. Kinsman said that he had seen the records, and that there had been no order made, and he asked Mr. Elder if there had been any order made, and he said not to his knowledge, there was no record of it, and he was going to sue the county, he thought he had a—well, he thought he had a good thing; that he was sure of his case, and that is why Mr. Kimball was solicitous to find out whether there was any order, and he asked the judge if he had made any order in the case.

Q. Did Mr. Kimball say this in the presence of the respondent Judge Page.

A. He said that before the board.

Q. Did he say it before Judge Page came there?

A. I don't know; he was in there before the judge came in.

Q. He was in before the judge came in, and you don't know but what it is preceding the judge's coming?

A. I don't know but what it did, because when he said that Mr. Kimball got the statutes he showed him where he could find the law in regard to it.

Q. Now did Mr. Kimball ask the judge whether the order had been made, or whether the order had been filed?

A. He asked him if it had been made.

Q. What did the judge say?

A. He said that he had not, but he might.

Q. That he had not made, or had not filed an order?

A. That he had not made an order.

Q. Did not the judge state what had occurred in court in relation to those subpœnaes?

A. Well, he might; him and Mr. Kimball had the most of the conversation.

Q. Was that not a general talk there, between the judge and board, as to whether that was an illegal bill?

A. Yes, that was a talk.

Q. Did not the judge go on and make a statement then, as to what had occurred in relation to issuing the subpœnaes.

A. I don't remember anything of that kind.

Q. Did he say anything as to what had occurred between him and the clerk, as to its being a proper charge against the county.

A. I did not hear any thing of that kind.

Q. You did not hear any thing of that kind?

A. No sir.

Q. Well, you state there was a full explanation by the judge of the manner in which the bill was made up?

[No answer.]

Q. You did not so state?

A. No sir.

Q. What had caused Mr. Kimball to go the clerk to find whether an order was filed or not?

A. I don't know what made him go.

By Mr. DAVIS. Q. What brought the remark from Mr. Kinsman that he had been up to the clerk and had examined the record and had asked him if such an order had been entered. I wish you would bring your memory to bear upon that talk aad see what brought it about.

A. Well what brought it about was whether the bill was a legal bill against the county or not. This we had talked among ourselves, and Mr. Kinsman, when he came in, talked the matter over and said that it was—he referred to the statutes.

By Mr. DAVIS. Q. Was Judge Page there when Mr. Kinsman said that he had been up to the court?

A. I would not be positive who was there.

Q. What is your impression?

A. I would not be positive whether it was before he came in or not.

Q. Had considerable conversation taken place before Mr. Kinsman made that remark?

A. Not a great deal; he came in and presented his case to the board.

Mr. DAVIS. That is all.

Mr. WEST. That is all.

The PRESIDENT. Call yonr next witness.

Mr. WEST. That is all on that article with the exception of the records of the proceedings of the county commissioners.

W. T. MANDEVILLE SWORN.

W. T. Mandeville sworn and examined on behalf of the prosecution, testified.

Mr. Manager GILMAN. Q. Where do you reside?

A. I reside in Austin, Mower county.

Q. How long have you resided there?

A. Since the March of 1856.
Q. Do you know Judge Page, and if so, how long have you known him?
A. I have known him about twelve years.
Q. Were you present at the January term of court, 1876?
A. I was.
Q. Did you render assistance there?
A. I did.
Q. In what capacity?
A. As court deputy.
Q. Upon whose request?
A. At the request of the sheriff, Mr. R. O. Hall.
Q. When did your service commence?
A. Commenced on the morning of the 11th of January.
Q. What day of the week was it?
A. On Tuesday.
Q. What day of the session?
A. The first day.
Q. How long did your service continue as compared to the length of the term?
A. Continued through the whole length of the term.
Q. What duties did you perform during that trial?
A. Well, I built the fires, swept the court room, arranged the seats and chairs, waited upon the court generally, raised and lowered the windows, went out and brought in witnesses, went to the post office after the judge's mail, went out and brought in prisoners into court, adjourned court in the absence of the sheriff, and spent a greater portion of the time in the passage way of the court room pressing the crowd back, which was very large at that session.
Q. What was the business of this court?
A. It was the trial of Mr. Jaynes; the State against Mr. Jaynes.
Q. Was it a case of considerable excitement?
A. Of a good deal of excitement.
Q. Who else, if anyone, officiated as court deputy at that term?
A. No one to my knowledge until betwixt four and five o'clock of the afternoon of Wednesday.
Q. Just answer my question, the question was, who else, if anyone, was on service?
A. Mr. F. W. Allen.
Q. When did his services commence?
A. On Wednesday sometime betwixt four and five o'clock in the afternoon.
Q. Wednesday; how soon after the commencement of the session?
A. Well, nearly two days had expired.
Q. What services did Mr. Allen perform so far as you observed?
A. Mornings, noons and evenings, when the court was not in session, he was engaged a large part of the time putting up some window shades in the court room; they were a patent spring roller and they seemed to work badly. It was a good deal of trouble to fix them so that they would work proper; and in fact, he was engaged on them trying to get them adjusted in a proper shape so that they would work well throughout the term after he commenced to serve. That is when the court was not in session.
Q. Were you recognized by the Judge during your service?

A. I so understood it.
Q. What was the answer?
A. I so understood it. When the Judge came into the court room Mr. Hall and myself were there, and Mr. Hall spoke and says: "I have set Mr. Mandeville at work as court deputy." The Judge passed right up to the desk and took his seat, and motioned with his finger to me and said, "Step this way;" said he, "Lower those windows around there four or five inches and change the air in the room here."
Q. Did he give you any commands or orders during the term after that?
A. He did, all through the entire term.
Q. Were you paid for your services at that term?
A. I was not, nor have not been.
Q. By whom were you requested to officiate there?
A. As I said, by Mr. R. O. Hall and the sheriff.
Q. How long before the commencement of the term, if at all, did he engage your services?
A. Well I should judge it was about a week. I spoke to him one day, and asked who was going—

Mr. DAVIS. One moment. We object.

Q. Did you apply to any one for pay, or make any application, looking to the pay, if so, to whom?
A. I made application to Judge Page.
Q. State in what manner, and what occurred.
A. Well, immediately after the court adjourned, Mr. Hall came along and spoke to Mr. Allen and myself, and he says, "come up to the judge's stand, and I will have him give you an order for your pay." We passed up to the judge's stand with him, and he says to the judge, "I have brought my deputies to get an order for their pay." The judge replied, that he was then busy, that he could not attend to it just then, but come in sometime in the afternoon.
Q. You complied with that reqaest?
A. I did.
Q. Please state the results.
A. Mr. Hall said, "you may remain here in the court room, and keep up the fire, and if the judge wants any errands done you can do them for him, and when he gets time, gets around to it, he will give you on order for your pay."
I remained there in the court room until some time between four and five o'clock in the afternoon, I should judge it was; Mr. Allen and myself were down at the end of the room by the stove, and the judge says: "Boys, come up this way." And we passed up to his desk.
Q. What was then said?
A. The judge says: "Mandeville, how did Hall come to appoint you court deputy? What dirty work did you do to help elect him that he appointed you court deputy?"
Q. State your reply.
A. I replied to him that I was'nt aware that I done any dirty work. He went on to say, that Mr. Hall did not need any court deputy; he could have done the work himself, and he considered it a steal upon the county, and he did not propose to sanction any of these steals." Well he went on and talked for some five minutes and finally he says:

"I shall take time to consider this matter; I shall not give any orders to-day."

Q. Did you make any reply to him beyond what you have stated?

A. I am inclined to the impression I did; that I rather vindicated Mr. Hall.

Q. What was the tone of the Judge when he made these remarks as to being mild or otherwise?

A. Well, I can't say that he was very angry, although he seemed to have some spite toward Mr. Hall.

Q. Was that the first trial of the case?

A. No sir, it was on the second trial.

Mr. LOSEY. We asked to have that part of the answer stricken out where the witness states that he seemed to have some spite against Mr. Hall.

Mr. Manager GILMAN. There is no objection to that being stricken out.

Q. Were you present at the first trial of this case?

A. I was.

Q. How large was the crowd collected at the time of the second trial as compared to that at the first trial, if you have any means of judging?

A. Well, it was considerably larger; the second trial was in the month of January, when the people were generally idle.

Q. Was this a case of some notoriety?

A. Yes sir, a good deal of notoriety.

Q. Can you state how many deputies officiated at the first trial—how many court deputies?

A. I cannot only state what I have been told.

CROSS-EXAMINATION.

Mr. LOSEY. Q. How many trials of that case were there?

Mr. Manager GILMAN. One moment if you please, I desire to ask one question.

Q. Have you ever received your pay for your services?

A. I have not.

Q. Have you requested your pay several times since the first time in the court room.

A. At three different times that I distinctly remember.

Cross examination by Mr. LOSEY.

Q. When.

A. About a week I should judge, it was after the court was over. I went up to Mr. Page's house one evening.

Q. When next?

A. Well, a few days subsequent I met him on the street.

Q. When next?

A. I should say a couple of months or more I met him again on the street.

Q. How long have you lived in Austin?

A. I have lived in Austin since March '56.

Q. March 1856?

A. Yes sir, in and about Austin, I was off a few years out on the farm about five or six miles out of Austin.

Q. How many times was the case of the State against Janes tried?

A. Twice.

Q. Twice—you know that as a fact do you?

A. Yes; that is the best of my knowledge.

Q. It was not tried three times?

A. Not to my knowledge; that is, not to have a jury trial. There was an examination, I understood, at Judge Page's office.

Q. Will you swear that Mr. Allen was not there the first day of the term, taking care of the court room?

A. He might have been in the court room, but he wasn't taking care of the court room.

Q. Wasn't he engaged in taking care of the court room the first day of the term?

A. I should say not. I had no knowledge of it; I was right there.

Q. Do you swear that he was not there taking care of the court room the first day of the term?

A. If I can swear positively to anything I can swear positively to that.

Q. You do so swear then, do you?

A. I swear to what I have said.

Q. Have you testified before in relation to this matter?

A. I have.

Q. Before the committee of the Assembly last winter?

A. Before the judiciary committee of the House of Representatives. Yes sir.

Q. Did you swear there as you have sworn now?

A. I did sir.

Q. Did you at that time state that when the Judge came into the room on the first day of the term, as you have stated here, Mr. Hall said, "I have set Mr. Mandeville at work?"

A I did so.

Q. Did you swear that the judge then motioned to you to come forward?

A. I did sir, or called me up to his desk.

Q. You swear that you testified in that manner before the committee of the House?

A. I do sir.

Q. Isn't it a fact that this is the first time you have given that testimony?

A. It is not, sir.

Q. You stated that Mr. Allen was principally engaged in fixing those curtains?

A. During the recess of the court.

Q. Did it take him a whole week?

A. Well, I didn't state that it took him a whole week.

Q. Oh, so I understood you; how much time did it take him?

A. Well, I should judge he was at it two or three days?

Q. Had Mr. Allen been a court deputy previous to that time?

A. Well, sir, I could not swear positively whether he had or had not.

Q. You don't know as to the facts?

A. No sir, my impression is that he had.
Q. Was Mr. Allen there during the whole term?
A. That I could not say.
Q. Was he there during the whole week, after Wednesday night?
A. He was in and about the court room.
Q. Was he acting as court deputy during that week?
A. I so understood it.
Q. Did Mr. Allen build the fires?
A. He might in one or two instances.
Q. Didn't he?
A. I couldn't say that he did.
Q. Didn't he generally build them?
A. Well, I don't know hardly what you would mean by the term "generally." More than half of the time, is that what you mean?
Q. Will you swear that he did or did not build the fires during that week; which way will you swear?
A. I won't swear that he did not, nor I won't swear that he did, because I don't know.
Q. Didn't you swear that you built them?
A. I did some of the time, and still swear so.
Q. Didn't you swear that you built them all the time?
A. No sir.
Q. How much of the time did you build them?
A. I could not swear how much of the time I built them.
Q. Tell any morning that you built the fire in that week?
A. Well, I built the fire on Tuesday morning.
Q. Any other morning?
A. I built it on Wednesday morning.
Q. Any other morning?
A. Yes, I built it on one or two other mornings, but I wouldn't swear I swept the room.
Q. How frequently did you sweep the room?
A. It is my impression that I swept it every morning or helped to sweep it.
Q. Who helped you?
A. Well, Mr. Allen helped me.
Q. Every morning?
A. No sir.
Q. Was the sheriff present at this time?
A. I recollect his being present the first morning.
Q. Was he present any other morning?
A. Well, I should presume he was.
Q. Was he present at any time during the week while the term was being held?
A. Yes sir.
Q. Was he present all the time in court?
A. No sir.
Q. When the court called on the sheriff to adjourn, on or any one to adjourn, what did he say?
A. He looked over towards where the sheriff generally sat and noticed his absence, and then he looks to me and said, "adjeurn the court."
Q. Didn't he say, "the sheriff will adjourn the court." Make the usual announcement?
A. No sir.

Q. He did not. He looked over to you and told you to adjourn?
A. Yes sir—so I understood it, and I adjourned it, and he did not object to it.
Q. How often did he do that?
A. I don't recollect of only one instance.
Q. Did Mr. Allen generally adjourn that court during that week?
A. I never saw him adjourn it.
Q. Did not the sheriff adjourn the court?
A. As a general thing, yes sir.
Q. You adjourned it once?
A. Yes sir, in his absence.
Q. Did Mr. Allen adjourn it at all in his absence?
A. Not to my knowledge.
Q. Now, sir, who had the key to that court room during the week?
A. Well, I think the key was generally left there with the jailor.
Q. You did not have it?
A. I would not be positive; if I had it at all I had it one or two of the first days.
Q. You did not leave it with jailor at any time?
A. I understood that the jailor locked up the court room.
Q. Now answer my question. Did you or did you not leave it with the jailor at any time?
A. I can't swear that I did.
Q. Who was present at the desk? You state you went up to the desk, and the judge asked you about this dirty work; who was present at that time?
A. Judge Page, W. F. Allen and myself.
Q. Had you gone up there with Mr. Allen?
A. Yes sir, we went up there together.
Q. What day of the week was it; can you tell?
A. It was Monday, I think.
Q. What month?
A. The month of January.
Q. Now state all that was said then at that time.
A. Well sir, I could not; it would be impossible for me to state just all that was said there at that time.
Q. All that you remember of it is just that one statement that you have made?
A. Well, I have made more than one statement.
Q. Well, do you pretend to give the exact language of Judge Page?
A. I do in this first remark, yes sir.
Q. What was the first remark, then?
A. He says, "Mandeville, how did Hall come to appoint you court deputy? What dirty work did you do to help elect him, that he should appoint you court deputy?"
Q. That occurred when you and Allen first went up there?
A. Yes sir.
Q. Did Mr. Allen make any remark at that time?
A. I could not swear positively whether he did or did not.
Q. How far were you from the clerk's desk at that time?
A. Well, probably as far as I am from that table.
Q. Was the clerk sitting there?
A. No, I was thinking of the Judge's desk?
Q. About how many feet away was the clerk's desk?

A. Well, ten or twelve feet.
Q. Was the clerk sitting there?
A. No sir; the clerk was not in at that time. There was only the three that I have mentioned in the court room at the time.
Q. The judge addressed you in his ordinary tone, did he?
A. Yes sir.
Q. Was it before or after court had adjourned?
A. It was after court had adjourned.
Q. You may state what you asked the judge when you went up there—just give the conversation as you recollect it?
A. I did not ask him: made no request of him. He went on:—he knew what our object was up there, or I suppose he did,—he went on and done the talking, and stated he should not give us an order, and of course I did not go up there to bulldoze the court; consequently I did not ask for any order.
Q. Did he tell you at that time that he would think it over?
A. He said that he shouldn't give no orders that day; "He should take time to consider this matter." That was his language.
Q. How many jury cases were tried at that time?
A. There was only one jury case.
Q. Who had charge of the jury?
A. Mr. Allen.
Q. Did you, at any time, have charge of the jury?
A. I did not; while he was having charge of the jury I was bringing on other prisoners, criminals there.
Q. Was there any other trial had, did you say?
A. I brought in three or four saloon-keepers there and confined them.
Q. You brought them in for what purpose?
A. For him to impose a fine upon them.
Q. Had they been found guilty by a jury.
A. I could not say whether if they had or had not.
Q. Were they out on bail or confined?
A. I could not say whether they were out on bail; I guess they were not confined.
Q. Where did you find them?
A. Well, I found them out in the street in various places.
Q. Who sent you after them?
A. I wont be positive whether the judge sent me or the sheriff.

RE-DIRECT EXAMINATION.

By Mr. Manager GILMAN—
Q. Did I understand you to say that you had any conversation with the judge the first time you went to ask an order for your pay?
A. Why, I did not make a direct demand on him for my pay, because he went on and talked in the manner I have stated, and in the course of his remarks, he stated distinctly that he should not give any order.
Q. Was that the time when Mr. Hall told you and Mr. Allen to go up to the judge's desk.
A. No sir; it was in the afternoon. It was in the fore part of the day when Mr. Hall was there.
Q. Was there any conversation transpired between you, at that time Mr. Hall took you up in the morning?

A. No sir.

Q. Then this conversation regarding the dirty political work was not when you first went in, but the first time you entered into conversation with him?

A. Yes sir.

Mr. LOSEY. When did this conversation occur in relation to this political work you speak of?

A. Betwixt four and five o'clock on the 17th day of January, 1876.

Q. After court had adjourned?

A. After court had adjourned.

R. W. HALL BEING RECALLED

In behalf of the prosecution, testified:

Mr. Manager GILMAN. Q. You have stated, I believe, that you were sheriff in January, 1876, in Mower county?

A. Yes sir.

Q. Were you in attendance on the court at that term—the January term of 1876?

A. I was.

Q. Who assisted you in taking charge of the court room and doing the business of the court?

A. Mr. F. T. Allen and Mr. Mandeville.

Q. What time did you engage Mr. Mandeville as your court deputy?

A. Well, previous to the sitting of the court he spoke to me, and wanted to know if I wanted any one to help me; and he said he would like to help me. I told him to be there on the morning of the first day of court. He was there. That is all the engagement there was.

Q. What services did he perform, if any, during the term?

A. He performed any services that were required about the court room, any thing that was needed during the term.

Mr. LOSEY. What was that last?

The Witness. He performed various duties in the court room.

Q. Mandeville?

A. Yes sir.

Mr. Manager GILMAN. Q. Do you recollect any particular service he performed; if so, state what.

Q. I know of his raising and lowering windows, keeping the crowd quiet and attending to them, and keeping them back. There was a big crowd there for a little court house at that time, and it required more than one to keep them quiet—to keep them back. I saw him doing various work around, making fires, sweeping, dusting, anything that I required of him about the court.

Q. Were you present so as to perform all the services usually performed by a sheriff during the entire term?

A. I was not always in the room. I was there most of the time.

Q. Do you recollect whether you opened and adjourned court every day of the term?

A. No sir, I did not adjourn the court every time.

Q. In your absence, who opened and adjourned court?

Mr. LOSEY. Does he know that?

The witness. I don't know who adjourned it. It was adjourned once in my absence, and I only know from hearsay.

Mr. Manager GILMAN. Who did you leave in charge during your absence?

A. Mr. Mandeville was in charge at that time.

Q. What other assistance did you have during that term if any besides Mandeville.

A. Mr. Allen assisted.

Q. When did Mr. Allen's services commence; what period of the term?

A. My impression is that he went to work the second day, but I would not be positive about that, for the first work that I recollect of his doing was going up into Lansing with a venire for a jury. That is the first I remember of his doing; still he may have been around.

Q. How far is that?

A. Six miles away.

Q. Was he absent upon any other services of that character during the term.

A. I don't remember as he was.

Q. Do you remember what services he performed, if so, you will state what, aside from those you have mentioned.

A. Well, the same that Mandeville did, except that he arranged some windows; they were out of gear, and he being a carpenter he attended to that; during recess he arranged those. I don't know how much of the time he was engaged in that; I know he done that work.

Q. At any time during the term was Mr. Mandeville brought to the notice of the judge. Did you bring the deputy to the notice of the judge.

Mr. LOSEY. We object; that calls for his conclusion. Well, go ahead; I withdraw my objection.

The witness. At the close—the adjournment of the court, I went up with the deputies to the judge and presented them to him.

The PRESIDENT. Senator Henry desires to ask the following question: "Did the judge make any order limiting the court bailiffs prior to January, 1876?"

Mr. LOSEY. I will state that we desire to ask that question.

Mr. GILMAN. If the Senator will wait a moment, that will be reached.

By Mr. GILMAN. Q. At any time during the term did any conversation take place between you and the judge relative to Mandevills performing any services; if so, what?

A. Some time during the term, I cannot tell exactly when, there was something said—he said something to me about Mr. Allen—that he preferred Mr. Allen to have the jury.

Q. On or about the commencement of said term did Judge Page notify you in any manner of the number of deputies that would be required to serve during that term?

A. He did not, sir.

Did you appoint Mr. Allen by reason of any order or authority from Judge Page; and if so, what?

A. I don't think I did appoint him by any order. There was nothing said about either of them until we got to a certain point in the stage of the proceedings, and he told me he would like to have Mr. Allen for the jury.

Q. At what stage of proceedings was that?

A. It was after the jury was called and empannelled.

Q. How long after the commencement of the term?

A. I think the jury was not empannelled until the third day of the session, if my memory serves me right. It was sometime getting a jury.

Q. On or about the commencement of said term, did the judge authorize you by any order or otherwise, to appoint any deputies at all?

A. He did not.

Q. Did you first appoint Mandeville or Allen as your deputy?

Mr. DAVIS. Wait a moment. We object to that question.

Mr. GILMAN. I would like to hear the objection.

Mr. DAVIS The witness has already testified that Judge Page knew nothing about the appointment of his deputy, and it is not material, as bearing on Judge Page.

Mr. GILMAN. I am under the impression that the witness did not testify that. I asked the witness if the judge authorized the appointment of Allen. That was my question. I afterwards asked if, on or about the commencement of the term, he authorized the appointment of any deputies, to which he answered no. I now ask, which of the deputies he appointed first?

Mr. DAVIS. Now, in the light of those questions and answers, we say it is not material.

Mr. GILMAN. I will state, Mr. President, we propose to show before we are through with this case, that a paper, which we hardly know whether to designate as an order, or in what manner we shall characterize it—

Mr. DAVIS. I withdraw the objection. I am familiar with that paper.

The PRESIDENT. The witness will answer the question. Which of the deputies he appointed first?

A. My impression is that Mandeville was the first appointed, still I think they both spoke to me about serving in the court room, prior to the sitting of the term.

Mr. Manager GILMAN Q. Do you know any thing about the matter of deputies applying for pay for their service, if so, you will state what you know in connection with that matter?

A. All I know is that I went up with them and presented them to Judge Page, at the adjournment of the court, and asked him for an order.

Q: Did he make any response; and if so, what?

A. I turned right on my heels and left them right there. I don't know what he said to them, anything about it, I left them with him.

CROSS EXAMINED BY MR. LOSEY.

Q. Did you hear a talk with the judge, on the first day of the term, in relation to the appointment of a deputy?
A. No sir, I don't think I did.
Q. Are you positive that you did not?
A. I am quite positive.
Q. Didn't the judge state to you, on that day, he should make an order for the appontment of only one court deputy?.
A. No sir.
Q. Are you positive of that?
A. I am positive.
Q. Didn't he state to you, on account of Allen's fitness and experience, it was best to have him appointed a court deputy?
A. In the progress of the trial conversation to that effect took place, that he wanted—that he preferred him—to take charge of the jury.
Q. Answer my question?
A. No sir, he did not.
Q. At the time he told you that he desired to have Allen take charge of the jury did he tell you; did he speak to you of his fitness in court matters?
A. I think he did.
Q. You knew Allen, did you, at that time?
A. Yes sir.
Q. He had special fitness for the duties of that position, didn't he?
A. I don't know as he had any more so than any other ———
Q. He had experience, hadn't he?
A. Yes, he had been court deputy before.
Q. Several times?
A. I don't know how many times; I think he had been once or twice. He might have been under Mr. Baird before.
Q. Now, was not this conversation on the first day of the term?
A. No sir.
Q. Didn't you so state before the House committee?
A. No sir; I don't think I did.
Q. Now reflect a moment; you swear you did not?
A. I don't think I did?
Q. You swear then that you didn't state before the House committee in substance, that the judge told you that, under the statutes, he didn't think it necessary to appoint more than one deputy for that term?
A. I am not positive.
Q. And that you did have a conversation with him on the first day of the term in relation to that matter?
A. I don't think that we talked about it on the first day of the court.
Q. Didn't you swear that you might have had that conversation on the first day of the term?
A. I don't think I did.
Q. Did't you swear that you would not be sure as to what day you would have it on?
A. I don't think I did.
Q. But you would not be positive as to whether you did or not?
A. No.
Q. Can you swear as to whether this conversation occurred on the first day of the term or not, in relation to the appointment of a deputy.

A. I think I am quite positive, because he seemed to have a preference about—

Q. It was a question as to which one should be appointed?

A. It seemed to be, he preferred Allen to take charge of that jury.

Q. Did the judge at any time, especially authorize you to appoint Mr. Mandeville court deputy?

A. He did not.

Q. Did he at any time authorize you to appoint two deputies for that term?

A. He did not.

Q. Well, I believe you stated, that the court talked with you, or the respondent talked to you in relation to the appointing of Allen on account of his fitness?

A. No sir.

Q. Haven't you so stated?

A. I think not, sir.

Q. What did he tell you?

A. He preferred Mr. Allen to take charge of that jury on account of his fitness.

Q. Was this jury all the time in custody of an officer, or did they appear in court and stay there like any other jury, and go off about their business during the session of the term. From time to time did the jury scatter for their homes?

A. I don't know where they went.

Q. They were not in charge of a deputy out of the court room?

A. No sir.

Q. When did the trial finish—what day of the week?

A. I don't remember when the jury went, from the last week.

Q. How long did that term last?

A. I think about six days.

Q. Was it Saturday that the case was finished before the jury; that the jury took the case?

A. I think not.

Q. What day was it?

Q. I think the court adjourned on Monday.

Q. Didn't the case go to the jury on Saturday?

A. I think it did.

Q. How many jury cases were tried at that term?

A. One.

Q. This one case, the State against Jaynes?

A. Yes sir.

Q. Was that term held expressly to try that case?

A. Well, I suppose so.

Q. Didn't you know that as a fact, that the term was held for the purpose of trying that case, and that alone?

A. Why, yes, I suppose that is the fact.

Mr. LOSEY. That is all.

Mr. GILMAN. I wish to state to the court that we have in our possession a certified copy of a paper issued by the judge, in relation to the appointment of a deputy for that term. The paper has been in the hands of the clerk of the Senate, and by him given to the managers, with other papers, and we have been unable to find it, although search has been made. (After a pause.) I think we have it here. We ask leave as soon as we can find it to file it.

Here it is. It is a paper authorizing that appointment and we offer it in evidence; I ask that it be placed on file.

Mr. DAVIS, (after examining paper) There is no objection to this paper.

Mr. GILMAN. I would ask that the paper be read by the clerk.

The clerk read the paper, which is as follows :—

EXHIBIT "C."

District Court, Mower County, General Adjourned Term, June 11, 1876.

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

SHERMAN PAGE,
Judge District Court

CERTIFICATE OF TRANSCRIPT.

State of Minnesota, County of Mower,—ss.

I, A. W. KIMBALL, clerk of the district court in and for the county of Mower, in the State of Minnesota, do hereby certify that I have compared the foregoing with the original order remaining on file in my office, and that the same is a true and perfect transcript of said original.

In testimony whereof, witness my hand and the seal of said court at Austin, in said county, this 16th day of May, A. D. 1878.

A. W KIMBALL
Clerk of the District Court.

Endorsed on back : Order appointing F. W. Allen special deputy, June term, 1876. Filed January 19th, 1876. F. A. ELDER, Clerk.

Filed May 29, 1878. CHAS. W. JOHNSON,
Clerk of the Court of Impeachment.

I wish to ask Mr. Hall a question in relation to that paper: (to the witness) was the paper of which that is a copy ever in your hands ?

Mr. DAVIS. I object; it is wholly immaterial whether he ever had the paper or not.

Mr. GILMAN (to the witness) I will ask another question:

Q. Did the judge show you any paper of that character in relation to the appointment of deputies in that term ?

Mr. DAVIS. I object: it is wholly immaterial whether it was issued to him or not.

Mr. GILMAN. I will ask another question; (to the witness) Were you the sheriff of that county at the term previous to the trial of that Jaynes case ?

A. I was.

Q. How many court deputies did you have at that term of court ?

Mr. DAVIS. We object; it is wholly immaterial; it is a matter for the discretion of the judge.

Mr. GILMAN. We ask the liberty to introduce evidence on that subject for the purpose of proving that at a previous trial of that case when there was a smaller crowd, there was employed four deputies; we ask to show that there was occasion for the appointment of at least two

deputies for the second trial of the case. We think the evidence is relevant.

Mr. DAVIS. The charge against the respondent, may it please the President, is not that he did not appoint deputies enough to carry on the business of his court. The charge is that Mr. Mandeville served as a court deputy; was recognized by the respondent, and that the respondent maliciously refused to certify in such a manner that Mandeville could get his pay. Now, it is wholly immaterial, grossly immaterial what the practice of the respondent had been at a previous term of the court in that or anything else. Supposing he did at the term of the court at which the Jaynes case was tried, authorize the sheriff to employ deputies? What inference towards Mandeville is this court authorized to draw from the fact that at a subsequent term the judge, in the exercise of a discretion given him by the statutes of this State, saw fit to prescribe that one deputy, and one alone, was sufficient for purposes of attendance upon that court during the trial? The statutes of this State, page 725 of Bissell's edition, provide that, "On or before the holding of the district courts or courts of common pleas, of this State, the judge thereof shall determine and fix by his order the number of deputies which shall be necessary for the sheriff of that county to have in attendance upon such term of court; and thereupon such sheriff shall designate and appoint such deputies. Such deputies appointed as aforesaid shall be paid their per diem to be determined by the court for attendance upon such court in the same manner, as provided by law for the payment of grand and pettit jurors."

I can see no object that can be subserved by the introduction of proof of this character.

Mr. GILMAN. Before a decision is reached in this case in that matter I would like to make a few remarks. We hold in that matter that there is malice in this case on the part of the judge toward this deputy, Mandeville. That he not only by reason of malice, refused to grant an order allowing him to be paid for his services, after the services were rendered, but also that prior to the commencement of the term, from the same motive, he refrained from making any order at all to the sheriff, in regard to the appointment of deputies as required by law, and afterwards—after these two deputies had served, he issued a paper, a sort of *quasi* order so worded as to be a design on his part, to insure the pay for services to deputy Allen, and not to include Mr. Mandeville. It has appeared in testimony here, that he refused to issue an order for paying Mr. Mandeville on the ground that two deputies were not needed, that his services were not wanted.

Now, we propose to show not only that the services were needed and were performed, as we think we have shown through witnesses who have testified, but we also propose to show that in this instance, for the reason that he could not control the action of the sheriff in that matter, he departed from his usual custom, and failed to observe the requirements of the law. We propose to show that at the previous term, when this same case was on for trial, when there was a much smaller crowd of people there to keep quiet and to attend to by the deputies, than there was at this last trial, that he appointed for services in that first term, or authorized the appointment of three deputies. I was mistaken before when I said four; it was three.

We propose to introduce that as cumulative evidence, to show that this appointment of Mandeville was just, proper and necessary, and that his action was arbitrary, malicicious and unwarranted, in that manner. Furthermore, I wish, at this time, (not to interpose an objection, perhaps,) but to give a reason why testimony of this class should be received; not only in regard to this case, but also to apply to other cases that might arise, and such as have arisen here. I believe that it has been held by good authorites, to be proper whenever the question of relevancy or competency on the part of testimony tendered arises—it has been held I say, that it is much better to receive more testimony than is absolutely necessary than to restrict the testimony within such bounds; that some testimony which is necessary shall be thrown out and objected.

If there happens to be a surplusage of testimony, the court—the judges—will soon discover it, and will attach to it such importance as it deserves, and will give it weight accordingly. But if testimony which is proper and should be received is rejected there is an injury done for which there is no remedy. I would like to read a very few words, and I will be brief, regarding that matter. I will read from Judge Appleton's work on evidence; Judge Appleton being a Justice of the Supreme Court of the State of Maine; I read from page 11:

"The exclusion of any proof entitled to any weight—the slightest—is a voluntary self deprivation by the court thus excluded of the means of correct decision, to the extent of all proof of such clause.

If the testimony rejected be the only proof attainable it is an utter denial of justice. It is like bandaging the eye to aid vision ; like imposing manacles and fetters to accelerate motion."

Further down he says : " If the evidence excluded be true no possible reason can be given for its exclusion. Whether true or not, cannot be foreknown."

On page 13, he says : "The exclusion of testimony from whatsoever source attainable, is presumably wrong. The judge needs testimony else he cannot decide. he requires proof, else he is without the means of correct decisiou. He might as well resort to lot, to ordeals by fire, to ordeals by water, to burning plow shares, to trials by battle, as attempt to decide without proof." There is considerable more said here upon that subject, but I will not quote further from it, and will remind the court that if all the testimony offered on the part of the State could be excluded, as you well know, the case would fall.

If one half of the testimony could be excluded, while we might still have a good case left, our case would be seriously weakened, and proportionally so as to the loss of any testimony which reasonably appears; and on that theory, and on the principles which are enunciated by the learned judges from whom I have quoted, I claim that great care should be taken in rejecting testimony.

Mr. DAVIS. Will the reporter read the questions to which we object?

[The reporter read the two last questions propounded to the witness.]

Mr. Manager CAMPBELL. This particular question, in the form it is, may not perhaps——

Mr. DAVIS. We do not object to the form.

Mr. CAMPBELL. I deem this a material matter in the trial in regard to the particular article now under consideration. We charge in this that Mandeville acted as deputy, that he was recognized as deputy, and that the judge failed to perform his duty under the law in not making any order, setting the number of deputies.

That is what we charge, that Mandeville was recognized by the judge, and because he had a spite against him, after the court was entirely over, he makes an order and dates it back and files it with the clerk and in that he assumes not only to determine the number of deputies, but he determines who shall be deputies.

Now malice is only proven, like fraud, by certain ear marks; you cannot prove malice except indirectly by circumstances, the same as you would fraud, as every lawyer knows. We offer this evidence to show malice; to show first, and we shall follow up this question by showing that at prior terms he allowed more deputies than one, that at this term while there were but two deputies acting, in order to vent his spite against Mandeville he attempted to cut him off, to cut off the sheriff to one deputy. We say that is an *ear mark* to show the intent of the judge in filing this order; the order that is already in shows upon its face that this was made after the court was over; shows that the judge violated the law in not making his order when he should; because this order is filed by the clerk on the 19th, when the court commenced on the 11th, and he dates it on the eleventh when it was not made until the 19th; more than that, it shows upon its face, that it was made after the court, because he says Allen is to receive pay for six days.

Now, the Senate must see at once that he did not know how many days Allen would serve when that court opened. Therefore, it bears upon its face that it is a fraud. Now, in order to follow that up, we propose to show how many deputies they had at the term before. We propose to follow that by introducing the order of the court, which is a legal and proper order, made in prior terms, showing that he allowed the sheriff to appoint under the law, and that he did this, knowing that he violated the law, when he made this order in the form it was. Therefore it is material for us to show, first, how many deputies he allowed prior to that, and that his order prior to this order was in conformity to the law, and that this order was in direct violation of the law, and known to be so by this judge. That is the object of asking this question, to be followed by the others.

Mr. DAVIS. Mr. President: I shall endeavor under no pretense to violate the resolution of the Senate adopted the other day, prohibiting counsel from discussing the force and relevancy of evidence.

Mr. Manager CAMPBELL. If I have violated any rule of the Senate, I shall be very glad to——

Mr. DAVIS. I have this floor and I call you to order; I shall therefore waive the ordinary right of replying to the argument which the learned counsel has put before the court, before the facts; this question of competency of testimomy is a question of strict right on the part of plaintiff or defendant before any court; upon no subject are rules more ancient or better grounded, than upon that. The question under discussion now is, in its severest terms, as to whether at a previous term of this court, for the trial of this same case, under circumstances as to that preceding term, which happened before this court, whether as to pub-

lic interests then involved, the array of counsel or the number of witnesses, that this respondent appointed four deputies, whereas in the present instance as to this term, he appointed but one.

Now, irrespective of any technical defense which we may have to such evidence, and I will not enquire as to that—I put it to the indulgence and sense of fair dealing of any candid man to say what possible inference can be drawn against the respondent from that fact, that some six months before, upon a trial of that same case, under circumstances which this Senate cannot know, and which it would be improper to let it be known in evidence, this respondent, erroneous perhaps, appointed three deputies where it might have been better had he appointed one, as he did thereafter, and that was a general term of court wherein those four deputies were appointed, which had to do presumably with other cases where while one jury was out another jury might be engaged in hearing a case, when the term under consideration was one specially called for the trial of this Jaynes case, and no other. My learned friend, Manager Gilman, has cited from the elementary work of Judge Appleton, in regard to the danger of rejecting testimony, but the commentator, of course, meant legal testimony, and the authority which he read, and the purpose for which he read it, begs the question under consideration.

But, gentlemen, anything for a pretext upon which to get testimony before this court that is irrelevant. My learned friend, the manager last up, says that by some unique process of deduction he proposes to show from Judge Page's action, six months before, in regard to that general term, that there was malice in the matter against Mandeville, and you will here observe all through this case, whenever we have set up before this court, and protested against the introduction of testimony, irrelevant in its character, that this pretext of malice has at last come out in justification. Without any forcible attempt, so far as I have been able to discover, especially in the present case, should malice again possibly be inferable from the act now sought to be proved. Because if that is competent, it is also competent for Judge Page to show, in rebuttal of that class of testimony, that, at some other term, he appointed but one special deputy, and we are thus led into the pursuit of irrelevant matters, matters which divert the mind from the real issue, to embarras both the prosecution and the defense from a proper presentation of the case to this court.

What Judge Page did during the term now in question—what his relations to Mandeville were, we shall offer no evidence as to the proof of these facts, but to such testimony as this we do most strenuously object. I call the attention of the Senators to the fact that the statute cited does not require the judge to fix the number of deputies at the first day of the term. He can do it on or before the holding of any term of the district court, at any time during the holding of the term of the district court, he can fix the number of deputies. And as I read this statute as it bears upon the duties of both judge and sheriff, it occurs to me that it is a fair construction of the statute that if a sheriff wishes to appoint any special deputies for a term, that it is his duty to apply to the court to fix the number, and if he goes on without any application as to the number, as the witness now on the stand has stated, that there was no understanding why, he takes his chances of what the judge of the court will do when the question of compensation comes up.

The PRESIDENT. The chair had purposed to make a ruling on this case, but as it has given rise to so much discussion it will be submitted to the court.

The question being submitted to the court,

And the roll being called, there were yeas 23, and nays 13, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement Clough, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan John B., Goodrich, Hall, Henry, Hersey, Houlton, Macdonald, McHench, Morrison, Remore, Smith and Swanstrom.

Those who voted in the negative were—

Messrs. Donnelly, Gilfillan C. D., McClure, McNelly, Mealey, Morton, Nelson, Pillsbury, Rice, Shaleen, Waite, Waldron and Wheat.

So the court admitted the question.

Question repeated to the witness.

Q. How many court deputies did you have at that time?

A. Three. I had an assistant of one, one day besides, that made the fourth one; I think there was one paid for one day's work besides.

Mr. GILMAN. I will renew now, the offer of a certified copy of the judge's order made at that time.

Mr. DAVIS. (After examining paper.) We have no objection to it.

The clerk read the paper, which is as follows:

EXHIBIT "D."

State of Minnesota, County of Mower—General Term District Court—March 2nd, 1875.

Two special deputy sheriffs are hereby authorized to be employed by the sheriff of said county, for said term of court, each to receive three dollars per day for the period of twelve days.

SHERMAN PAGE,
District Judge.

In addition to the above, pay may be given to E. H. Seeley, for one day's service as special deputy at the said date.

SHERMAN PAGE,
District Judge.

CERTIFICATE OF TRANSCRIPT.

State of Minnesota, County of Mower—ss.

I, A. W. Kimball, Clerk of the District Court in and for the county of Mower, in the State of Minnesota, do hereby certify that I have compared the foregoing, with the original order remaining on file in my office, and that the same is a true and perfect transcript of said original.

In testimony whereof, witness my hand and the seal of said court, at Austin, in said county, this 16th day of May, A. D. 1878.

A. W. KIMBALL,
Clerk of the District Court.

Endorsed on back: Order allowing special deputy, March term, 1875. Filed March 17, 1875. F. A. Elder, Clerk.

Filed May 29, 1878.

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

Mr. Manager GILMAN. I will state to the court, Mr. President, in the hurry of finding that order, that we accidentally got hold of an order relating to a term previous to the one we supposed. What we intended was to introduce an order relating to the appointment of deputies, for the September term.

Mr. DAVIS. We don't object,

Mr. GILMAN. We wish to give notice that we will offer that paper hereafter.

Q. [To witness.] Mr. Hall, during the January term of 1876, while deputies Mandeville and Allen were acting, did Judge Page make any remark at any time about the appointment of more deputies?

A. I think he did.

Q. Will you please state the occasion, what occurred in relation thereto?

A. It was something that he required, and I said I had no deputy, and he says: "Why don't you make more then?"

CROSS-EXAMINATION.

By Mr. LOSEY.

Q. When was this?

A. I think it was some time during that term.

Q. During the September term?

A. I think so.

Q. Can you tell how that conversation came about?

A. It came about by his wanting something; that is, that the people pressed in, the hall and aisle was full clear down to the front, and sometimes there were disturbances, and Mr. Allen was away some of the time, and we hadn't but one deputy, and something or other occurred and I remarked that I hadn't any more deputies, and he said: "Why don't you make more then?"

Q. The court was in progress at that term sitting?

A. I think it was.

Q. How many special terms were held in that county, previous when this special term was held, to try Jaynes' case while you were sheriff?

A. There never was any.

Q. All terms at which deputies were appointed were general terms?

A. Yes sir.

Q. Much more business at the general term than there was at this special term, was not there ordinarily more cases tried?

A. Yes sir, there was only one case tried at the special term, that is all the jury case there was.

Q. Was there no other case tried by the court?

A. I don't know of another; we never had the house so full.

Mr. DAVIS. Never mind that; that you was not asked.

Mr. LOSEY. Q. At general terms, have not two been the usual number of special deputies since that term?

A. I think it has; I think so.

Q. Do you usually make application for this appointment to the court on the first day of the term?

A. I have done so ever since that term.

Mr. CLOUGH. Which term?
A. The term of Mandeville.
Q. Did you before that time?
A. I think I did.
The PRESIDENT. Senator Henry asks this question:
Q. Did the witness know of the Judge's order being made and filed, limiting the number of bailiffs to one alone, during the term of January, 1876; and, if so, when did he discover it?
A. I never saw that order until about a month ago.

Mr. DAVIS. That is not responsive to the question.

Mr. CLOUGH. When did you first know of it—first hear of it in any way?
A. I should think it was about a month ago.

Mr. GILMAN. In answer to the counsel, you stated that there was more business at the general term than at this adjourned term. Was there ever more than one case on trial at one time?
A. No sir.

Mr. LOSEY. The cases followed one another pretty closely, didn't they?
A. Yes sir.
Senator NELSON. Before the witness retires I would like to ask him a question:
Q. Had the term of court, at which Mandeville acted as deputy, been closed prior to the filing of Judge Page's order appointing Allen deputy?

Mr. CLOUGH. The filing, Mr. Hall, was the 19th day of January?
A. Yes sir.

Mr. CLOUGH. When was it closed; do you remember. What date?
A. I think it closed on Monday after the 17th of that month. It closed on Monday.

Mr. LOSEY. Did you commence on Tuesday of the week or Monday?
A. Yes sir, Tuesday.

Mr. LOSEY. Let us see that order that you introduced—the second order.
[After examining paper.]
That is all.

LAFAYETTE FRENCH,

Being recalled on behalf of the prosecution, testified.

By Manager GILMAN. Q. Were you present at the January term, 1876?
A. I was.
Q. In what capacity was you there?
A. As county attorney.

Q. Do you know who officiated as deputies, at that term, if so, state?

A. I saw Mr. F. W. Allen, and Mr. W. T. Mandeville, and Mr. R. O. Hall; all three officiated.

No cross examination on the part of the defense.

Mr. LOSEY. I want to ask Mr. Hall a question in connection with this—

[To Mr. Hall, who had not resumed the stand.] You can stand right there, Mr. Hall.

Q. Did you serve during that term at which Jaynes was tried, and receive pay for attendance upon the court as sheriff?

A. Do you mean on the first trial?

Q. Yes, the January trial?

A. I did, sir.

Mr. Manager GILMAN. I will state that Mr. Kimball, the clerk of the court, has gone for his record and will be in in a moment with it. We will then put him on the stand.

F. W. KIMBALL, being recalled on behalf of the prosecusion.

By Mr. Manager GILMAN. Q. Have you the court records of Mower county?

A. I have part of them here.

Q. Have you the records of the proceedings of the January term of 1876?

A. I think so, yes sir. (after examining the book, which the witness produced.) Yes sir, I have.

Q. You have stated, I believe before, what your position was in the county?

A. Yes sir.

Q. Will you please state on what day the January term closed, of 1876.

A. January the 17th, was, I think the last, the last day.

Q. On what day did the term commence?

A. It commenced on the 11th day of January.

Q. Were you the clerk of the court at that time?

A. I was not.

Mr. LOSEY, to witness. Let me take that book. (The wituess handed the book to Mr. Losey.)

Mr. GILMAN. I wish to ask one more question. Will you please inform us as to the close of the September term of court of 1875, as to whether that term adjourned *sine die*, or was it to a day certain?

A. The entry here is, the court adjourned until the second Tuesday in January, A. D. 1876, at 11 A. M.

Mr. GILMAN. That is all.

Mr. Manager HINDS. Mr. President: I will state to the court that in the evidence we now give that it is intended to apply to the fourth article of impeachment.

I will offer a certified copy of the execution that is referred to in that article.

Mr. DAVIS. There is no objection.

Mr. HINDS. Will the clerk please read the judgment and the execution.

The clerk read the papers as follows:

EXHIBIT "E."

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

STATE OF MINNESOTA, Plaintiff,

vs

DWIGHT WELLER, Defendant.

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

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

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

F. A. ELDER,

[SEAL.] Clerk.

Satisfied May 19th, 1877.

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

The State of Minnesoto to the Sheriff of the County of Mower:

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

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

Therefore, you are commanded to satisfy the said judgment, with interest, and your fees, out of the personal property of the said judgment debtor, within your county; or if sufficient personal property cannot be found, then out of the real prop-

erty in your county belonging to said judgment debtor on the day when said judgment was so docketed in your county, or at any time thereafter not exceeding ten years, and return this execution, within sixty days after its receipt by you, to the clerk of the District court for the county of Mower.

Witness, the Honorable SHERMAN PAGE, judge of the District Court aforesaid, at Austin, this 11th day of January, in the year of our Lord 1877.

SEAL OF DISTRICT COURT.

F. A. ELDER,
Clerk.

LAFAYETTE FRENCH,
Co. Att'y, Attorney for Plaintiff.

CERTIFICATE OF TRANSCRIPT.

State of Minnesota, County of Mower,—ss.

I, A. W. KIMBALL, clerk of the district court in and for the county of Mower, in the State of Minnesota, do hereby certify that I have compared the foregoing with the original execution No. 1 and judgment decree, on page 459 on judgment book of this court, remaining on file and of record in my office, and that the same is a true and perfect transcript of said original.

In testimony whereof, witness my hand and the seal of said court, at Austin, in said county, this 11th day of February, A. D. 1878.

A. W. KIMBALL,
Clerk of the District Court.

Mr. HINDS (to the clerk). Read the returns of the officers.

Mr. DAVIS (after examining paper). We fail to see any return there, Mr. Hinds.

Mr. HINDS. If the return is not there we will produce the original. (Examines paper.) The endorsements that are desired read are here upon the paper. (The clerk read the endorsements which are as follows:)

Endorsed on back: Execution. No. 1. District Court, county of Mower. State of Minnesota against Dwight Weller et al. Filed April 27, 1877. F. A. Elder, clerk. Filed May 29, 1878. Chas. W. Johnson, Clerk Court of Impeachment.

Renewed for sixty days from the date hereof at rqeuest of judgment creditor. Witness my hand and official seal this 27th day of February, A. D. 1877.
[SEAL] F. A. ELDER,
Clerk.

Received on the within execution $14.50, February 27th, 1877. F. A. Elder, clerk.

March 31st, 1877, received on within execution $5.50. F. A. Elder, clerk.

DAVID H. STIMPSON SWORN.

And examined on behalf of the prosecution, testified:

By Mr. Manager HINDS.

Q. Where do you live, Mr. Stimpson?

A. Mower county, in this State.

Q. How long have you lived there?
A. Four years.
Q. What office have you held there, or what office did you hold on the 11th of January, 1877?
A. Deputy sheriff.
Q. Of that county?
A. Yes sir.
Q. How long have you held that office?
A. I think I was appointed on the fifth day of January, or about the first of January.
Q. The same year?
A. Yes sir.
Will you look at this execution (holding paper to witness) and see whether the endorsements are your own?

Mr. DAVIS. (To Manager HINDS.) The indorsements that were just read by whom?

Mr. HINDS. That was from a copy; this is the original.

Mr. DAVIS. Do you offer this paper now?

Mr. HINDS. No sir, I do not offer them now. (The witness.) No sir, they are not in my hand writing.
Q. Are they signed by you?
A. No sir.
Q. Did you have that execution in your possession for service on the 11th of January, or about that time?
A. No sir, I think it was in February that I got that execution.
Q. In February?
A. Yes sir.
Q. That is the execution which you had, is it?
A. Yes sir.
Q. And you say you received it, at about what time in February?
A. I could not tell exactly, some time in the latter part or the middle of February.
Q. Will you state what services you did ander that execution as a deputy sheriff of that county?

M. DAVIS. Wait a moment, if you please—[Examining the records.] Go on.

The Witness. I went down to Lansing, about six miles from our place, just six I believe—saw Mr. Weller; told him I had an execution against him—the amount I have forgotten—told him what he was going to do about it? He said he couldn't pay it then. I told him that I would have to levy on some cattle he had in the yard. He said he didn't want I should do that; I told him I would have to. I made out a copy of the execution and gave him a copy of it, and he said he would go to Austin with me and fix it up. He got into the sleigh with me, and rode down to Austin; and he couldn't fix it up that day. It ran along a short time after that; I went up there again to get the cattle, and he said he would fix it up. I told him now was the time to do

it, if he was ever going to do it. He said he would get some of his neighbors to receipt the cattle for him. I told him that would be all right.

Q. Had you then made a levy on the cattle?

A. I had made one before this time.

Mr. DAVIS. Q. You did make a levy?

A. Before that time? At that time he said that he had sold a cow to the clerk of the court and would let me have that money, and come down to Austin and fix it up in a manner satisfactory. I told him I wouldn't do that. He then told me he had a watch; that he would come cown and pay me $20 dollars the next day; and then the money that Mr. Elder, the clerk of the court, was going to pay him for the cow, he could endorse on the execution. I took the watch and gave him a receipt for it; I told him that if I was not in town that day that I would leave the watch with Crandall & French, and he could come there and get the watch by leaving the money. I came down to Austin; left the watch with Crandall & French, and the next day I did not go out of town. I met Mr. French on the street and he handed me twenty dollars and said that Mr. Weller ———

Mr. DAVIS. Never mind what took place between you and Mr. French.

Mr. HINDS. Your honor, we insist upon that conversation between this witness and Mr. French.

Mr. DAVIS. We shall object to it.

Mr. HINDS. Well, the evidence is in.

Mr. DAVIS. Well, it is in, by your witness riding over an objection.

Mr. HINDS. It was in before the objection was made.

Mr. DAVIS. I move to strike it out, if I was not quick enough for the witness.

Mr. HINDS. We insist upon its remaining in, if that is a motion to strike out.

Mr. DAVIS. The witness was proceeding to state what took place between him and Lafayette French, in Austin; that the defendant in that execution had arranged and had paid twenty dollars to Mr. French, and Mr. French had paid it over to Mr. Stimpson, the witness on the stand. Now that is wholly immaterial.

Mr. HINDS. It goes right to the material issue that the answer of the respondent raises, that the witness had rendered no services under that execution which entitled him to fees; that this twenty dollars which the answer admits was actually paid, was not paid upon this execution. Now, we have shown by this witness that there was an arrangement made between him and the execution debtor, that twenty dollars should be paid into the hands of Mr. French, to be repaid over by Mr. French to the witness, to apply upon that execution. Now if that don't

prove the issue that is raised by the respondent's answer, I can't tell what does.

Mr. DAVIS. Unless we put in testimony. As to that point, perhaps it may be in time for the counsel to rebut our defense.

Mr. HINDS. We make the assertion in our article that services were rendered under this execution that entitled this witness to fees. Now it is incumbent upon us to prove it, and we prove it by this state of facts.

Mr. PRESIDENT. The chair decides that the testimony may stand.

Q. You have already stated, Mr. Stimpson, that Mr. French paid these $20.00 over to you?

A, Yes sir.

Q. And you applied it upon the execution?

A. I paid it to the clerk of the court and handed it to him and told him I had received $20.00.

Mr. DAVIS. Never mind what you told the clerk of the court.

The witness. I handed $14.50-100 dollars, I think it was, over to the clerk of the court, and had it endorsed on the execution.

Q. And the balance, $5.50, you applied how?

A. I kept as my fees in the case.

Q. For the services you had rendered under the execution?

A. Yes sir.

Q. Have you stated all of the services you have rendered under that execution up to the time the transaction took place in court between you and the respondent?

A. You mean between myself and Mr. Weller.

Q, The question is, have you stated all of the services that you rendered under this execution up to the transaction in court between you and the respondent in which you were required to pay over that five dollars and a half.

A. I think I went to see him as much as three or four times, or saw him in town, and talked with him about this execution, trying to get it out of him.

Q. But this $20.00 is all you had collected up to that time?

A. Yes sir.

Q. Now, you may state what transpired in court in regard to that $5.50; state when it was as nearly as you can recollect.

A. I think it was in the March term, 1877. Judge Page asked the sheriff if he had a deputy by the name of D. K. Stimpson; the sheriff told him that he had; he asked him if he was in the room; I was in the rear end of the court room, I rose in my seat and the sheriff said: "There he is."

The judge told me to come forward, I came up to the railing and he said (I can't remember all the language he said.) The first thing—he went on and said: "He understood that I was holding money that belonged to the State," said "that in such cases as that it belonged, when a fine was imposed that I should pay the money into the treasury and put my bill into the county." And I told him I would like to explain; and he told me he didn't want any explanation. Said he,

"Young man, you step up here before this grand jury and pay the fees over to the clerk of the court, so they can see it is paid, and if I catch you doing this thing again I will punish you to the full extent of the law," is about the words he used. I stepped up to the clerk of the court and paid him my fees, $5.50. [Laughter.]

Q. State whether that five dollars and a half is the said fees that you had received from that $20.00 collected?

A. Yes sir.

Q. At the time of this transaction in court there will you state who were present; you have referred to the grand jury?

A. The grand jury were present, and I think some of the pettit jury, a large number of people were present. The court room was nearly full, I guess entirely full, the seats were all taken, I think.

Q. Will you state all that transpired on that occasion, if you have not done so?

A. I think I have stated about all I can remember of it. I presume there is more of it that I don't remember.

Q. Did you ask Judge Page's permission to make an explanation?

A. Yes sir, I did.

Q. What was his answer to that?

A. I don't remember just his words, but it was that he wouldn't consent, and at the same time ordered me to step up to the clerk, and pay it over before the grand jury.

Q. Did you have any difficulty in getting the money to pay over?

Mr. DAVIS. I object.

The PRESIDENT. Is that material?

Mr. HINDS. The answer does make it material as it is a part of the transaction that took place there, in which Judge Page was engaged as I understand the evidence in regard to that, the fact is that the witness when he was ordered to pay over the five dollars and a half, stated to Judge Page that he did not have it with him, and that he was ordered to borrow it, and to pay it over forthwith. If such is the fact in regard to the matter, I think it is competent and material as a part of the transaction.

Mr. DAVIS. That, Mr. President, is a most dexterous way of informing the witness what will be proved by him.

Now that is not material, we have no objection to the witness stating anything that took place between him and Judge Page, as he has already been led by the counsel up to that point?

Mr. HINDS. I think that the criticism of the honorable gentlemen is not deserved. The only suggestion that I proposed to my witness was whether he had any difficulty in getting the money, merely to lead him to that transaction by such a gentle reminder; the counsel put me to the necessity by his making the objection.

Mr. DAVIS. I insist upon the objection.

The PRESIDENT. The chair thinks that the question is not material unless some ground is laid for it at any rate.

Mr. Manager HINDS. Q. Mr. Stimpson you may state what further, if anything, transpired between you and Judge Page upon that occasion of paying over, or getting that money to pay over?

Mr. DAVIS. I object to the question upon the ground that it is leading, taken in connection with the information which the gentleman has just imparted to the witness.

Mr. HINDS. I don't see the force of the objection, (the reporter having read the question.)

The PRESIDENT. I think that is proper to ascertain what occurred; I think the witness may answer the question.

The Witness. After he told me to pay over the fees, I told him I hadn't got the money; I would have to go to the bank and get it. He says, "perhaps you can borrow it of the sheriff." The sheriff spoke up and said, "I'm in the same fix;" and there was a gentleman there, a friend of mine, he loaned me the money to pay over.

Q. State whether on that occasion Judge Page read any paper to you?

A. Not to my knowledge.

CROSS EXAMINATION.

Mr. DAVIS. Q. Mr. Stimpson. How long had you been deputy sheriff up to the time of this occurrence?

A. I think I was appointed in the fore part of January; sometime about the fifth of January. I don't remember the exact date.

Q. What month was this?

A. This was in February I think.

Q. Had you ever served in the capacity of deputy sheriff, or other officer?

A, No sir; I want to ask you one question. You don't mean if that was the first business I ever done, serving that execution?

Mr. DAVIS. No I don't mean that.

Q. When you received that execution where did you start with it first?

A. To Lansing.

Q. How far is that from Austin?

A. Six miles.

Q. What is Mr. Weller's business?

A. Farmer.

Q. You say you made a levy upon some cattle?

A. Yes sir.

Q. Did you do it then?

A. Yes sir.

Q. On the first day you were there?

A. The first day I was there.

Q. What did you do to make that levy?

A. The first thing that I done—

Q. Did you take possession of the cattle?

A. I drove them into the road sir.
Q. What did you do with them then?
A. He took them back again. [Laughter.]
Q. What did you do then?
A. I went back, took him into the sleigh and went to Austin with him.
Q. Did you drive the cattle away?
A. No sir.
Q. Did you take and retain possession of them?
A. No sir.
Q. Did you ever take a receipt for them of any person?
A. No sir.
Q. You never did?
A. No sir.
Q. You drove them into the road and he drove them back?
A. Afterward, yes sir.
Q. With your consent, did'nt he?
A. Yes.
Q. You call that a levy, do you?
A. Yes sir, I did at that time.
Q. You call it a release of the levy too, don't you?
A. Yes sir.
Q. And was it then that this agreement was made about this twenty dollars?
A. No sir.
Q. When did you make the agreement with regard to the twenty dollars?
A. Some time after that, I can't state how long.
Q. On the occasion of your visit to Lansing again?
A. Yes sir, I think I was there once before that time.
Q. Did you make a levy on that occasion?
A. I told him I was going to take the cattle.
Q. What did you do that time?
A. I took the cattle.
Q. What did you do with them?
A. I gave them back again. [Laughter.]
Q. Then you made the arrangement about the twenty dollars, did you?
A. Yes sir.
Q. When did you take the watch?
A. That same day.
Q. Did you make a levy on that?
A. No sir.
Q. How many times did you visit Lansing in all?
A. I can't state positively, two or three times, perhaps three times; I went there once I remember, when he was not at home.
Q. Did you go up there solely for this purpose each time?
A. I can't say as I did.
Q. What other purposes did you have in going there?
A. I presume I had some other papers to serve on the road.
Q. You presume you did; did you as a matter of fact?
A. I don't remember.
Q. What is your impression?
A. I think the first time I didn't have any.

Q. You think the other times you did?
A. I think perhaps I might; I couldn't state.
Q. Who did you receive this twenty dollars from?
A. From Lafayette French.
Q. He was the county attorney, wasn't he?
A. Yes sir.
Q. This execution which you had in your possession at that time, was an execution rendered in a criminal proceeding against Mr. Weller, was it not?
A. Yes sir, it was.
Q. Mr. French was the county attorney of that county?
A. He was.
Q. The fine for which that execution called was twenty dollars, was it not?
A. It was a larger amount than that—$80 or something—I don't remember how much, at first.
Q. Seventy or eighty dollars; somewhere along there?
A. Yes sir.
Q. And the *modus operandi* of this business was, that the defendant in the case paid twenty dollars to the county attorney, and the county attorney paid it over to you, and you pocketed $5.50 and paid the balance into the court.
A. I kept five dollars and a half, and paid the balance to the clerk of the court.

Q. Did you put any returns upon that execution of the amount of your fees in items?
A. No sir.
Q. Will state to the court how you made up that bill of $5.40?
A. I couldn't state it now the way I done it.
Q. Are you familiar with the statutes of the State, in regard to the fees of officers levying execution?
A. Somewhat.
Q. Will you go to work and construct, for the benefit of this Senate, a bill of costs of $5.40 for the services you have described and performed?
A. I can by explaining how I made it up.
Q. That's just what I have been asking you to do, go ahead?
[A pause.]
Q. For instance, did you charge for these levies?
A. Yes sir.
Q. Did you charge for both of the levies?
A. Well, I can explain—
Q, Did you charge for both of these levies?
A. I can explain how—
Q. Did you charge for both of these levies?
A. I don't think I did—but for one of them.
Q. Which one?
A. The first one I guess, or the second, I don't know which it was.
Q. Did you charge for that operation with the watch?
A. No sir.
Q. Did you charge mileage?
A. Yes sir.

Q. Did you charge mileage?
A. I think I charged mileage twice for going up there.
Q. You had other process?
A. I am not positive I had.
Q. You think you had?
A. I don't remember.
Q. If you had, did you charge mileage for that too?
A. I presume I did, yes sir.
Q. Now go to work, and item by item for what you did there, inform this Senate how you got a bill of $5.50 out of that matter?
A. I would like the privilege of telling just how it was.
Q. I want to know how you got a bill of five dollars and forty or fifty cents out of that?
A. Well sir, in the first place the mileage; I was there twice.
Q. That is how much?
A. It was twelve miles up there and back.
Q. How much a mile did you tax the county for that?
A. I guess 10 cts. a mile. I don't remember what I did charge for the service of it; I presume a dollar; it might have been less.
Q. The service of what?
A. The execution.
Q. What else did you charge for?
A. Then I got the execution renewed; paid the clerk of court for renewing the execution.
Q. Was that after you had made a levy?
A. I think it was before I mace the levy; I don't remember exactly the time.
Q. Then you held the execution for sixty days and did not do anytoing with it, and got it renewed and charged the county for it, did you?
A. I did not hold it for sixty days.
Q. How old was it when you got it?
A. I don't remember. I know I had to get the execution renewed.
Q. You charged that to the county?
A. No sir, I charged it to Mr. Weller.
Q. You got it out of that twenty dollars, didn't you?
A. Yes sir.
Q. Go on.
A. Well, the the understanding was that Mr. Elder was to pay the balance. He was to pay for the cow and Mr. Weller was to apply that amount on to the execution; he was to endorse that on to the execution.
Q. Did you charge for that understanding?
A. I presume I did. [Laughter.]
Q. Did you trade him that cow on the execution?
A. No, he did not take the cow afterwards.
Q. But nevertheless you charged for it, did you?
A. The trade was busted up before that.
Q. You charged for it, did you, in the execution?
A. I believe I did.
Q. Well, what else did you ring in on that?
A. Well I guess that was about all; the percentage I got on it. I know it was the understanding between Mr. Weller and I that I was to charge him five dollars and a half out of that.

Q. Then it comes down to this; you pocketed out of that $20.00 the sum of $5.50 that Mr. Weller had agreed to pay you for your fees?
A. Yes sir.
Q. Now, Mr. Stimpson, at the term of court in question, there was a grand jury was there not?
A. There was.
Q. That grand jury investigated this little transaction of yours?
A. I don't know whether it did or not; I understand that it did.
Q. They found a report and presented it to the court upon the facts, did they not?
A. I don't know.
Q. Have you not so been informed?
A. I heard that they did.
Q. Do you swear that they did not?
A. I don't know; I heard that they did.
Q. Didn't the court, when you were called up so inform you?
A. I don't think he did.
Q. Had you heard of it before the court called you up?
A. I heard; some one told me that the grand jury had that matter under consideration.
Q. Had you been informed before the court called you up, that the grand jury had presented or reported your doings, in this matter, to the judge?
A. I had not.
Q. Were the grand jury in the box when the judge called you before him?
A. They was.
Q. What was the first thing Judge Page asked you when you presented yourself before the bench?
A. I don't know as I can state the first word he said.
Q. Well, come as near to it as you can; make an effort?
A. I think he commenced by telling me that he had understood; he had been informed, or something of that kind, that I had got money in my possession that belonged to the county.
Q. Didn't he say that he had just been informed by the grand jury?
A. I don't think he said so; he might have said so though.
Q. Did he say in what case it was?
A. I don't remember as he mentioned their names.
Q. Go on and state what he did say, commencing where you just left off?
A. He said that it was a State matter, where the State of Minnesota was plaintiff, and that I should put my bill into the county; and then he politely invited me up to pay it over to the clerk.
Q. So his invitation was polite?
A. Well, some might call it so; I didn't. [Laughter.]
Q. You understood it was for your transaction in the Weller case did you?
A. Yes sir.
Q. You well knew it at that time?
A. Yes sir.
Q. How did you know you were being called to account for that Weller business?
A. Because I had understood.
Q. Because you had been informed that this grand jury had reported your transaction in that respect?

A. No sir; I understood they had it under consideration.
Q. Wasn't there a pretty well-defined rumor to that effect around the court room which came to your ears about that time?
A. I don't think there was.
Q. Had the jury, just previous, presented a paper to the court?
A. I don't remember; I presume likely they did; I didn't see it.
Q. Did the Judge have the paper in his hand?
A. I don't remember.
Q. Did he refer to a paper while he was addressing you?
A. Not that I know of; he might have had a paper in his hand.
Q. Did he refer to a paper while he was addressing you?
A. I don't remember as he did.
Q. Did he call your attention to all these facts you have related?
A. It was the conversation that I have stated.
Q. Did he call your attention to the fact that you had made no levy, as he claimed?
A. No sir.
Q. Did he not call your attention to the fact that the grand jury had reported the matter to him?
A. No sir, he did not.
Q. Now, Mr. Stimpson, there was a large crowd in that court room at that time, was there not?
A. Yes sir.
Q. Do you pretend to swear that Judge Page called you before him and did not tell you in substance that the grand jury had reported to him the transactions in which you had been implicated?
A. I don't think that he did. He might have done it; I don't think he did.
Q. Were you in the court room when the grand jury came in?
A. I presume I was or soon after.
Q. Well, you were definite on your direct examination, please be so now. Were you in the court room when the grand jury came in?
A. I don't remember, I say; I might have been and I might have followed the grand jury when they came in.
Q. Now do you pretend to testify that Judge Page did not tell you that the grand jury had reported as to your doings in this business, and that he did not state to you what the charge was that the grand jury made against you as an officer of court?
A. He never told what the grand jury found, for I never knew.
Q. Did he tell you that the grand jury had found anything against you in this Weller case?
A. He did not.
Q. That is as true as anything you have testified to, is it?
A. It is.
Q. Now will you go back and tell us again the first thing that Judge Page said to you when you appeared?
A. He said he understood that I had been taking money that belonged to the county; that belonged to the State. He said that I should put in my bill to the county.
Q. In what case did he state you had been doing this?
A. I don't remember whether he stated or not; I presume he did.
Q. You understood it to be the Weller case?
A. Yes sir, I did.
Q. What was the next thing he said?

A. I guess the next thing was to have me pay it over to the clerk of court.

Q. Did not Judge Page then and there state to you the facts as presented by the grand jury and ask you if those facts are true, and did you not then say yes?

A. I don't think he did.

Q. Is that as true as anything you have testified to?

A. I think it is.

Q. Do you deny that he so stated, and that you so answered?

A; I did not so understand it.

Q. My question is a positive and plain one; did not Judge Page detail to you the substance of what the grand jury had reported, and ask you if that was true?

A. He did not.

Q. That is as true as anything you have sworn to here, is it?

A. Yes sir, my understanding of it.

Q. You did not upon such facts being detailed by he court to you say that they were true?

A. No sir.

Q. Do you deny that positively?

A. I do.

Q. And that is as true as anything you have testified to?

A. I think it is.

Q. Did he require you to pay this money over in the presence of the grand jury?

A. He did.

Q. What reason did he give?

A. So that they should know that it was paid over.

Q. Do you still persist in your denial, that he made no reference to any report that the grand jury had made to him?

A. I don't know that he did,

Q. I mean, do you persist that he made no reference to any report that the grand jury had made?

A. He never mentioned any report.

Q. What was the next thing that he said?

A. After telling me to pay over the money?

Q. Yes.

A. He told me perhaps, I could borrow it of sheriff Hall.

Q. That was in answer to your remark, that you would have to go to the bank?

A. Yes.

Q. Have you stated all that took place, according to your recollection, in that court room?

A. I think I have, very nearly all that I remember of it.

Q. Were you examined before the committee ot the House of Representatives, last winter?

A. I was.

Q. Did you say anything in that examination about making a levy on those cattle?

A. I think I did.

Q. You think you did; will you say whether you did or did not?

A. It is my impression that I did.

Q. As strong an impression as of anything to which you have testified in this case?

A. I don't remember.

Q. Did you testify anything before the committee of the House of Representatives as to this watch.

A. Yes sir.

Q. Now I repeat the question, and ask, the best recollection you have upon that subject; did you say a word before the committee of the House of Representatives as to making a levy on any cattle?

A. I don't remember; I think I did.

Q. Was your examination quite full and complete before that body?

A. Somewhat.

Q. Who conducted it, my friend, Mr. Clough?

A. Mr. Clough was there.

Q. Assisted by Mr. Lafayette French?

A. Lafayette French was there.

Q, Did it strike you, in the course of that examination that they had left anything out?

A. I don't remember.

Q. Well, I suppose, Mr. Stimpson, as a result of all this you got pretty angry at Judge Page, didn't you?

A. Well, I can't say as I loved him very much. [Laughter.]

Q. You felt very angry towards him, did you not?

A. Somewhat, yes sir.

Q. Taken considerable interest in these proceedings, have you not?

A. Somewhat, yes sir.

Q. Did you testify before the House committee last winter to the same facts you testify to here to-day.

A. I think I have, nearly.

On motion the court went into secret session.

Mr. Nelson offered the following:

Resolved, That under the law we have no authority to allow the Managers more than $5 per day and mileage as provided by law, and that the clerk of the court draw certificates for such per diem and mileage; the per diem to commence with the opening of this session.

The question being taken on the adoption of the resolution, and

The roll being called, there were yeas 21, and nays 9, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Bonniwell, Donnelly, Doran, Edgerton, Finseth, Gilfillan C. D., Hall, Henry, Hersey, Macdonald, McHench, McNelly, Mealey, Morton, Nelson, Rice, Shaleen, Swanstrom, Waite and Wheat.

Those who voted in the negative were—

Messrs. Armstrong, Bailey, Clough, Drew, Edwards, Goodrich, Houlton, Morrison and Remore.

So the resolution was adopted.

Mr. Edgerton offered the following resolution, which was adopted.

Resolved, That while the Managers ought to receive pay for services in preparation for this trial, in the opinion of the Senate it will be necessary that such allowance be provided for by law.

On motion the court adjourned.

Attest:

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

FIFTEENTH DAY.

ST. PAUL, THURSDAY, MAY 30, 1878.

The Senate was called to order by the President.

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

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Donnelly, Doran, Drew, Edgerton, Finseth, Gilfillan C. D., Goodrich, Hall, Henry, Houlton, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Morton, Nelson, Remore, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

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

The sergeant-at-arms having made proclamation,

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

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

The PRESIDENT. Is the honorable Manager ready to proceed?

Mr. Manager HINDS. We are ready.

R. O. HALL RECALLED

On behalf of the prosecution.

Mr. Manager HINDS. Q. Mr. Hall, will you state whether you were present in court at the time of the transaction of the paying over of that $5.50 by Mr. Stimpson?

A. I was.

Q. Will you state what transpired as you saw it and heard it?

A. Judge Page says: "Mr. Sheriff, have you a deputy by the name of D. K. Stimpson?" I told him that I had, and pointed to the back part of the room and he arose and came forward. And he remarked to him that it had been brought to his notice that he had retained a portion of money which he had collected on a certain execution, referring to Mr. Weller. He asked him if that were the fact. He told him that he had. He told him to step forward and pay it over to the clerk of the court.

Q. What did Mr. Stimpson say?

A. He said he hadn't the money. He told him perhaps the sheriff would let him have it. I replied that the sheriff was in the same fix; and he got the money and paid it over.

Q. What was said, if anything, in reference to the grand jury?

A. I don't think anything was said in reference to the grand jury.

Q. Will you state whether there was many people present at the time of that transaction?

A. The court room was quite full.

Q. Was the grand jury present?

A. Yes sir.

Q. Petit jury?

A. They were.

Q. State whether there was anything said by Judge Page on that occasion about paying this over in presence of the grand jury?

Mr. LOSEY. We object to the counsel leading the witness; no objection to his asking the question as to what occurred there.

Mr. Manager HINDS. After a witness has gone over a transaction, as he recollects, it has always been competent, as I understand the rule, to call his attention to particular facts.

Mr. LOSEY. I don't so understand it; I don't understand that he has the right to put into the mouth of the witness by a series of questions a statement that he desires him to make.

The PRESIDENT. The chair thinks the form objectionable.

Q. You may state if there was anything said in reference to the payment being made in the presence of the grand jury by Judge Page?

A. I would not be positive.

Mr. Manager HINDS. Take the witness.

Mr. LOSEY. That is all.

C. C. KINSMAN RECALLED

On behalf of the prosecution, testified:

Mr. Manager HINDS. Q. Mr. Kinsman, will you state whether you were present in the court room at the time of the payment of this $5.50?

A. I was.

Q. Will you state what traspired?

A. To the best of my recollection, I heard the respondent ask the sheriff, Mr. Hall, if he had a deputy by the name of Stimpson. He stated that he had. Something was said about his stepping forward; I don't remember what was said. Mr. Stimpson came forward; the respondent asked him if he had collected money on a certain execution, (describing the execution,) and retained out of the money collected the sum of $5.50, (or some other sum,) I think it was $5.50—as his fees. Mr. Stimpson stated that he had. The respondent then stated to Mr. Stimpson that it was an unlawful act, that he hadno right to retain his fees out of an execution of that kind, or an action of that kind, or something to that effect, and directed him to step forward and pay the money over to the clerk in the presence of the grand jury, that it might know it was paid, or see it paid. Mr. Stimpson stated he had not the money,

and asked permission to go to the bank, or time to go to the bank and get it. The respondent stated, perhaps he could borrow it, which he did, and gave it over. The respondent then stated to Mr. Stimpson, I don't know whether it was at that time or at the time he stated it was an unlawful act, that if he committed another act of the kind he would punish him to the full extent of the law.

Q. During that transaction did Mr. Stimpson ask the court permission to make an explanation?

A. I don't remember anything of the kind.

Q. How long did it take before the money was paid over from the time Mr. Stimpson was first called?

A. A very short time, perhaps two minutes, may be not so long, and it might have been longer; I don't remember.

Mr. Manager HINDS. Take the witness.

CROSS-EXAMINATION.

By Mr. LOSEY.

Q. It took long enough so that the court explained to Mr. Stimpson the circumstances under which it was claimed he had collected that money, did it not?

A. Yes sir.

Q. Then there was a full explanation made by the court of the facts, and he admitted it, did he not?

A. Yes sir; that was in the first instance.

Q. He admitted that the facts were as the court stated?

A. With regard to the collection of it?

Q. Yes, and as regards the circumstances under which the execution was issued. The court told him that the execution was illegal, did he not?

A. He told him the retaining of the fees was illegal. I don't know that he told him that the execution was illegal.

Q. What was the case as to the explanation to Mr. Stimpson by the respondent?

A. I think that the respondent explained the case as a case in which the State was a party plaintiff, and that the execution was for a fine—was to collect a fine I think.

Q. A fine imposed in a case in which the party should have been in the custody of the officer until it was paid was it not?

A. I don't remember about that.

Q. You can't state whether the language was used or not?

A. I have no recollection.

Q. It was in the case of the State against Weller, was it?

A. Yes sir, I understand it so.

Q. And he so stated?

A. Yes sir, I think he stated so.

Q. To Mr. Stimpson?

A. Yes sir.

Q. After the facts were stated by the court, did the court ask Mr. Stimpson if he assented to the correctness of the facts as stated?

A. Yes sir, he asked him if it was true, and Mr. Stimpson stated that it was.

Q. Did he?

A. Yes sir.

Q. Did you notice anything unusual in the tone of the court at the time he asked the sheriff if he had a deputy by the name of David H. Stimpson?

(No answer.)

Q. Answer my question whether he did or not?

A. There was something unusual in the——as I understand it. I may be mistaken in regard to it, I think he called him D. K. Stimpson, and I noticed it not being his name.

Q. That was the unusual thing about it?

A. Yes sir.

Q. He made a mistake in the name?

A. Yes sir.

Q. No other unusual thing about it?

A. No sir, I didn't notice anything.

Mr. LOSEY. That is all.

RE-DIRECT EXAMINATION.

Mr. Manager HINDS.

Q. Will you state what the manner of Judge Page was when he was speaking to Mr. Stimpson?

A. Somewhat earnest.

Q. As to his tone of voice?

A. I don t know as it was any different from usual while presiding in court?

Mr. Manager HINDS. That is all.

G. M. CAMERON RECALLED

On behalf of prosecution, testified:

Mr. Manager HINDS.

Q. Were you in court the time of this transaction between Judge Page and Mr. Stimpson?

A. I was.

Q. Will you state what transpired, as you saw and heard it?

A. The Judge spoke to Sheriff Hall and asked him if he had a deputy by the name of D. K. Stimpson. The sheriff told him that he had. Something was said, I don't recollect exactly what it was, and Mr. Stimpson stood up in the back end of the room, and came forward and the Judge asked him if he had, he says I understand you have got some money in your possession that belongs to Mower county, or something of that kind; that you collected of Dwight Weller, and he asked him if he had—Mr. Stimson said that he had; I think the amount was stated, but I could not tell the amount now. He ordered him to walk up to the clerk's desk and pay over the money. Mr. Stimpson said something about an explanation, and the Judge did not wish to hear any. He walked up and paid over the money, and Mr. Stimpson said, in the meantime, that he had not got it. Something was said about his borrowing it from the sheriff.

Q. Did the Judge, in his remarks, make any reference to the presence of the grand jury.

A. I think he did.

Q. What?

A. I could not state exactly the words; something about its being paid in their presence.
Q. Was the grand jury there?
A. The grand jury was there at the time.
Q. Any other people?
A. Yes sir, the most of the members of the bar were there I think, and the court house was about as full as it usually is, as nearly as I recollect.
Q. Will you state whether you have any knowledge of the circumstances under which the $20.00 was paid over by Mr. Stimpson?
A. Nothing of my own knowledge.
Q. I understood it was paid through your hands.
A. Through my hands, the twenty dollars?
Q. Yes.
A. I don't recollect that it was.

Q. Mr. DAVIS. It was Mr. French's hands.

Mr. LOSEY. It was through Mr. French's hands; most everything did down there. That's all.

Mr. LOSEY. [Continuing.]
Q. Do I understand that Mr. Stimpson said something about an explanation?
Q. Yes sir.
Q. Can you tell what he said?
A. No sir, no more than he asked to make an explanation.
Q. When?
A. Just at the time the judge called him up and told him that he understood that he had money belonging to the county.
Q. Didn't the court go on and state to him the circumstances under which it was claimed the money had been received by him?
A. He stated but very little.
Q. Answer my question.
A. He said something—
Q. I didn't ask you whether he said little or not.
A. Yes, he said something about circumstances.
Q. You can't tell what he said about the circumstances?
A. No sir, not the language that he used.
Q. Did the man Stimpson assent to the facts as related by the court to him then?
A. He assented—no.
Q. He did not; did he dissent from the facts as stated by the court?
A. No.
Q. He neither assented or dissented?
A. He did neither; that is, all the facts you are speaking of; he assented to one certain fact.
Q. Did he remain mute?
A. No sir.
Q. When the court stated the facts to him, what did he say?
A. When he stated a part of the facts to him he assented that he had the money; that he had collected and retained some money; he assented to that; further than that he did not assent to anything.
Q. Further than that he did not dissent to anything.

A. He did not assent nor dissent either one.
Q. But the court went on and made a full statement?
A. The court went on and made a few remarks, not a full statement; Stimpson did not say anything to that.
Q. Then Stimpson made what request?
A. He requested to make an explanation.
Q. What did the court say?
A. The court refused to allow him to.
Q. And directed him to do what?
A. Directed him to walk up to the clerk's desk and pay over the money.
Q. Could you give the language of the court at that time?
A. I can't do it exactly.
Q. But you got the impression that the man was to pay the money to the clerk, from the conversation carried on there.
A. He ordered him to do it.
Q. You got the impression, then, that there was an order made for him to pay the money the clerk?
A. I know the order was made, for I heard him make it.
Q. Wasn't any different from an ordinary order—a simple direction?
A. A little more peremptory.
Q. It looked a little as though the Judge thought an illegal act had been done by an officer of the court?
A. Yes; he talked in that way to him.

Mr. LOSEY. That is all.

W. H. CRANDALL,

sworn and examined on behalf of the prosecution, testified:

Mr. Manager HINDS.
Q. Where do you live?
A. Live in Austin.
Q. How long have you lived there?
A. I have lived there about seven years.
Q. What is your business?
A. Attorney.
Q. Are you a partner of Mr. French?
A. I am, sir.
Q. Were you a year ago?
A. Yes sir.
Q. Have you any knowledge of the circumstances under which the twenty dollars upon an execution—to which reference has been made—was paid to Mr. Stimpson?
A. I have.
Q. State what it is.
A. Well, the execution was in the hands of Mr. Stimpson; he came into my office and handed me a watch.

Mr. LOSEY. Is it claimed that the respondent is to be connected with this by having had notice of the facts that the witness is about to state? If not, we object to it.

Mr. Manager HINDS. I don't know as to notice; I am not aware that

we claim that there was any notice. I don't understand that it is necessary in that view at all. If the question is objected to, I would state briefly the object. I don't understand that the question is objected to.

Mr. LOSEY. I say we object if the facts are as I stated; we claim that it is necessary for you to connect the respondent with it, and to show that he had knowledge of the facts that the witness is about to state.

Mr. Manager HINDS. Well, I am willing to hear you upon that objection. We insist upon the question.

Mr. LOSEY. I can hardly see on what ground this is admissible, your honor. It is necessary to connect the respondent with it before he can be bound by any transactions that may have occurred between the witness and Stimpson at his office. Now it is admitted that there were certain facts stated in court, and a certain transaction occurred there and certain facts were brought to the knowledge of Stimpson there in court to which he assented. Now, it don't make any difference to this issue whether Stimpson obtained that money by one means or by another. If he illegally had got possession, it was the duty of the court to protect the county; no matter whether the sum was great or small, by bringing him up as an officer and compelling him to do his duty by paying that money into the treasury.

We claim that the issuing the execution in the first place was illegal; the facts will show that the defendant in the case of the State against Weller had been fined, and he was in the custody of the sheriff, rightfully belonged there. If the sheriff had let him go, and then, for the purpose of covering his own transactions, as we may call them, had an execution issued for the purpose of recovering a sum of money for which he originally held a body, and had permitted an escape, that don't affect the issue here at all. The simple question is, whether Mr. Stimpson, in the mind of the court, had obtained that money in an illegal manner.

Mr. Manager HINDS. My idea is that the question must be determined by the issues that are raised. The allegation of this article is that $5.50 had been earned as fees, for this officer in that case; and that he had retained it in his hands as fees; earned for services rendered under that execution. The answer takes issue upon that and denies that he had earned any fees there at all. The article states that he had collected $20.00 upon that execution; the answer denies it, and alleges that he had collected no money upon the execution at all. Now both of these issues we are attempting to prove by the evidence that he had received $20.00 upon the execution; had collected it. It is similar to the testimony of Mr. Stimpson in that regard, but we prefer to confirm it by this witness.

The PRESIDENT. The chair sees no impropriety in the question. If any Senator desires it submitted it will be submitted, otherwise the question may be answered.

Q. State the circumstances?

A. Mr. Stimpson came to my office and left in my custody a watch that he had taken upon the execution against Mr. Weller. He instructed me to deliver the watch to Mr. Weller upon the receipt of $20.00, and the receipt that he had given Mr. Weller for the watch. Mr. Weller

came into the office and paid the twenty dollars, and the watch was delivered to him by me.

Q. Now in regard to the payment of the $20.00 to Mr. Stimpson?

A. I did not pay the money to Mr. Stimpson; I think it was paid by Mr. French, my partner.

Q. Were you present in court at the time of the payment of this $5.50, to which reference has been made, over to the clerk.

A. Yes sir.

Q. Will you state what transpired there, as you saw and heard it?

A. Judge Page called upon the sheriff, and inquired of him if he had a deputy by the name of D. K. Stimpson; the sheriff responded in the affirmative, and I think pointed to him in the back part of the room; Mr. Stimpson arose, and he was asked to come forward by Judge Page; Judge Page told him that he understood that he had collected money on an execution against Mr. Weller wherein the State of Minnesota was plaintiff and Mr. Weller defendant, and that he had retained $5.50, (I think it was,) as fees, and asked if that was a fact.

I think that Mr. Stimpson said it was. He told him to pay the money over to the clerk in the presence of the grand jury. Mr. Stimpson had not the money and he got the money and paid it over to the clerk as required by the court; after this had been done Judge Page remarked "that this was his first offense, but that if an offence of that kind was repeated he should punish him to the full extent of the law."

Q. Was there any reference made by Judge Page to the presence of the grand jury, if so, about what?

A. He requested Mr. Stimpson to pay the money over to the clerk in the presence of the grand jury.

Q. Did Mr. Stimpson make any explanation, or ask to make an explanation, of the circumstances under which he received the money?

A. I think an explanation was attempted, but he was stopped by the court.

Mr. Manager HINDS. You may take the witness.

CROSS EXAMINATION.

By Mr. LOSEY. Q. You mean to say that the grand jury were in their seats in court at the time the money was paid over?

A. Yes sir.

Q. Do you mean to say that Judge Page said anything in relation to the grand jury?

A. Yes sir.

Q. What did he say?

A. He required Mr. Stimpson to pay the money, the $5.50 he had retained as fees, over to the clerk in their presence.

Q. He stated that, did he?

A. Yes sir.

Q. Had the grand jury brought in a presentment of facts in relation to this matter?

A. I could not say; I inferred that they had.

Q. You inferred that they had from what occurred in court did you?

A. Yes sir.

Q. And did you infer also that the Judge was calling the attention of Mr. Stimpson to what the grand jury had presented?

A. I don't know that I had any inference, so far as that matter was concerned.

Q. Well, didn't you know it?
A. I did not.
Q. Didn't you presume it was so, then and there?
A. Well I—Judge Page called the—said that information had come to him—
Q. Answer my question; didn't you presume then and there it was so?
A. I don't know that I had any presumption, sir, with reference to it.
Q. Didn't you believe it was so?
A. I can't say that I did.
Q. Didn't you think it was so?
A. I don't think I did.
Q. Now didn't you as a fact know that it was so?
A. I did not, sir.
Q. Well, the grand jury had just previously come in hadn't they?
A. They had.
Q. And they had handed a paper up to the court?
A. I think they did, sir.
Q. And the court had examined the paper?
A. I think so.
Q. And the court looked up from the paper and asked the sheriff if he had any officer by the name of D. K. Stimpson?
A. I think something intervened between them.
Q. How much time do you think?
A. Well sir, it was not a great while—probably a minute or two.
Q. Did any business intervene?
A. No sir, I think there was no intervention of business.
Q. And the court called for D. K. Stimpson, and D. K. Stimpson come forward?
A. Yes sir.
Q. Did the court state to Mr. Stimpson that it was illegal—that information had been conveyed to him of certain facts in relation to the collection of this matter?
A. Yes sir, I think he did.
Q. Made quite a full statement, did he?
A. I don't think it was very copious.
Q. You did not look upon it as very copious?
A. No sir.
Q. But you understood, from the statement, what was charged and claimed?
A. Sir?
Q. You understood from the statement, made there in court, what was charged and claimed what the officer had done?
A. Yes sir.
Q. Did the court inform Mr. Stimpson that he considered that his acts in relation to the matter were illegal?
A. I don't think he said anything about that; he may have done so.
Q. Did you give a receipt at that time; this money was paid over to you?
A. I don't remember, sir. I think it was quite likely that I did.
Q. Was Mr. French present when the money was paid over?
A. No sir, I think not?
Q. Well, how come you to give the money to Mr. French?

A. It was placed in our care
Q. And Mr. French took it out?
A. Yes sir, I suppose so.
Q. You don't know any thing about that?
A. I do not; I know that I didn't.
Q. Now won't you look at this paper that I hold here; whose handwriting is that little scrap of paper there.
A. It is the hand writing of Mr. French.
Q. Lafayette French?
A. It is.
Q. District attorney of the county?
A. Yes sir.
Q. Whose hand writing is this in?
A. That is in the handwriting of F. A. Elder, the clerk of the court.
Q. Do you know when Mr. French made that paper.
A. I do not.

Mr. LOSEY. We desire to put this in evidence as a part of the cross examination.

Mr. HINDS We object to it, and the ground of the objection is that the subject matter don't relate to anything that is called out on the part of this witness. The paper is shown to be in the handwriting of Mr. French, and it also appears to be signed by Mr. French, and it seems to be torn off from something else to which it don't refer, and that something else ain't there.

Mr. DAVIS. We will submit it to the President without comment.

Mr. HINDS. The grounds to our objection is not that the state of facts that have been developed or might rather be developed in regard to the testimony of another witness if he could be called, that that might be competent. Now, if we should go over the subject matter to which that refers, on the part of that witness, it would be competent as a part of the cross examination.

But it is not any part of the cross examination of anything that has been called out on the part of this witness. As I state, the slip there that is stated to be in the handwriting of Mr. French, appears to refer to something else; something within; that something else seems to be torn off and a portion of it is seen on the back of the slip.

The PRESIDENT. The chair does not see any connection with this paper, and the examination in chief of this witness.

Mr. DAVIS. Just allow me a single question addressed to Mr. Crandall. The learned Manager stated his object to be to trace the history of this twenty dollars. That is why Mr. Crandall is put upon the stand, how it got into his hands and how it got out. Now this is an important part of that history, this receipt is sewed on seems to be a memorandum of a docketed judgment and clearly refers to the paper to which it was attached. It seems to me, please the court, that it is a part of the *res gestae*, the history of these twenty dollars; which can be the only object with which the testimony of Mr. Crandall is given.

The PRESIDENT. If the counsel will read the paper to the court I will submit the question.

Mr. DAVIS (reading). "State of Minnesota versus Dwight Weller. The amount of judgment in justice court 47, interest $2.76, costs 24 dollars 32 cents. November 21st, 1876." Then the footing $77.05; paid February 27th, 1877, $14.50. Then in lead pencil which seems to be a retraction $62.50. Now here is a little slip to which the learned Manager objects, and here appears to be a receipt of twenty dollars on the within judgment, $20.00, February 27, 1877. L. French." So far as the return of the execution is concerned here Mr. Weller only gets credit for $14.50.

The PRESIDENT. I will submit the question.

MR. HINDS. Your honor, I would like to be heard a little farther. The court will notice that we do not make the objection that the subject matter to which that was pasted might not be competent evidence on the part of the respondent, when he comes to prove his case. It appears to be a receipt on the part of Mr. French of a sum of $20.00 on the within judgment. We have not called that witness on the subject, and there is nothing in that receipt to contradict it or vary his testimony, because his testimony yet is not before the court. This witness, Mr. Crandall, has not testified to anything in reference to that receipt or to that demand, but simply the circumstances under which it was paid to him. Now this might be competent evidence on the part of the respondent in cross-examination of any testimony that Mr. French might give in reference to the circumstances in which the $20.00 came into his hands; as it appeared that it did come into his hands and was by him paid over to Mr. Stimpson it might, perhaps, be competent evidence, as evidence in chief on the part of the respondent when they prove their case. Neither of these matters, however, is before the court. The question merely is it competent evidence as a cross-examination of this witness. Does it cross-examine anything that he has testified to?

We have a further objection, and if this paper should be ever offered in evidence by the respondent when he comes to prove his case, we should object to it then, because the paper has been tampered with; it is not fair on its face. When you look on it, it refers to a within judgment: Received $20.00 on the within judgment. When you refer to the back part of the slip, or refer to the slip, you will see that it is torn off of a larger piece of paper, and a part of the writing of that larger piece of paper is still upon this slip, upon the back of it. After it has been detached from the within judgment to which it refers, it has been sewed on to another piece of paper in somebody else's handwriting, which Mr. French never saw, and knew nothing about; and for that reason it would not even contradict or explain, if it was used for the purpose of contradicting or explaining any portion of evidence which he himself might hereafter give.

Mr. DAVIS. As regards the integrity of these papers, we submit them to the inspection of any Senator.

The PRESIDENT. The question will be submitted to the court. The clerk will call the roll on the advisability of this paper. The question being taken on the reception of this paper,

The roll being called, there were yeas 15, and nays 18, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Bailey, Donnelly, Doran, Drew, Hall, Henry, McNelly, Mealey, Nelson, Remore, Rice, Waite and Wheat.

Those who voted in the negative were—

Messrs. Clough, Edgerton, Edwards, Finseth, Gilfillan C. D., Goodrich, Hersey, Houlton, Macdonald, McClure, McHench, Morehouse, Morrison, Pillsbury, Shaleen, Smith, Swanstrom and Waldron.

So the paper was rejected.

Mr. LOSEY:

Q. Do you know to whom this receipt was given by Mr. French?

A. I do not.

Q. How long have you lived in the county of Mower?

A. I have lived there since November, 1871.

Q. Your business is that of a lawyer, is it?

A. Yes sir.

Q. How long have you known the respondent.

A. Nearly ever since I came to the town.

Q. Have you taken considerable interest in this case?

A. I have been somewhat interested in this case, sir.

Q. About to what extent?

A. That is a difficult question to answer.

Q. You can't answer that question?

A. I don't think I could.

Q. About how many times have you traveled over the county of Mower in connection with this case?

A. Not any times.

Q. Were you engaged in getting up affidavits of grand jurors in Mower county at one time?

A. I was sir.

Q. Did you travel for the purpose of getting up those affidavits?

A. I did.

Q. Then you did travel through the county of Mower somewhat in connection with this matter?

A. Not in connection with this case. No sir.

Q. In any connection with this case; in connection with the matters involved in this case, didn't you?

Q. Yes sir.

Q. About how many times did you go through the county for that purpose?

A. Only once I think, sir.

Q. Were you a notary public?

A. I was.

Q. How many affidavits did you obtain?

A. I don't remember.

Q. How many did you write yourself?

A. I wrote several; I couldn't tell you the number, sir.

Q. As many as seven?

A. I couldn't state.

Q. Look at these affidavits—that batch—and say if they are all in your hand writing?

A. That one is in my hand writing.

Q. That is one?

A. So is that.

Q. That is two?
A. That also.
Q. Three?
A. That is one.
Q. Four?
A. That is one.
Q. Five?
A. That is one.
Q. Six?
A. That one is not.
Q. Whose hand writing is this one in; (handing witness another affidavit)?
A. I should judge it was in the handwriting of Mr. Harwood.
Q. One A. A. Harwood?
A. Yes sir.
Q. Whose signatures are to these affidavits?
A. To this affidavit, of Mr. O. W. Case and O. B. Morse. Here is one with the signature of C. C. Crane; here is one in the handwriting of A. A. Sumner; this one George W. Clough; this one N. N. Hammond. This is John Rowley, William L. Stiles and Henry Webber.
Q. Where were these parties when you made these several affidavits; at their homes?
A. Some of them were and some of them were not.
Q. About how many of them were at their homes?

Mr. HINDS. We object.

Mr. LOSEY. I withdraw it.

Q. What were they gotten up for?
A. They were gotten up to be used in what was termed the bar committee—"white-wash committee"—that was held down at Austin. [Laughter.]
Q. Who termed it the white-wash committee?
A. Why, it was termed so by the press, I believe, generally.
Q. Termed so by you and a few of your clique, was it not?
A. No sir, the white-wash business is not original with me [Laughter].
Q. You used that term and a few of your clique?
A. I havn't so used it.
Q. You appeared in the whitewash business adversly to Judge Page did you not?
A. I secured the affidavits.
Q. Answer my question. You appeared adversly to Judge Page in the whitewash business?
A. I did not.
Q. About how many meetings have been held in your office in connection with this matter?
A. In connection with what matter?
Q. Getting up these articles of impeachment—laying the plans for them?
A. I couldn't say.
Q. Good many, havn't there?
A. No sir.
Q. Any?

A. I think there have.
Q. Haven't you been present at some?
A. I have.
Q. Won't you refresh your memory and tell us about how many?
A. About how many that I have been present at?
Q. Yes.
A. Well, I should say not more than three.
Q. Who was present at these meetings?
A. Several persons; I couldn't state at this time.
Q. Can you state any person who was present except yourself?
A. I can sir.
Q. Go on and state.

Mr. HINDS. We object.

Mr. LOSEY. I think we have a right to show the feeling of this witness in connection with this matter.

Mr. HINDS. The point of objection is this, this course of cross-examination of the witness can be competent only for the purpose of showing the feeling of this witness towards the respondent. The presence of others cannot have any bearing upon the question of the feelings of this witness towards the respondent. If he was participating in the conspiracy with the others I think it would be competent.

The PRESIDENT. The chair will decide that it is not competent, but will submit it if the counsel desire it.

Mr. LOSEY. We ask that it be submitted.

The PRESIDENT. The clerk will call the roll upon the question as to whether this question should be put.

The question being taken on admitting the question in evidence, and The roll being called, there were yeas 3; and nays 31, as follows:

Those who voted in the affirmative were—

Messrs. Hall, Lienau and Pillsbury.

Those who voted in the negative were—

Messrs. Ahrens, Armstrong, Bailey, Clough, Donnelly, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Goodrich, Henry, Hersey, Houlton, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Nelson, Remore, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

So the question was rejected.

Q. About how many of those meetings were held?
A. I could not state, sir, with any definiteness.
Q. Were the same persons there at the first meeting, generally there afterwards?
A. Not always.
Q. Were they generally there, afterwards?
A. I think as a general thing they were.
Q. Did not substantially the same body of men meet from time to time?
A. I think so, sir.
Q. And they met about how often?
A. I couldn't state that.
Q. At what time did they meet?

A. I couldn't state that.
Q. How long did they remain in session?
A. Different lengths of times, at different times.
Q. Where did they meet?
A. Sometimes one place and sometimes another.
Q. In the city of Austin, was it?
A. Generally; I think they were always.
Q. What was the general subject matter of consideration?
A. Several matters were discussed.
Q. What was the general subject matter of consideration?
A. Well, the state of things in Mower county, as a general thing.
Q. Wasn't it the impeachment of Judge Page?
A. It was very frequently mentioned in those meetings.
Q. Wasn't that the object of these meetings.
A. That was among the objects, I think.
Q. Was not that the sole object of the meetings?
A. No sir.
Q. Was there anything connected with those meetings—did the meetings have any object except the impeachment, or affecting the impeachment of Judge Page?
A. I think those were the prime ideas of the meetings, sir.
Q. Have you had meetings to devise ways to raise money to carry on this impeachment?
A. These matters have come up at those meetings.
Q. Have you employed counsel?
A. I have not.
Q. Haven't you assisted in employing counsel?
A. I think so.
Q. Have you not helped to raise a fund?
A. Yes sir.
Q. For that purpose?
A. Yes sir.
Q. How much have you contributed?
A. Well I contributed to the extent of about fifteen dollars.
Q. You are desirous of the success of these articles, are you?
A. I think they ought to be successful.
Q. In this prosecution?
[No audible answer.]
Q. When were the original articles presented to the House gotten up.
[No answer.]
Q. Gotten up in your office?
A. I think they were.
Q. Was the petition gotten up in your office?
A. I think not.
Q. The petition to the House of Representatives?
A. I am not clear upon that, I think not.
Q. Was it gotten up by you?
[A pause]
A. I think the petition probably, is in my handwriting.
O. Did you have a hand in getting it up then?
A. Yes sir.
Q. You went through the county of Mower, you obtained certain affidavits you have already stated; has there any question been raised

since that time by the grand jurors in relation to the facts you set up in those affidavits?

A. In relation to the facts that I set up in them?

Q. Yes sir.

Mr. HINDS. We object.

Mr. LOSEY. They object, we withdraw it.

Mr. LOSEY. That is all.

W. S. ROOT SWORN

And examined. Mr. Manager HINDS.

Q. Where do you live?

A. I live in the county of Murray, sir.

Q. How long have you?

A. I moved in there I think, two weeks ago to-day.

Q. Where did you previously live?

A. Mower county.

Q. How long did you live there?

A. About 10 years.

Q. Were you present at a term of court and on the occasion of Mr. Stimpson being required to pay over $5.50.

A. Yes sir.

Q. In what capacity was you there?

A. I was acting as a pettit juror.

Q. Will you state what transpired on that occasion; as you saw it and heard it?

A. I think after the grand jury came in, I am not clear as regards their making a presentment, I rather think they did make a presentment. In a few moments, I think Mr. Page asked Mr. Hall, the sheriff, if he had a deputy there by the name of Stimpson, I didn't understand the initials, he told him he had, and asked him to have Mr. Stimpson step forward. He said to him that he had been informed that he had money in his hand that he had collected on a fine that belonged to the county, asked him if he had, and he said he had. He told him that he must pay it over to the clerk; that there was a way for them to get their fees by presenting, I think, his bill to the commissioners. That was the sum and substance of the talk.

Q. Well, go on, anything else that you recollect ?

A. I think that he (Mr. Stimpson) asked to make an explanation, or something of that kind, and the court told him that he would pay it over to the clerk, and as it was his first offense if he repeated it he should give him to the full extent of the law. I think those were the words, or the substance of the remarks.

(No cross-examination.)

N. W. HAMMOND SWORN

and examined on behalf of the prosecution, testified :

Mr. Manager HINDS. Q. Where do you live ?

A. In Austin.

Q. How long have you?
A. Two years.
Q. Were you present in court in Mower county on the occasion of the payment over of this $5.50, to which reference was made?
A. I was.
Q. In what capacity were you there?
A. I was one of the grand jury.
Q. Will you state what transpired there as you saw it and heard it?
A. Judge Page wanted to know of sheriff Hall if he had a deputy there by the name of Stimpson; he told him he had appointed a Mr. Stimpson; the judge told him to step forward; Mr. Stimpson stepped forward; the judge told him that he had been informed or understood that he had a certain amount of money in his possession that did not belong to him that he had collected on an execution, that he had no right to hold, or words to that effect, and asked Mr. Stimpson if that was the case; Mr. Stimpson said it was; he told him then that he wanted him to step forward and to pay it to the clerk of the court so that the grand jurors could know that it was paid.
Q. What did Mr. Stimpson say to that?
A. Mr. Stimpson said he would like to make an explanation on it. The Judge told him there was no cause of an explanation.
Q. Was the money paid over?
A. It was. He hadn't the money with him, and I think he asked Sheriff Hall for the money. Sheriff Hall said he was in the same fix as Stimpson was, and he borrowed the money of somebody else there in the court room, I don't know who it was, and paid it over.

CROSS-EXAMINATION.

Q. What was the expression used by Mr. Stimpson at the time he spoke in explanation.
A. Well, I didn't notice particularly, just merely said he would like to give an explanation.
Q. Is that the language he did use?
A. I think that was what he said. Yes sir.
Q. He assented to all the facts?
A. He assented that he had got this money, a certain amount of money that was not paid over.
Q. The Judge went on and stated the circumstance surrounding the case to him, did he not?
A. Yes sir.
Q. You don't pretend to give an accurate account of just what was said there, do you?
A. Not word for word, no sir, I don't suppose I could.
Q. Had the grand jury already made a presentment to the court of the facts?
A. I don't know; I couldn't say whether they had or not.
Q. What is your impression?
A. Well, I have been trying to think of that; I couldn't say whether that was fetched before the grand jury or not. It is my impression that it was.
Q. Isn't it your impression also that the court was calling the attention of Mr. Stimpson to the presentment that the grand jury had brought in concerning it?

A. Well I couldn't say; I don't know; I won't pretend to say I hadn't thought of this case until Stimpson was fetched on to the stand yesterday.

Q. Just exert your memory a little and see if you can't.

A. Well I have; I have to-day, because I expected to be called upon.

J. D. WOODARD SWORN

And examined on behalf of the prosecution, testified.

Mr. Manager HINDS. Q. Where do you live?

A. I live in the town of Lyle, Mower county.

Q. How long have you lived there?

A. I came there six years ago.

Q. Were you in attendance on the term of court in that county on the occasion of the payment to the clerk by Mr. Stimpson of five dollars and a half?

A. I was—yes sir.

Q. In what capacity?

A. As a grand juror.

Q. Will you state what transpired on that occasion as you saw and heard it?

A. We were in the jury box, and Judge Page asked the Sheriff if he had a deputy by the name of D. K. Stimpson. He told him that he had, and he was asked to step forward. He asked him if he had retained illegal fees; that he had retained illegal fees in the case of Weller; five dollars and fifty cents; and Stimpson replied that he had. The judge asked him if he had, and he told him he had; then he ordered him to pay it over there before us, and Mr. Stimpson wanted to explain, and the judge told him he didn't want any explanations, and Mr. Stimpson went up and paid the money over in the presence of the grand jury.

Q. I call your attention to the word "illegal" fees. Did Mr. Stimpson use that term?

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

Q. In Stimpson's reply to the court what did he say to the court?

A. He said he would like to explain. I think those are the very words he used.

Q. When he answered the question of the judge, what did Stimpson say?

A. The judge asked him if he had the money in his possession, and he told him he had. I think it was five dollars and fifty cents; I'me not positive of the amount.

Q. You state that Mr. Stimpson said nothing about its being illegal fees?

A. No sir, not that I heard.

CROSS-EXAMINATION.

Mr. LOSEY. Q. Do you know whether the grand jury had had the matter before them or not?

A. Yes sir.

Q. Had they?

A. I think they had.

Q. Had you made a presentment to the court?
A. As to the presentment, I couldn't say; it was before us, and I think Mr. Weller was examined on it.
Q. Well, did you make a presentment to the court during the term?
A. Of that case?
Q. Yes.
A. I couldn't say whether we did or not, positively; it is my impression that we did.
Q. Isn't it your best impression that you had brought in the presentment, then and there?
A. I rather think so, yes sir; I could not swear positively.
Q. And that the court had examined and then called to the sheriff and asked if he had a deputy by that name?
A. Yes sir.
Q. You made that presentment from the examination of Mr. Weller.
A. Yes sir.

Mr. LOSEY. That is all.

Mr. HINDS:
Q. What do you understand by the term presentment?
A. Well, I don't know as I can explain it fully; I understand that we came to a conclusion there in the jury room, and had presented those conclusions to the judge.
Q. As a report?
A. Yes sir.
Q. These conclusions, whatever they were, were in writing, were they?
A. Yes sir, they were in writing.

F. W. KIMBALL, recalled on behalf of the prosecution, testified.

Mr. HINDS:
Q. Have you the records of the district court of Mower county with you?
A. I have sir.
Q. Have you the record in regard to this transaction of the payment over of the sum of five dollars and fifty cents by Mr. Stimpson to the clerk?
A. I think I have what record there is in this book.
Q. Will you produce the record of this transaction.

Mr. DAVIS. Give us the page if you please.
The Witness. It commences on the 34th and continues to the 35th; shall I read the record?

Mr. DAVIS. We have no objection.
A. This is on the 11th day of the March term, 1877. The record is:
"Now come the grand jury into court, and being all present, report findings in the case of the State of Minnesota *vs.* D. Weller, viz.: That twenty dollars had been paid by the defendant to D. H. Stimpson, deputy sheriff, to be applied on payment of judgment, entered in said case; that said Stimpson had paid into court on said judgnent, but $14.50. On order of the court D. K. Stimpson paid into court said $5.50, and grand jury retired to their room."

That is all the record I think there is of that transaction in the proceedings of that term at any rate.

Mr. Manager HINDS. We rest upon this article.

Mr. Manager CAMPBELL. Mr. President, we desire now to file our specifications under article 10; they will be here in a very few moments. Mr. Clough has gone after them.

Mr. PRESIDENT. While waiting for Mr. Clough the court will take a recess of five minutes.

AFTER RECESS.

Mr. Manager CAMPBELL. Mr. President, we have prepared specifications on article (10) ten, as we asked——

Mr. DAVIS. [Interrupting.] I understand you offer to file this.

Mr. Manager CAMPBELL. Yes, we offer to file them now, and ask to have them read.

Mr. DAVIS. We insist on their taking the shape of an offer, to which we object; we desire to have the paper read, however.

The secretary read the specifications which are as follows:

STATE OF MINNESOTA.—ss.

Before the Senate of said State sitting as a Court of Impeachment.

In the matter of the impeachment of Sherman Page, Judge of the District Court for the tenth judicial district.

Now comes the House of Representatives of the State of Minnesota, by the committee of managers thereof, heretofore appointed thereby to conduct before the Senate of said State the said impeachment, and without waiving the right to give in general evidence to establish the truth of the allegations contained in the tenth article exhibited in such impeachment, hereby gives notice, that, to establish the truth of the allegations in said tenth article contained, it, the said House of Representatives, will rely upon each and all the acts, matters and things stated in the articles heretofore exhibited in said impeachment, numbered from one (1) to nine (9) inclusive, and upon all and singular the matters given in evidence to prove the allegations of such articles, numbered as last aforesaid.

And the House of Representatives further gives notice, that without waiving the right to give in general evidence to establish the truth of the allegations in the said tenth article contained, it, the said House of Representatives, to establish the truth of the allegations in such article contained, will give in evidence touching the following specific matters, that is to say:

I.

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

II.

At a general term of the district court for the said county of Mower, held in March, A. D. 1875, Lafayette French then being and acting as county attorney of the said county of Mower, and there then being pending in said court and on the calendar thereof for trial, several criminal cases wherein the said county attorney was

attorney for the prosecution, as he, the respondent well knew, the said county attorney being temporarily absent from the court-room, as the respondent well knew, he, the respondent, for the purpose of insulting and humiliating the said county attorney, suddenly and without previous notice, took up the criminal calendar and commenced the call of the criminal cases thereon, without in any manner notifying the said county attorney, and appointed another member of the bar, to-wit: J. M. Greenman to act as attorney for the prosecution of the criminal case or cases so called for trial.

III.

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

IV.

Heretofore, to-wit, at a term of said district court held at Austin, in said county of Mower, in the month of January A. D. 1876, a venire was issued to summon juries from a remote part of said county, and for the service and return of which at least two days were absolutely necessary, as he, the respondent, well knew. But notwithstanding such facts, because the said venire was not returned within a few hours after the issuance thereof, he, the respondent, angrily and in a public manner in open court, accused the sheriff of said county, and the officer entrusted with the service of such venire, with incompetency and neglect of duty, in not serving and returning such venire with proper speed, and he in substance and effect threatened to punish the said officer for not making such service, and returning such writ within a period of time in which it was impossible to do so, as he, the respondent well knew.

V.

Heretofore, to wit, on the 1st day of May, A. D. 1875, one C. L. West was duly appointed by the sheriff of Mower county, turnkey or jailor of the Mower county jail; and afterwards, and on the 1st day of June, A. D. 1875, the respondent, as judge of the District Court, in pursuance of the statute in such case provided, made and filed his order, fixing the compensation which the said West should receive as such turnkey or jailor.

In pursuance of the said appointment, and of the said order fixing the rate of compensation, the said West served as such turnkey or jailor from May 7th, A. D. 1874, until October 11th, A. D. 1875, as the respondent has always well known. Afterwards, to wit, on the 11th day of October, A. D. 1875, the respondent, for the purpose of injuring him, the said West, and also the then sheriff of said county, maliciously made and filed, as judge of the District Court, an order revoking his said former order fixing the rate of compensation to be paid to such turnkey or jailor, and falsely dated such order of revocation one week earlier than the true and real date on which the same was actually made and filed, in order to wrongfully deprive the said turnkey or jailor of compensation for the said period of one week, and whereby he, the said turnkey or jailor was deprived of compensation for his services during such period of time.

VI.

Some time prior to the March, 1876, term of the District Court for Mower county, one Richard Huntley had been indicted for crime by the grand jury of said county, and had been arrested and held to bail to answer the charges in such indictment

contained. The said Huntley failed to appear at said term of court, and his bail was thereupon declared forfeited. At the next general term of the said court, the same being holden in the month of September, 1876, a bench warrant for the arrest and production in court of the body of him, the said Huntley, was issued out of said court and placed in the hands of R. O. Hall, then sheriff of said county, for service.

Afterwards, in pursuance of such bench warrant, the said sheriff, both in person and by deputy, made due effort to arrest the said Huntley, but they were unable to find him him, as the respondent well knew. But, notwithstanding such facts, the respondent angrily and maliciously ordered the said sheriff to arrest him, the said Huntley, forthwith, and wrongfully and maliciously threatened as judge of said court, to punish him, the said Hall, in case he should fail to do so.

VII.

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

S. L CAMPBELL,
Chairman Board of Managers.

Mr. DAVIS. Mr. President, on behalf of the respondent we desire to submit to the paper just offered, the following protest and objection :

And now comes the defendant and objects and protests to the filing or consideration of the foregoing paper because it is in violation of his constitutional rights in the following particulars :

First. That it contains articles of impeachment which the House of Representatives have never considered or adopted.

Second. That the constitution confers upon the House the sole power of impeachment, and requires that power to be exercised by a vote of a majority of the members elected to that body.

Third. That the power of impeachment cannot be delegated to a board of managers.

Fourth. That the said paper is in the name of the House of Representatives, and that it was never considered or adopted by that body; that this respondent cannot be tried on any articles unless they have been served on him twenty days previously to his trial.

Fifth. Upon the special ground that the specification regarding auditor McIntyre was fully investigated by the House of Representatives, and that they determined that as to the act therein charged articles of impeachment should not be presented.

Sixth. That the second specification or any fact therein stated, was never presented to or considered by the House of Representatives.

Seventh. That the third specification and the facts therein stated have been considered by the House of Representatives and determined by it not to be impeachable.

Eighth. That the fourth specification or any fact therein stated was never presented to the House of Representatives or considered by it.

Ninth. That the fifth specification and the facts therein stated have been considered by the House, and by it determined not to be impeachable.

Tenth. That the sixth specification or any fact therein stated was never presented to or considered by the House of Representatives.

Eleventh. That the seventh specification is invalid and insufficient for the reasons heretofore advanced in respondent's demurrer to the seventh article.

Twelfth. That each of said articles are a departure from the tenth article.

All of which facts so far as they relate to the action of the House of Repsesentatives, this respondent is ready to verify from the journals of that body where they manifestly appear of record.

SHERMAN PAGE,
Respondent.

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

Mr. Manager CAMPBELL. I would ask if the Senate intends to act upon these objections at this time?

The PRESIDENT. I would inquire of the Senate what action they desire to take.

Senator EDGERTON. I would like, Mr. President, to ask counsel if they desire to argue the question, and if they wish time.

Mr. DAVIS. I wish to inquire if the learned managers intend to proceed immediately to the offer of any proof.

Mr. Manager CAMPBELL. None, except perhaps as may be incidental.

Mr. DAVIS. Well, I object.

Mr. Manager CAMPBELL. It is very possible that we may, but if the Senate desire that the counsel argue it we will pass that for the present in our testimony. For instance, I will state to you Governor, about what our testimony will be.

Mr. DAVIS. I don't care what it will be; but to be informed as to the general fact of whether you propose to proceed immediately to the offer of proof.

Mr. Manager CAMPBELL. Not upon this tenth article, except, perhaps, as it may be tendered incidentally. For instance, if there is a witness upon the stand that is testifying in regard to the charge of the judge as set forth in article six, we may desire him to tell the whole charge, and it may touch upon some of the specifications in article ten.

Mr. DAVIS. That would be a little departure from the rule which the counsel has adopted of exhausting the witness upon one article and then bringing him on when another came into consideration.

Mr. Manager CAMPBELL. In stating a charge it is almost impossible to give just what was said under article six and not touch upon other points.

Mr. DAVIS. I will say to the Senate, that we do not desire to strive any longer in argument with any conviction that the Senate may have finally entertained upon this subject. We have been heard with great patience and consideration; but now that these specifications are filed, some things present themselves much more clearly and pointedly than they have ever appeared before. The Senate will remember that in discussing the question of the power of the Senate to allow the managers to prefer additional articles, or to file specifications we stated that in so doing, those learned gentlemen would be compelled to do two things, or one of two things, viz., that they must either present to the consideration of this Senate as an impeachable offense something which the House, as appears by its journal, has already considered and declared that they would not impeach for; for which, I undertake to say without any offensive meaning, is a clear usurpation of power on the part of my learned friends. It is a direct contravention of their authority in that they assume, under their delegated powers, to impeach for that for which their principal has declared this respondent not to be impeachable. It is for the conscience of this Senate to determine whether it will look into the records of the House; whether it will ex-

amine the minutes of the stenographer who took the testimony before the committee in that body, to see whether or not a great and unprecedented outrage is not now attempted to be perpetrated.

The second alternative which we in our argument predicted would follow from the logical necessities of the situation in which the learned managers were placed, was this: That if they did not bring forward articles which the House had rejected, they would prefer articles which the House had never considered. And that again presents an instance of clear usurpation or clearly unwarranted assumption of power, because the constitution of this State provides that no officer shall be impeached except by a majority of votes of those elected to the House of Representatives. And if the House of Representatives has never considered some of the articles here in question, and has considered and rejected the others, of course our argument stands valid.

Now, let us recur to the tenth article, under which these specifications are subrogated. This article charges an habitual course of conduct on the part of the respondent. The object for which the learned managers were permitted to file a bill of particulars, or these specifications, is, to set up those instances of misconduct or nonfeasance which constitute that habit; and here again recurs the dilemma which I stated a few moments ago. If, to establish that habit and try the respondent therefor, they have brought in articles here which the House of Representatives have considered and decided not to be impeachable, it is not necessary for me to make any comment upon the situation in which my learned friends have placed themselves.

If to establish a habit and try the respondent therefor, they have presented a statement of facts which was never laid before the House of Representatives, or considered by it at all, then it is not necessary for me to emphasize by argument the position into which the learned Managers have forced themselves, and the respondent and this court. Now, gentlemen, here are these matters, and these consequences, fairly and pointedly before you. We appeal to the record of the House of Representatives, we ask this Senate to ascend to the sources of proof upon the facts which we have solemnly alleged here, by way of objection and protest against the consideration of these specifications by the Senate.

Mr. CLOUGH. Mr. President and gentlemen of the Senate; I will very briefly reply to the remarks of the learned counsel, and it strikes me at the outset that he is laboring under a very wrong impression, as to what these specifications are which have been filed here; as to what the object is of putting this bill of particulars upon the files of the Senate. Now the learned counsel remarks to the Senate upon what the House of Representatives has agreed to do, and to what it has not agreed to do. The House of Representatives has agreed in certainly a constitutional way to do this. [Reading.]

"Article ten, [reading.] Throughout the term of office of said Sherman Page, as Judge of the district court, in and for said county of Mower, to-wit: since on or about January first, 1873, he, the said Sherman Page, as such Judge, has habitually demeaned himself toward the officers of said court, and toward the other officers of said county of Mower, in a malicious, arbitrary and oppressive manner, and has habitually used the powers vested in him as such Judge, to annoy, insult and oppress such officers and all other persons, who have chanced to incur the displeasure of him, the said Page."

Now, whatever the House of Representatives may not have agreed to, they have agreed to impeach Judge Page for that conduct to which I have just alluded. For using the powers of his court habitually and enstomarily, to insult and oppress its officers; the House of Representives have impeached Judge Page at the bar of this court, in a lawful and constitutional manner for the perpetration of that customary course of conduct.

Now, has the House of Representaties, as to any of these articles, restricted its board of Managers as to what evidence it shall offer. Where, in the proceedings of the House of Representatives, has it attempted to say to its board of Managers, "Gentlemen, you may prove the allegations contained in these articles, the 10th like the rest of them by this kind of testimony, but you shan't prove it by any other kind of testimony."

Gentlemen, I fail to see anything in the proceedings of the House of Representatives that has restricted or instructed the Managers in any particular as to the evidence they shall offer upon the trial of this impeachment to establish any of these articles which are here charged? Now, I claim on behalf of these Managers the fullest and the widest liberty to introduce anything in evidence which will tend to make out the charges which the House of Representatives have prepared and which the Managers have presented here against the Honorable Sherman Page. One of the charges is that he has habitually demeaned himself in a particular way and I claim that the board of Managers is authorized to introduce any evidence before this body which will tend to make out that act.

Gentlemen, I made an argument upon the tenth article a few days ago; there are two kinds of evidence which we claim we are entitled to bring before this Senate, in respect to the tenth article. In the first place, I claim we have a right to prove this habitual course of conduct by asking the general question of those who know what that conduct has been.

Mr. DAVIS. Mr. Clough, will you allow me a moment.

Mr. CLOUGH. Yes sir.

Mr. DAVIS. Do you understand or do you not, that that proposition just alluded to by you was not distinctly overruled by the Senate. I understand it was distinctly overruled.

Mr. CLOUGH. I don't understand anything of the kind.

Mr. DAVIS. I don't controvert your statement.

Mr. CLOUGH. I don't understand anything of the kind; that is one claim we make; we claim we can prove this by the general allegation, and we claim further that we can prove this course of conduct by a sufficient number of specific acts from which the general course of conduct is to be inferred or made out. We say there are two ways of proving it, and such being the mode of proving it; if there is any act that is material to make out that change, the managers are wholly unaffected by anything that the House of Representatives has done or attempted to do to introduce that act in evidence.

In obedience to the response of the Senate, we have put upon the record here a statement of particular acts which we will introduce, not as distinct charges, but as matters of evidence to make out the charge contained in the tenth article which the House of Representatives has preferred here, and which this Board of Managers is prosecuting. None of the specific matters set out in that bill of particulars is a charge

in itself. We are not presenting any of those matters as charges in themselves; but in order to make out the charge, in order to introduce proof upon it, in order to establish it, we will offer in evidence these particular matters as evidence, not as charges. If it were necessary to do so, I might entirely and successfully, I think, deny the statement of the gentleman that the House of Representatives has declined to impeach Sherman Page for any of the matters which are contained in those specifications. I apprehend the gentleman is utterly mistaken upon that point; but if it were true that the House of Representatives had declined to make any of those matters the subject of a specific charge. This article does charge Sherman Page with this habitual course of misconduct, and the House has not instructed nor restricted its managers as to the manner in which they shall be proven. With these remarks, gentlemen, on the part of the managers, we submit the case to the Senate.

Mr. DAVIS. We submit the matter on our part.

The PRESIDENT. What order will the Senate take?

Senator GILFILLAN C. D. I would suggest, Mr. President, that we had better wait until the bill of particulars has been printed before we can consider them very intelligently.

Senator EDGERTON. If the objections were not sustained it will be rendered unnecessary for the respondent to subpœna a large number of witnesses.

On motion, the Senate went into secret session.

Mr. Armstrong offered the following:

Ordered, that the consideration of the bill of particulars and protest be posponed till the opening ot the afternoon session, on Friday, May 31st, at 2½ o'clock.

Which was not adopted.

Mr. Goodrich offered the following:

Resolved, That the objections of the respondent to the bill of particulars be overruled.

The roll being called, there yeas 25, and nays 12, as follows,

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Bailey, Clough, Donnelly, Doran, Edwards, Finseth. Gilfillan John B., Goodrich, Hall, Henry, Hersey, Lienau, Macdonald, McHench, Mealey, Morehouse, Morrson, Morton, Nelson, Remore, Rice, Shaleen and Swanstrom.

Those who voted in the negative were—

Messrs. Clement, Drew, Edgerton, Gilfillan C. D., Houlton, McClure, McNelly, Pillsbury, Smith, Waite, Waldron and Wheat.

So the resolution was adopted.

On motion the Senate took a recess until 2½ o'clock.

AFTERNOON SESSION.

On reassembling, the President announced that the court had overruled respondent's objections to the bill of particulars furnished by the managers.

Mr. Manager CAMPBELL. In regard to article five, we, as advised now, do not intend to introduce any evidence. Probably we shall not, but still we do not wish to be precluded from doing so, should we deem it necessary in the future to put in that particular testimony. If there is no objection, we would like to pass it in that way.

Mr. DAVIS. There is no objection, Mr. Campbell.

F. W. KIMBALL

being recalled on behalf of the prosecution, testified:

DIRECT EXAMINATION.

By Mr. Manager Campbell.

Q. Were you clerk of the court in Mower county?

A. Yes sir.

Q. Will you state to the court whether you have examined the records of your office of the report of the grand jury of the September term of 1876.

A. I have sir.

Q. State whether there is any report there with reference to the county treasurer's office?

A. There is not, sir

Q. Is the same true for the March term, 1877?

A. There is none that I can find.

Mr. DAVIS. Will the manager be kind enough to state the object of that inquiry?

Mr. CAMPBELL. The object is to let in new testimony as to the substance of the report.

Mr. LOSEY, to the witness. Q. When did you take your office?

A. On the first day of January, 1878.

Q. When did you make this search?

A. I made it at three different times. I made it within two weeks after I entered the office, somewhere between two weeks and a month, I am not sure as to the exact time? I can't state.

LAFAYETTE FRENCH RECALLED

On behalf of the prosecution, testified:

By Mr. CAMBPELL. Q. You have already stated that you were District Attorney of the county of Mower?

A. Yes sir.

Q. Were in 1876, September term of that court?

A. I was.

Q. Present in court during that term?

A. I was, yes sir.

Q. State if you heard the charge of the judge to the grand jury at that term?

A. I did.

Q. State what that charge was; especially in reference to the treasurer's office of that county, if anything was said?

A. The Judge stated in connection with other matters, that information had come to him that certain irregularities existed in the county treasurer's office, and he requested the grand jury to investigate the matter. That is about all that I remember of his saying on that particular subject at that time.

By Mr. LOSEY. When was this, Mr. French, at the September term, 1876?

By Mr. CAMPBELL. At the March term of '77. Were you then present?

A. I was.

Q. As District Attorney?

A. Yes sir.

Q. Did you hear the charge of the Judge to the grand jury?

A. I did.

Q. Will you state what he said to the grand jury as near as you can recollect in regard to the county treasurer's office, and any other officers of that county?

A. Judge Page charged the grand jury with reference to their powers and duties, &c., and read to them the statutes, I think, from sections 27 to 42, as he does at every session of the court. After he had completed that portion of his charge, he said to the grand jury, that information had come to him, of irregularities existing in the treasurer's office, or in the conduct of the county treasurer—that is he had been informed that the county treasurer had received a town order from the town treasurer, of the town of Clayton, that in his settlement with the town, that is, when the county treasurer came to settle with the town reasurer, that he refused to pay over all the moneys he had in his hands belonging to the town of Clayton, and demanded that the town treasurer of that town receive this town order, which the county treasurer held as so much money.

He called their attention to certain irregularities that he said existed as he had been informed, relative to certain town officers in that town. He also called the attention of the grand jury to the fact that the county auditor was in the habit of allowing the band to meet in his office and practice there. He stated to the grand jury that there were very valuable books and papers in that office, and that such conduct on the part of the officer was misconduct.

Q. State whether he said it was indictable conduct or not.

Mr. DAVIS. Mr. Campbell, we shall certainly object to that form of question.

The PRESIDENT. I understand the manager to withdraw that question.

Mr. DAVIS. Very well.

The witness [continuing.] I think Judge Page stated at that time, and read from the statute that it constituted misbehavior and misconduct in office, and that it was an indictable offense. He also read from

the statute which provides that if any person has in his office any moneys belonging to any state, city or town, or if the treasurer of any city, town, school district, and neglects refuses to pay over, &c. &c., that that constitutes embezzlement.

He also called the attention of the grand jury to another section, which provides that the persons named in that section, that is, the persons holding money, or the treasurers of any of these towns or school districts or counties, that they are to pay over the same money which they received, or which came into their hands, and that they could not set off any claim which they might have as against that money; that it was their duty to pay it over. He stated: "You will see, gentlemen, that it was the duty of the county treasurer, if the facts existed as I have stated," and he stated to the jury that he didn't claim to know anything about this, except as he was informed; that he did not know that this was so or not, but that he had been so informed, but that if they did so exist, that it was the duty of the county treasurer to have paid over that money; that he had no right to offset this order against the funds which he held in his hands. He stated to the jury that he desired them to investigate these matters fully and carefully, and then told them that they could retire in charge of the officer.

That was all I recollect of his argument at that time with reference to the matter.

Q. The grand jury of 1876; state whether they made any report in regard to the counnty treasurer's office.

A. They did.

Mr. Manager CAMPBELL. [To counsel for respondent.] You admit in your pleadings that the report is as he sets up?

Mr. DAVIS. Well, if we do there is no need to take up any time about it.

Mr. CAMPBELL. Do you admit that that is a copy of the report?

Mr. LOSEY. We will not admit that that is correct, but we don't think it is a copy of the original report.

Mr. CAMPBELL. [To the witness.] State what they did with the report when it came in; was it in writing?

A. It was; the report was filed with the clerk of the court.

Q. Did you see it after it was filed?

A. I did; yes sir.

Q. Will you examine that? [Handing the paper to the witness.] State whether in your opinion this paper shown to you is a copy of that report?

A. I should say it was.

Mr. Manager CAMPBELL. I wish to offer this in evidence; I only offer the latter part of it. Is there any objection to our offering it?

Mr. LOSEY. There is no objection to your offering it, but there is some objection to its being received.

Mr. CAMPBELL, to the witness. This jury found in this investigation nothing irregular or unauthorized or wrongdoing in any of the affairs of the county treasurer. Was not E. S. Cameron clerk of the grand jury?

Mr. DAVIS. Mr. Campbell will please let me look at that.

Mr. LOSEY, to the witness—
Q. Did you swear that that was a copy of the original?
A. In my judgment it is.
Q. Did you draw the original?
A. No sir, I did not.
Q. Did you ever compare the original with that?
A. I have not.
Q. Is that a copy of the whole original?
A. I think it is.
Q. The whole report that the grand jury made at that time?
A. With reference to what?
Q. With reference to any matter?

Mr. DAVIS, interposing. Is that a copy of the whole report, or is it a mere extract of the report of the grand jury?
A. That is all there is of it except it is entitled in this way—
Q. Will you answer my question?
(Question repeated.)
A. That is all the report.
Q. On any subject?
A. Yes sir.

Mr. DAVIS. We do not object now.

Mr. LOSEY (to Mr. Campbell.) You offer just the last part of it?

Mr. CAMPBELL. Just the last part of it.

Mr. CAMPBELL (to the witness.) State what reason you have for putting away a correct copy.

Mr. LOSEY. That we objected to, on the ground that it was cross-examination.

Mr. CAMPBELL. You have no objection of my contradicting my own witness, have you?

Mr. LOSEY. Yes sir.

Mr. CAMPBELL. I withdraw my question then.

Q. Going back to the grand jury of 1877—the March term—state what occurred, or state how soon after the grand jury retired did they return into the court again, to your recollection.
A. I do not recollect as to the order of the events that occurred there.
Q. Was anything said afterwards by Judge Page in reference to the treasurer's office, to the grand jury? if so, state what?
A. After the general charge to the grand jury, the next time this matter came up, to my knowledge, the grand jury came in and presented a paper to the Judge. I don't know what the contents was. I didn't see it.
Judge Page says to the jury, "No, gentlemen, the law is this: The county treasurer has no right to receive an order in payment for town taxes," or words to that effect; that he could receive a town order in payment of town taxes, or a county order in payment of county taxes, but

for nothing else. He then read the statutes. I don't know how it reads, touching that same matter, and also from the statute, which makes it embezzelment for the officer neglecting to pay over moneys of the county.

Q. Was that the second time?

A. That was the second time, yes sir.

Q. You are detailing now what took place the second time that he spoke to them about the county treasurer's office?

A. I am.

Q. Well, now state, go on?

A. The next time this matter came up I think that the grand jury handed another paper to Judge Page.

Q. In connection with that did he say anything about investigating again?

A. He did. At the second time he told them that he wanted them to investigate that matter fully and efficiently. He talked with them. I don't remember all he said; but he charged them with reference to their duties.

Mr. LOSEY. Which time was this?

A. That was the second time; but it was more particularly with reference to certain orders. I judged from his language that they asked his opinion with reference to the order, if it was legal for a county treasurer to receive orders in payment of taxes, etc. The next time this matter came up another paper was presented to the judge. He held the paper before him and said to the jury, he says "you have reported here that you find no irregularities sufficient in warranting you in finding an indictment. Now, I don't know what you mean by that, whether you mean there are no irregularities; or whether there are irregularities, but that they are not sufficient to warrant you in finding an indictment." He stated to the jury he wanted the facts presented and that that was simply a conclusion of theirs, and that he wanted them to go back and investigate the matter, and to report the facts fully and explicitly in the matter, and the grand jury went out.

Q. That was the third time they were charged upon this subject, was it?

A. I think it was the third.

Q. Now then, the next time?

A. The next time—it is not clear—I am not clear in my own mind whether they presented the last report at this time, but my impression is that they did, and Judge Page told to them that the facts found by them constituted an indictable offense, and he asked them to go back, and act upon that matter. At this time the judge stated to the jury that he would recommend that they proceed either by presentment, and if they could not find an indictment after they had proceeded by presentment, if they could not then find an indictment, that he desired the facts fully and explicitly. This conversation that I just narrated may have been at the time that they reported this conclusion, as he styled it; I am not positive in regard to that, but he told them at that time, the time that I mention now, that he would recommend that if they could not proceed by indictment, that they proceed by presentment, and if they could not find a presentment, to report to him the facts.

He said something more to the jury; I don't recollect all that he said. The next time this matter came up was when the grand jury was discharged. The grand jury came in and reported no further business, and

after a brief conversation, between Judge Page and myself with reference to some other matter, we took this report, a report that the grand jury had made in this Ingmundson matter.

Q. You say Ingmundson matter; who was Ingmundson?

A. He was the county treasurer.

Q. Then was he the county treasurer in September, 1876?

A. He was.

Q. Go on and detail.

A. He says, "Gentlemen, by your oaths I should think which you have taken"——

Mr. LOSEY, [interposing.] Which time was this, Mr. French?

A. This was the time the grand jury were discharged.

Q. The fifth time, was it?

[Witness continuing.] I don't know whether it was the fifth time, but it was the last time that the grand jury was discharged. He said that they had taken an oath to inquire into all public offenses within the county and to leave no man unpresented, through fear, favor or affection, that the facts found by them and reported to him constituted an indictable offense, and that, in not finding an indictment, that they had violated their oaths.

He then said, "Gentlemen, I cannot account for this. I do not see here why you have been so loth to investigate this matter. Here you have been in session nearly two weeks and you might have completed all the business you have transacted, within a week; and here you have been investigating this matter and putting it off," or something about that kind; that they hadn't taken hold of it and investigated it sufficiently and fully, in the comparatively short time that they ought to have done. He stated to them that it was a good thing that there was a higher power than grand juries; that a grand jury could not put themselves between criminals and the execution of the law. He then turned to myself and directed me—

Q. State whether he discharged the grand jury then, or not?

A. No sir, he did not; he says, I order the county attorney to make complaint before me and have Ingmundson arrested. He then turned to the clerk, and said, "Mr. Clerk, you enter that order of record." Then turning to the grand jury he says, "Gentlemen, you are discharged."

Q. You have stated in your testimony, that the grand jury made the report and handed it to the Judge; state whether you ever saw that report or not?

A. I did, yes sir, I had that report in my possession from Saturday afternoon until the next Tuesday morning following.

Q. What did you do with it?

A. I gave it to Judge Page, he requested me to.

Mr. CAMPBELL. We now desire to give notice to the other side, to produce it in court, if they have that report.

Mr. LOSEY. We have not got it. It was with the clerk of court, which was the last that was ever seen of it.

Mr. CAMPBELL to the witness. Mr. French, will you state the contents of that report to the best of your recollection?

A. If you will furnish me the original complaint which I drew against Mr. Ingmundson, I will give that report almost word for word.

In drawing my complaint, after consultation, I decided to adopt the language of the report in my complaint.

Now state while we are looking up that report—you have stated already the order to you, to make complaint and have Ingmundson arrested and brought before him. State what was done.

A. Monday morning when I came into court Judge Page asked me if I had made complaint against Mr. Ingmundson. I asked the judge what he intended by his order; whether he intended I should draw the complaint, or whether he intended that I should draw one and swear to it—make such a complaint as he could issue a warrant on. He said that he wanted such complaint as a warrant could be issued on. I told him I didn't know anything about the facts. He says, you have the facts in the report I gave you from the grand jury, which he did. He ordered the clerk to give me the report of the grand jury that Saturday afternoon they were discharged. That Monday night I drew the complaint, and the next Tuesday morning I presented it, as I told the judge I would have it ready by Tuesday morning. I told the judge when he handed the complaint to me that there was one matter I had left out. The judge asked me to put that in, and insert it, and I went back, and first attempted to interline it; then I told him I would draw a new complaint. Then I went back, and drew a new complaint, and that was inserted. I then presented it to Judge Page, and that is all.

Q. Did you swear to it?

A. I swore to it, to the best of my knowledge and belief.

Q. See if that complaint is there. [Handing document to witness.]

Witness [after examining paper.] That is the complaint.

Q. Go on, in detail. What further was done? You need not read the complaint now.

A. Judge Page told me that he would notify me.

Q. One moment. You said Judge Page told you to do something to the complaint. Can you tell what you added by his direction?

A. I think I can.

Q. Will you do so?

A. I will when I——

Mr. DAVIS. Let us have the paper offered now.

Mr. CAMPBELL. You need not state it now, then, if the counsel so prefers; I am not tenacious about it. Go on and detail the history of the case.

A. Judge Page said he would notify me when the examination came on. I was engaged in the case at that time before a referee, and it passed along for two or three days, I should judge, when I was notified by the sheriff that Ingmundson had been arrested and was before Judge Page. I appeared before the Judge to attend to the matter, and I told him that I didn't know what witnesses to subpœna, as I knew nothing about who the witnesses were that we could prove these facts by, as alleged in the complaint, and that I should have to have further time in which to subpœna the witnesses. Judge Page said it would be necessary to adjourn it; that he could not look after it then, but in the meantime he would give me the names of the witnesses. The matter was adjourned.

Q. For how long a time?

A. Well, for several days. I think the last adjournment was to the 18th of April, I think that was the day they had the examination. In

the meantime I asked the judge for the names of the witnesses, and he said he would see to that himself, so I paid no more attention to it until the day that Mr. Ingmundson was to have his examnation. On that day I appeared. Mr. D. B. Coleman, and Soren Haralson were there as witnesses for the prosecution, the judge informed me. I then talked with Mr. Coleman as to what he knew. I think Judge Page said that Mr. Coleman was the man to whom this order was given originally, and that he had been paid on that once; that the order had been paid, for it came into Mr. Ingmundson, hand, that he, Soren Haralson, was the town treasurer of the town of Clayton, and that he held this order. Mr. Ingmundson had it in his hands or in his possession; and that he also had his books there, I examined his books, and as soon as Judge Cameron came up we proceeded with the examination. I examined Mr.—

Q. Did Mr. Cameron appear for—

A. Mr. Cameron appeared for Ingmundson. I examined Coleman I think, as treasurer of the town of Clayton. This was in the afternoon the case was adjourned. Judge Page said he would take it under advisement until the next morning. The next morning about 9 o'clock I went up, and Judge Cameron was there, and Mr. Ingmundson and Judge Page asked Mr. Cameron if he had any remarks to make. The judge stated that he had a few, he would be very brief; and then stated to the judge that no one had been wronged in this matter, and that Mr. Ingmundson had acted in good faith, and that the way it looked to him was, that the only difference he could see was this fact, that Mr. Ingmundson had taken a receipt for the money which he paid the former county treasurer, instead of taking this order, which would be all right, that he simply took the order as a voucher or receipt, instead of the other; and that is about all that Mr. Ingmundson said.

Judge Page said he had given the matter his careful consideration and that he had examined it carefully, and that if the defendant had seen fit to have introduced any proof, perhaps he might have arrived at a different result. He didn't know as to that; he didn't know what his evidence was, or how he was going to explain this away, but he said this about it: if Ingmundson claimed that he took this order—that is, that he bought the order, then he was certainly guilty; if he claimed that he didn't buy the order, but that he simply took it and held it as an offset, as he claimed, against moneys which he held in his hands belonging to the town; he was equally guilty, so that either horn of the dilemma which he might take he was equally bad off." The judge argued it there eight or ten minutes, I should judge, and then something was said: Mr. Ingmundson asked Judge Page if he could ask him a question, and Judge Page told him he could. Mr. Ingmundson asked the question:

Q. What was the question?

A. The question was if the county funds—the Judge had made this remark, that he understood that there were grave and other offenses which the defendant had committed That he understood that he was in the habit, if a man came there with a town order and there was not any town funds, to pay it out of the county funds, and if a man came there with a county order, and there weren't any county funds, he paid it out of the town funds and so forth, and Ingmundson asked a question. He asked him if he could ask a question; he said he could. Ingmundson asked him with reference to a man presenting an order, and

there weren't any money there belonging to that particular fund—a county fund or a school district fund, what he should do; I think that was the question.

Judge Page also stated that he had been informed that the defendant had been talking about him and said that he had been informed *that* by a citizen of LeRoy; that he was down there, that he got excited, very much excited, and was talking very angrily about him—about Page, and so forth. I don't remember all that was said; at last he wound up by saying that he would fix the bail at one thousand dollars.

Q. Now, state what he said about the bail; about holding him to bail?

He said then that he would fix the bail at $1,000; that he didn't know but what the defendant would appear on his own account, but that the history of that county had been a sorry one in that particular; that several who seemed to be honest men had forfeited their bail. He says now there is Nelson Huntington, a man to look at him would think that he was an honest man, who had as honest a looking countenance as you could see, and he said that he was a defaulter; and there was that man Quam, the town treasurer of the town of Clayton, a man who you naturally would suppose that he was honest, still he was a defaulter and hadn't appeared, and he then said that he would fix the bail at $1,000; that the defendant would have no trouble in getting bail he apprehended.

Q. Was that all that took place?

A. That is all that I recollect now; there was considerable talk at that time.

Q. You say he stated to you that he would give you a list of witnesses, did he do so?

A. He did not.

Q. Who procured the attendance of witnesses?

A. I don't know, they were there; I never issued a subpœna for one, or never asked an officer.

Q. State if Judge Page ever said anything more to you about witnesses?

A. No sir, nothing at all; I got them and found the witnesses on hand.

Q. Do you recollect the language which Judge Page used to you about procuring those witnesses; saying that you should procure them, or if he should procure them?

A. He said that he would give me the names of the witnesses.

Q. Anything about procuring them?

A. No sir.

Q: Don't you recollect.

A. No sir, but after this I asked him for the names of those witnesses, and he said that he would see to them himself.

Q. That is what I am trying to get at, you might as well have told it at first?

A. The subpœnas are here; they will show for themselves.

Q. You stated that you could give us the substance of the report. [Handing paper to witness.]

Q. Is this the whole report of that case?

Mr. DAVIS. If it is certified, it speaks for itself; it is not necessary for him to examine it.

Mr. CAMPBELL. It is the original record; it is not certified.

The witness. I think that is the complete record, testimony and all.

Mr. LOSEY. Let us see it. [The document handed to the counsel for the respondent.]

Mr. CAMPBELL. I offer it in evidence.

Mr. CAMPBELL. (To the witness while examining the record.) I will ask you one question: State whether the testimony taken on this examination of Ingmundson was reduced to writing or not.

A. It was.

Q. State who took it down.

A. Judge Page, and read it over to each witness, and had him sign his name to it.

Q. Do you know where it is?

A. It is with the case, I think.

Mr. DAVIS. It appears to be here.

The WITNESS. I have seen it with the case, in the clerk's office.

Mr. DAVIS. We have no objection to this paper. We don't wish to consume the time of the Senate in calling for its reading, but we wish the reporter to be required to spread it upon the record.

The President directed, in order to save time, that the report in question be spread upon the record.

THE STATE OF MINNESOTA,

vs.

I. INGMUNDSON, *County Treasurer*

April 3d, 1877. Complaint made by Lafayette French, county attorney, filed and marked "A."

April 17, 1877. Warrant issued and placed in the hands of R. O. Hall, sheriff, by virtue of which he arrested and brought before me the above named defendant. Defendant waived the reading of the complaint.

With consent of defendant the examination is hereby adjourned until Wednesday, April 18th, A. D. 1877, at nine o'clock.

Wednesday, April 18, 1877, case called and defendant appears, G. M. Cameron attorney. Co. Attorney present.

The defendant states that he will waive an examination and does not desire to offer any testimony on the case.

The case was thereupon held open until Tuesday the 24th day of April, A. D. 1877, at 9 o'clock A. M., with the consent of defendant.

Wednesday, 24th, 1877, 9 o'clock A. M., defendant appeared and the witnesses for the State not being present, by and with the consent of defendant, the examination was postponed until 2 o'clock P. M. of said day. 2 P. M., defendant present.

EVIDENCE.

Soren Haralson sworn said: I am the treasurer of the town of Clayton in this county; succeeded Siver O Quamm; Quamm was treasurer of that town 18 months; he went out when I came in March 3rd, 1876; I received the books and papers of him as treasurer; I have the books, papers and orders belonging to my office as town treasurer, present with me.

Order No. 69 presented and witness said: I got this order of Mr. Inmundson,

defendant; I was here after the money; I got a warrant from the auditor for the amount of money then in the treasury belonging to my town; the amount was $509.34; I presented this warrant to defendant as treasurer in his office at the court house in Austin: I asked him for the money; he said I could have the money if I took that order; he received it as money, and would pass it as money again on the town; I told him Powers said he would like to let that order run until the June apportionmen; the said I should take that order or I could not have the money; if I took the order I could have the money; he took that order and went with me to Cameron's and asked him, and he said it was all right for me to take it; so I took the order, and he gave me the balance in money, except some small orders which he claimed to have taken for taxes; the total amount of orders was $165.65, including this order, $114.52. Ingmundson did not claim to have taken this order for taxes; he said he got the order from Siver O. Quamm, as money; he did not say about the other orders.

The order offered—No. 69, dated August 5th, 1875, payable to D. B. Coleman, or bearer—one hundred and fourteen and 52 100 dollars.

Signed, W. F. MATHEWS,
Chairman Board of Supervisors.

Directed to the treasurer of the town of Clayton, Mower county, State of Minnesota.

Countersigned, JOHN O. WOLD,
Town Clerk.

Across face—Received April 3rd, 1876. L. Haralson. This was written after I got home after receiving the money.

SOREN HARALSON.

D. B. Coleman sworn, said: I live in the town of Clayton, this county. Order above described in the testimony of last witness, presented to witness and he stated that it was issued to him by the town board of Clayton for town labor. I received payment of it from the town treasurer Siver O. Quamm; he was town treasurer at that time; he paid $20.00 at one time, and the balance about August 17th, 1875, and I then surrendered the order to Siver O. Quamm; I next saw the order in April 1876; It was in the hands of the county treasurer, defendant; next time I saw it I had a conversation with him in the auditor's office; Ingmundson asked me how he came by that order· he brought the order in and presented it to me and asked how he came by it; I answered that I thought it would be a more fitting question for me to ask him; I remarked further that il should be the hands of the town treasurer of the town of Clayton; I said to him that the town treasurer had paid me for the order; he said then that he remembered all about how he came by the order, and stated that he got the order of Siver O. Quamm the fore part of October, 1875, as I recollect, and that he had paid for the order at two different times; had drawn checks on bank of Le Roy at different times showing dates of checks; he said if I had brought the order I could not have got the money; I said I did not see how he could get the order of the town treasurer without it first having been paid; he claimed he had a right to take town orders of any town treasurer; he and I could not see the matter alike; had considerable talk; the order was paid by Quamm as town treasurer; I received Ingmundson's check in part payment of the order; the check was one hundred dollars.

Cross-examined by Cameron. When I first presented the order, Quamm said he did not keep all the town money by him; that he kept most of the town funds at Austin, and would have to go to Austin before he could pay the order in full. He said he would pay what money he had: he gave me $20.00 and I gave him a receipt for it; he said the town funds were at Austin; in about ten days he brought me the check from Ingmundson, defendant, for $100.00. This overpaid me, and I paid him the balance back; I got the money as stated and delivered up the order at the time I got the $100.00 check; Quamm said he took the check as an accommodation to defendant; I remember particularly delivering up the order; the check was signed by defendant as treasurer as I recollect; I was present when the town treasurer went to settle with Quamm, and told him there was an order he had probably forgotton to enter, if he thought it would make the claim $100 less; he then admitted he let Ingmundson have the order; there were many things he had fogotton; he had not charged it up; the order and amount were then charged against the town treasurer by order of the town board.

Clayton is one of the organized towns of this county; Quamm was town treasurer of the town of Clayton at all the times above specified, and this settlement or attempted settlement was before his successor was qualified as treasurer; the order was not then there.

D. B. COLEMAN.

After considering the evidence, and the fact that defendant waived an examination, and after hearing counsel for defendant, and being of opinion that an offense has been committed, has ordered that defendant be held for his appearance at the next general term of the district court of said county, and the bail is hereby fixed at one thousand dollars.

SHERMAN PAGE,
District Judge.

State of Minnesota, County of Mower.—ss

I hereby certify that the within and foregoing is the testimony, and all the testimony taken on examination of the case of the State *vs.* I Ingmundson; that the testimony of the witnesses was read to each severally, and by each subscribed after having been so read. I further certify that the papers hereto attached, marked exhibits "A," "B" and "C" are the complaint, warrant and bond filed in said case.

SHERMAN PAGE,
District Judge.

Bond received and approved and filed.

SHERMAN PAGE,
Judge District Court.

EXHIBIT "A."

State of Minnesota, County of Mower.—ss.

To Sherman Page, judge of the district court in and for the county of Mower and State of Minnesota:

Lafayette French makes complaint, and being duly examined, on oath says, that I. Ingmundson did on the 30th day of December, A. D. 1875, in said county of Mower, being then and there county treasurer of said county of Mower, duly qualified and acting as such, did then and there take and receive of the town treasurer of the town of Clayton, a town duly organized under the laws of the State, and one of the towns of said county, a certain town order for the payment of the sum of one hundred fourteen dollars and fifty-two cents, payable to a person unknown to this affiant; that the said I. Ingmundson did then and there pay the said treasurer of said town of Clayton the sum of one hundred dollars and fifty-two cents for and upon said order, out of the funds belonging to said town of Clayton then and there in his possession and control by virtue of his said office; that the said order had previously been paid by the treasurer of said town; that the said I. Ingmundson afterwards and in his settlement with said town, held the said order as a voucher and receipt for moneys paid out by him for and belonging to said town, and then and there demanded of the said town that they take and receive said order as a receipt and voucher for the amount named therein, as having been paid by him, the said Ingmundson, for and on behalf of said town, and then and there refused to pay said town the sum of one hundred fourteen dollars and fifty-two cents of the funds and moneys belonging to said town, by reason of holding said order as aforesaid, whereby the said town was compelled to pay and did pay the sum named in said order twice.

That on the 20th day of March, A. D., 1877, the said I. Ingmundson being then and there county treasurer of said county, as aforesaid, did receive by his deputy from a resident and tax payer (whose name is unknown to this affiant), a certain town order, issued by said town of Marshall, a town duly organized, and being one of the towns of said county, for the payment of the sum of fifty dollars, and then and there paying therefor the sum of forty dollars in money, and giving to such person a tax receipt covering his said taxes, to the amount of ten dollars. That the said I. Ingmundson did, at the same time and place, receive of another resident and tax payer of said town of Marshall, a certain town order, issued by said town of Marshall, for the payment of the sum of fifty-two dollars, and then and there giving to said person holding said order, a tax receipt therefor, on general taxes on real estate, a

portion of which was delinquent to the extent of said order, and in payment of said tax. Contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State of Minnesota, and prays that the said I. Ingmundson may be arrested and dealt with according to law.

LAFAYETTE FRENCH.

Subscribed and sworn to before me this 3d day of April, A. D., 1877.

SHERMAN PAGE,
Judge District Court.

Endorsed on back—

State of Minnesota, County of Mower. State of Minnesota, against I. Ingmundson. Complaint. Filed April 3d, 1877.

EXHIBIT "B."

State of Minnesota, County of Mower—ss.

The State of Minnesota, to any Sheriff in the State of Minnesota:

WHEREAS, Lafayette French has this day complained in writing to me, on oath, that I. Ingmundson did, on the 30th day of December, A. D., 1875, in said county of Mower, being then and there county treasurer of said county of Mower, duly qualified and acting as such, did then and there take and receive of the town treasurer of the town of Clayton, a town duly organized under the laws of this State, and one of the towns of said county, a certain town order for the payment of the sum of one hundred and fourteen dollars and fifty-two cents, payable to a person unknown to this affiant. That the said I. Ingmundson did then and there pay the said treasurer of said town of Clayton, the sum of one hundred dollars and fifty-two cents, for and upon said order, out of the funds belonging to said town of Clayton then and there in his possession and control, by virtue of his said office. That the said order had previously been paid by the treasurer of said town. That the said I. Ingmundson afterwards, and in his settlement with said town, held the said order as a voucher and receipt for moneys paid out by him for and belonging to said town, and then and there demanded of the said town that they take and receive said order as a receipt and voucher for the amount named therein, as having been paid by him, the said Ingmundson, for and on behalf of said town, and then and there refused to pay said town the sum of one hundred and fourteen dollars and fifty-two cents, of the funds and moneys belonging to said town, by reason of holding said order as aforesaid, whereby the said town was compelled to pay, and did pay, the sum named in said order, twice.

That on the 20th day of March, A. D., 1877, the said I. Ingmundson, being then and there county treasurer of said county as aforesaid, did receive by his deputy, from a resident and tax payer (whose name is unknown to this affiant), a certain town order, issued by said town of Marshall, a town duly organized and being one of the towns of said county, for the payment of the sum of fifty dollars, and then and there paying therefor the sum of forty dollars in money, and giving to such person a tax receipt covering his said taxes, to the amount of ten dollars. That the said I. Ingmundson did, at the same time and place, receive of another resident and tax payer of said town of Marshall, a certain town order, issued by said town of Marshall, for the payment of the sum of fifty-two dollars, and then and there giving to said person holding said order, a tax receipt therefor, on general taxes on real estate, a portion of which was delinquent to the extent of said order and in payment of said tax, contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State of Minnesota.

And prayed that the said I. Ingmundson might be arrested and dealt with according to law; Now, therefore, you are commanded forthwith to apprehend the said I. Ingmundson, and bring him before me to be dealt with according to law.

Witness my hand this seventeenth day of April, A. D., 1877.

SHERMAN PAGE,
Judge District Court, 10th Dist., Minn.

State of Minnesota, County of Mower—ss.

By virtue of the within writ I did, on the 17th day of April, A. D., 1877, at the city of Austin, in said county, arrest the within named I. Ingmundson, and have him in custody before the court.

R. O. HALL,
Sheriff.

April 17th, 1877.
Endorsed on back—The State vs. I. Ingmundson. Warrant.

EXHIBIT "C."

Know all men by these presents, that we, I. Ingmundson as principal, and Seymour Johnson and J. H. Mansfield, of the county of Mower, and State of Minnesota, as sureties, are held and firmly bound unto the State of Minnesota, in the penal sum of one thousand dollars, lawful money of the United States, which sum well and truly to be paid we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this 25th day of April, 1877.

The conditions of this obligation are, that whereas, the above bounden, I. Ingmundson, as county treasurer of Mower county, Minn., has been charged with misconduct in office, before Hon. Sherman Page, judge of the district court, in and for the 10th judicial district of Minnesota, and held by said judge, in the sum of one thousand dollars, for his appearance at the next general term of said court, to be held in Austin, in the county of Mower, Minn., in the month of September next, to answer to such charge. Nevertheless, if the said I. Ingmundson shall appear at the said next general term of said court, to be held in said county as aforesaid, to answer to said charge, and shall abide the order of the court therein, and not depart from said court till the same shall be determined, then this obligation to be void, otherwise to be and remain of force and effect.

I. INGMUNDSON, [Seal.]
J. H. MANSFIELD, [Seal.]
SEYMOUR JOHNSON, [Seal.]

In presence of

G. M. CAMERON,
H. J. SMITH.

State of Minnesota, County of Mower—ss.

On this 25th day of April, 1877, personally appeared before me, I. Ingmundson, Seymour Johnson and J. H. Mansfield, to me well known, and acknowledged the above bond, by them signed, to be their voluntary act.

G. M. CAMERON,
Notary Public.

State of Minnesota, County of Mower—ss.

Seymour Johnson and J. H. Mansfield being duly sworn, says, each for himself, that he is a resident free holder, of the county of Mower, and worth the sum of two thousand dollars over and above all debts and liabilities, and exclusive of all homestead exemptions.

J. H. MANSFIELD,
SEYMOUR JOHNSON.

Subscribed and sworn to before me this 25th day of April, 1877.

G. M. CAMERON,
Notary Public.

State of Minnesota, County of Mower—ss.—District Court, Tenth Judicial District.

To D. B. Coleman, Severt O. Quamm, and S. Haralson—Greeting.

In the name of the State of Minnesota: You are hereby commanded, that laying

aside all and singular your business and excuses, you be and appear before the Judge of the District Court, for the Tenth Judicial District, and county of Mower, at the court house, at the city of Austin in said county, on the 18th day of September, A. D., 1877, at 2 o'clock in the afternoon, then and there to give evidence in a cause to be tried between the State of Minnesota, plaintiff, and I. Ingmundson, defendant, on the part of the State. Hereof fail not, on pain of the penalty that will fall thereon.

Witness, the

HON. SHERMAN PAGE,

Judge of the District Court aforesaid, at Austin, Mower county, Minn., this 21st day of August, A. D., 1877.

F. A. ELDER,
Clerk.

State of Minnesota, County of Mower—ss.

I hereby certify that I have made diligent search and am unable to find the within named Severt Quamm within said Mower county.

R. O. HALL,
Sheriff.

Sept. 13th, 1877.

State of Minnesota, County of Mower—ss.—District Court, Tenth Judicial District.

To Soren Haralson, D. B. Coleman and Severt O Quamm—Greeting:

In the name of the State of Minnesota: You are hereby commanded, and said Haralson, to bring his records as town treasurer of town of Clayton, and a certain order given to D. B. Coleman, that laying aside all and singular your business and excuses, you be and appear before the Judge of the District Court, for the Tenth Judicial District, and county of Mower, at the court house, at the city of Austin in said county, on the 20th day of March, A. D., 1878, at 2 o'clock in the afternoon, then and there to give evidence in a cause to be tried between the State of Minnesota, plaintiff, and I. Ingmundson, defendant, on the part of the State. Hereof fai not, on pain of the penalty that will fall thereon.

Austin, Mower county, Minnesota, this 7th day of March, A. D., 1878.

LAFAYETTE FRENCH,
County Attorney.

State of Minnesota, County of Mower,—ss.

I hereby certify, that after diligent search and inquiry, I have been unable to find the within named Severt O. Quamm within said Mower county.

R. O. HALL,
Sheriff.

March 15th, 1878.

Mr. CAMPBELL. I shall ask him to read the complaint only. I wish you to read the entire complaint, and then give us the report of the grand jury.

The witness here read the complaint. (Exhibit "A.")

The witness. The indorsement—

Mr. CAMPBELL. Never mind about the indorsements. You need not read them. They are before the Senate.

Q. State now what part was now put in there by order of Judge Page when you got it back—that part of it that Judge Page caused you to enter?

The witness, reading, "We find that the county treasurer"—

The PRESIDENT. I don't think the witness understands the question.

Q. State what part of that Judge Page caused you to put in after the complaint was made?

Witness reading: "And then and there demand of the said town, that they take as a receipt and voucher for the amount named therein, as having been paid by him, the said Ingmundson, for and behalf of said

town, and then there refused to pay said town the sum of $114.52 of the funds and moneys belonging to said town by reason of holding said order as aforesaid."

Mr. DAVIS. Mr. French, please mark that with a pencil.

Mr. CAMPBELL. Was any part of that—

The witness. I am not positive that it covers all of that; I know that some portion of that; my best impression—my best recollection is, that that is the portion he asked me to insert. Still I wouldn't be positive of that.

Q. Was any part of that in the report of the grand jury that was added by Judge Page—what Judge Page ordered you to add—was that any part of the report. Was it in the report of the grand jury?

A. No sir, that portion that he asked me to add was not in the report of the grand jury.

Q. Now give us the report of the grand jury, as near as you can.

A. "We find that the county treasurer on the 30th day of December, 1875, received of the town treasurer of the town of Clayton, a certain town order for the payment of the sum of one hundred fourteen dollars and fifty-two cents; that the county treasurer paid to the town treasurer of the said town of Clayton the sum of $114.52, for said order, out of the funds belonging to the said town of Clayton, then in his possession, and under his control. We find that said order had been paid to the treasurer—had previously been paid by the treasurer of said town, and aftewards when he come to settle with the town, the county treasurer held this order as a receipt for moneys paid out by him belonging to the town."

Now some portion that I have stated here was not in there—I think *was* in, I think that report run on——

Q. You are to detail the report from your recollection refreshed from the minutes that you have?

A. I think that this was in.

Mr. CLOUGH. Just repeat that last sentence that you think was in.

The Witness. "Belonging to the town, and then demanding of the town that they take said order as receipt for the amount named therein, as having been payed by him," I think that was in.

Now this clause:

"Paid by him on behalf of said town," but this portion, "and then and refused to pay said town the sum of $114.52, of the funds and moneys belonging," I don't think was in.

Mr. CAMPBELL. What was not in you not say anything about, because the report——

(WITNESS interrupting and reading.) "That the town was compelled to pay the sum named in the order twice." "We also find that in February, 1876," I think that was the date; this here "the 20th day of March, 1877, I alleged it the day before. "We also find that in February, 1876, the county treasurer by his deputy received from a resident and taxpayer, a certain town order issued by the town of Marshall, for the payment of the sum of $50.00, and paying therefore the sum of forty dollars in money, and giving to such person a tax receipt, covering his said taxes to the amount of ten dollars. That also the said county

treasurer, at the same time and place, received of another resident and tax-payer, of the town of Marshall, a certain town order, for the payment of the sum of fifty-two dollars, and then their giving to the said person holding the order, a tax receipt therefor on general taxes on real estate, a portion of which was delinquent, to the extent of said order, and in payment of said tax." That is the report. There may be some portions of this that I have omitted that was in, but this phase—the last phase here, "Then and there refused to pay the said town the sum of $114.52, of the funds and moneys belonging to the said town, by reason of holding said order as aforesaid." I don't think that was in the report; still I would not swear positively as to that.

Manager CAMPBELL here directed the stenographer to read over to the witness the latter part of his testimony, touching his description of the finding of the grand jury; which was accordingly done.

Q. Have you any correction to make?

A. I think of none now.

Q. Who drew the report of the grand jury, if you know?

A. I should judge that it was in the handwriting—in this matter, I should judge it was in the handwriting of Andrew Knox, foreman of the grand jury.

Q, If you know, state how many times Judge Page charged that grand jury, the September term—at the March term, 1877—how many times did he charge them to inquire as to irregularities in the office of the treasurer?

A. The subject of the county treasurer's office?

Mr. LOSEY. We object to the witness answering in that way; he is asked a direct question, and can answer it with a given number—

Mr. CAMBPELL. I asked him if he knew how many times, if so, state.

The WITNESS. That word charge—

Q. Call their attention to it?

A. Four or five times.

Q. At the time they came in and were discharged, what was his manner towards the grand jury?

A. I think Judge Page was considerably excited.

CROSS EXAMINATION BY MR LOSEY.

Q. Were there any lawyers upon that grand jury?

A. None that I know of.

Q. Were you attending the grand jury as the attorney of the county

A. I was

Q. How much of the time did you remain in attendance?

A. I was simply in before them; not a day, I only examined a witness in one case.

Q. Will you swear you were in there every hour of the day while they were in session, each day?

A. No sir.

Q. Were you in there every half day that they were in session?

A. I should think not.

Q. Then you mean to say you were in there only when they sent for you?

A. I do, sometimes I went in there to present some witness to them.
Q. What case did you examine the witness in, for the grand jury at this session?
A. It was a matter against Mr. Warner.
Q. Did the jury frequently come into court during the session?
A. They did.
Q. Each time they came in were they charged by Judge Page in relation to the Ingmundson matter?
A. Every time the grand jury came in?
Q. Yes sir.
A. I think not; no sir.
Q. How many times did they come in during that session?
A. A number of times.
Q. How many times?
A. I could not state.
Q. More than five?
A, Yes sir.
Q. More than six?
A. Yes sir.
Q. More than eight?
A. I should think so.
Q. More than nine?
A. I should think so.
Q. How many times?
A. I should think twelve or fifteen times.
Q. Who was clerk of the court during that time?
A. Mr. F. A. Elder.
Q. Where is he; is he here?
A. I don't know.

Mr. CLOUGH. Mr. Losey, there is a copy of the times the grand jury came in here, a certified copy with the clerk, Mr. Johnson here.

Mr. LOSEY [to Mr. Kimball.] Will you get it from the clerk, Mr. Kimball?
Q. Were you before the grand jury at any time while the Ingmundson matter was being discussed?
A. I was not.
Q. Was you before the grand jury when any witnesses were being sworn in the Ingmundson matter.
A. No sir.
Q. Did you know that they had that matter under consideration?
A. Except from what I heard, no sir.
Q. Did any of the jurors say to you that they had consultation?
A. I think they did.
Q. Did any of them speak to you concerning it?
A. No s r, I don't think they did.
Q. You say that when that matter came up before Judge Page that he told you he would have the witnesses there in court?
A. Which time?
Q. The last time, or the first time before the last?
A. Yes sir, I think they did.
Q. And he told you he would have the witnesses?
A. I think he did.
Q. When you told him that you subpœnaed witnesses then?

A. I don't know as to that; the records were present.
Q. Or rather that you put the names of the witnesses in the subpœnas.
A. Well that may be.
Q. Do you think that is consistent, you have already given in this matter?
A. I think it is, sir.
Q. You state you subpœnaed no witnesses?
A. Yes sir.
Q. And caused none to be subpœnaed?
A. I made that statement.
Q. Now tell me how you came to fill the subpœnas out?
A. Well, I told you, these are subpoenas for those same parties to appear before the grand jury.
Q. How came they to be in that record, and tell me how you came to swear that those were to appear before the grand jury, and didn't appear?
A. That is at the terms of court since that time, it is since the March term of court, 1877.

Mr. CAMPBELL. We object.

The Witness. I can explain it.

Mr. LOSEY. Now explain it.
A. Those subpœnas were for witnesses to appear before the grand jury, for Ingmundson was bound over to the September term of 1877; the next term to the March term 1877, after Ingmundson was bound over. The next subpœnas is for witnesses to appear before the grand jury of the March term of the court, 1878.
Q. No subpœnas there to appear before Judge Page on that examination?
A. I don't know; those two subpœnas are not there.
Q. Well, see, look at the record? Here is one subpœna to D. B. Coleman, Severt O. Quam, S. Haraldson, "You are hereby commanded that laying aside all and singular your business and excuses, you be and appear before the judge of a district court, for the Tenth Judicial district, and county of Mower, at the court house, at the city of Austin in said county, on the 10th day of September, A. D. 1877, at 2 o'clock in the afternoon, then and there to give evidence in a cause to be tried, between the State of Minnesota, plaintiff, and I. Ingmundson, defendant." And here is another one to Soren Haralson, D. B. Coleman and Severt O. Quam. How is it about that?
A. I didn't notice those two subpœnas there in the back, I just glanced over the records.
Q. Is there any other subpœna there?
A. There may be.
Q. Look, and see.
A. I don't find another subpœnae.
Q. Then you were mistaken when you swore with regard to the record and the papers in the case, at the term in which Ingmundson was brought before Judge Page.
A. I said I didn't see, I didnt know that these subpœnas were attached, I didn't look only at the evidence, the complaint and warrant, and the notice kept by Judge Page.

Q. Was the examination waived?
A. It was, yes sir.
Q. What did the court state when the examination was waived.
A. The court stated to Mr. Ingmundson that it was his desire that he introduce evidence to clear up this matter, to clear up the charge.
Q. What did Ingmundson say?
A. Indmundson said that he preferred through his counsel—Ingmundson didn't say anything, but his counsel said he preferred to waive an examination.
Q. What further did the court say?
A. The court there stated that he desired to have that matter investigated, and that for that purpose he should have witnesses snbpœnaed, and have matters investigated for his own satisfaction.
Q. To ascertain what amount to fix the bail at, or to find out what the facts were?
A. To find out what the facts were, as I inferred.
Q. This was a matter that created considerable notice down there, did it not?
Q. It did sir, a great deal.
Q. But you didn't hear that, while it was before the grand jury?
A. O! I knew that the matter was before the grand jury.
Q. But you was county attorney, didn't deem it of sufficient importance to appear before the grand jury in the matter?
A. Yes sir, I did.
Q. Did you appear before the grand jury.
A. I did not, but I told you I didn't appear to examine a witness in any case but one, I was very busy and the foreman examined the witnesses for me.
Q. Was it not a matter of common talk who the witnesses were before the grand jury?
A. No sir, I don't remember the matter being mentioned before the grand jury.
Q. Didn't you know that Mrs. Coleman's name was on the order?
A. I did not, or I would have inserted it in the complaint.
A. How did you swear that the court called the attention of the grand jury, to the receipt of this Coleman order by the treasurer?
A. What I meant by that was a particular order.
Q. You didn't mean to mention Coleman's name?
A. No.
Q. If you had mentioned Mr. Coleman's name then in your statement, as to what Judge Page stated, you stand corrected?
A. I do sir, because I don't think I mentioned it.
Q. Ingmundson was quite a friend of yours, was he not?
A. No sir, we were rather hostile at that time.
Q. Did you know or hear of Judge Page calling the attention of the grand jury to the fact that Ingmundson or another person whose case they might be investigating must not be permitted to appear before them in his own case to testify?
A. That is partly true and partly not true.
Q. Tell me what parts are true.
A. Judge Page in his charge to the grand jury stated to them that in cases where they thought the matter could be explained away, that it was allowable for them to call witnesses to hear evidence on the defense, but in no case should they allow the defendant himself to appear before

the grand jury, because in a decision of the supreme court it would be fatal to any indictment which they might find against the defendant.

Q. That in no case should they allow the defendant to appear before them?

A. Yes sir.

Q. Didn't you know that Ingmundson had appeared before the grand jury on two occasions?

A. No sir.

Q. It was not brought to your attention?

A. I never knew of it till some time afterward.

Q. Not at the time?

A. No sir

Q. No one of the grand jury came to you to talk about it?

A. No one of the grand jury passed a word with me.

Q. Do you know how Ingmundson got into that jury room?

A. I do not, except from what he says.

Q. From what he says?

A. Yes sir.

Q. You stated the grand jury were in court several times; when were the grand jury empannelled on that day; look at that record.

A. On the 19th day of March, 1878—I think 1877.

Q. Look at the record, refresh your memory, and state when they first appeared in court after that; it appears right along there, you don't want to turn over.

A. I want to see in whose hand writing it is.

Mr. DAVIS. It ain't material in whose hand-writing it is—it is a certified copy of the record. [Laughter.] You will find there the "first day March 20th, 1877."

Mr. LOSEY (to Mr. Kimball.) That is simply a complaint recording the doings of the grand jury—nothing more.

Mr. KIMBALL. That is all.

The WITNESS. You want me to state from my recollection?

Q. From the record.

A. As they are kept down there in Austin. I cannot tell you anything about it.

Q. Did you ever keep them ?

A. No sir, but I have examined them.

Mr. CAMPBELL. If he is attempting to prove the record here; the record I suggest is the best evidence.

Mr. LOSEY. I want to contradict the witness by the record.

Q. Is it the first entry there March 20th, 1877.

A. I think it is, yes sir.

Q. Did Judge Page charge the jury at that time, in relation to the Ingmundson matter?

A. I don't know, sir

Q. Will you swear he did?

A. I wont.

Q. Will you swear he did not?

A. I will not; but it is my best recollection.

Q. The next entry is ———

Mr. CAMPBELL. Have you offered the record in evidence?

Mr. DAVIS. We concluded to have you furnish us that paper to save time.

Mr. CAMPBELL. If you wish to offer that paper in evidence, we wish to look at it.

Mr. LOSEY. I think it will come in evidence.

Q. Is there any entry in that record of any charge to the grand jury after the first charge, until reaching the entry made on the 8th day of the term?

Mr. CAMPBELL. The objection is that if he wishes to prove that there is an entry, that he must produce the record to show whether it is there or not.

Mr. LOSEY. The witness has testified to what occurred on these different times. I want him to look at the record to refresh his memory and see if he made a mistake.

The PRESIDENT. I think it is proper to offer the record in evidence. I will rule that that is not the proper course to take.

Mr. LOSEY. You can lay the record down, Mr. French.

Q. Didn't the jury appear on the 8th day of the term in court?

A. I think quite likely they did.

Q. Did they on that day ask the court to instruct them in relation to certain matters pertaining to the construction of section 105, chapter 13, of the statutes at large?

A. If you will tell me what that refers to.

Q. I have not the statute here. You may look and see.

Mr. Davis here handed witness Bissell's Statutes at Large.

A. They did, or rather, on that day; on the 9th or tenth, I cannot state.

Q. Was that the first time they had been in and asked instructions?

A. It was with reference to that matter.

Q. Were they in again asking for instructions in reference to that matter before the term closed?

A. Yes. I don't think they asked for instructions; I know they got instructions.

Q. You don't know whether they asked for instructions or not?

A. I know they got it.

Q. Did they come and make a presentment at the time these instructions were given?

A. Make a presentment?

A. Yes, the presentment and indictment or anything of that kind.

Q. I don't recollect whether they presented an indictment or not, I think they did.

Q. How many days did they stay in session?

A. Eleven days, I think; they were empannelled on Tuesday and were discharged the Saturday the week following.

Q. Did you examine the facts in relation to this case, that was brought before the grand jury, this case of Ingmundson, did you examamine the facts?

A. At what time?

Q. Any time previous to the examination before Judge Page.

A. Examine the facts?
Q. Yes sir.
A. No sir.
Q. You took no interest in the case?
A. Why I did the same interest as I had in every criminal case, but I took no part in it.
Q. No greater in this than you had in every criminal case in that county?
A. I say I took the same interest as I ever did, I only examined one witness in one case.
Q. You did'nt take enough interest to try and ascertain what the facts were in relation to it?
Yes sir, in all other cases before the grand jury, the foreman examined the witnesses himself; I was busy in court.
Q. When the grand jury were considering this matter and appeared in court, and asked for instructions, you didn't consider it your duty to take any part in this matter?
A. Yes sir.
Q. But you didn't take any part?
A. Yes sir, I did.
Q. Now tell me what part you had taken or did take?
A. I now remember of the grand jury calling me before them and asking me if Mr. Ingmundson had any right to take a town order in payment of general taxes.
Q. What did you tell them?
A. I told them that he did not.

Mr. CAMPBELL. I object.

Mr. LOSEY. Any other questions asked you?
A. No other question asked that I recollect of.

Mr. CAMPBELL. I wish the witness would not answer so promptly when an objection is made.
The Witness. I will be more careful.

By Mr. LOSEY. What was it you stated the judge told the jury on his charge in relation to their taking either horn of a dilemma?
A. I didn't say anything to them about that; that was to judge Cameron and myself and Mr. Ingmundson the morning he was bound over.
Q. After the judge had decided to bind him over?
A. No sir.
Q. Was that part of his charge?
A. That was part of his argument or reason why he should bind him over.
Q. He gave it as his reason then and there for binding him over?
A. I understand that he stated this in reply to Judge Cameron's argument.
Q. Answer my question. Can you state what he said on that morning?
A. The substance of it?
Q. Do you pretend to give us exact language at this time?
A. No sir; not in every respect.
Q. Do you pretend to give us exact language in the general charge that is given here?

A. No sir; not in every respect.
Q. You have given a part of his language, and your impression of the rest, have you?
A. I have given his language as I recollect it.
Q. Not wholly his language then?
A. Not wholly, no sir.
Q. Do you think you could separate the part that you put in and the part that he put in?
A. I don't think that I could, except in some instances.
Q. Do you think that this expression, "either horn of the delemma," is his expression or yours?
A. That is Judge Page's language.
Q. You are positive about that?
A. I am positive about that.
Q. You said that Ingmundson had a conversation with the court after the court had given his reasons for binding him over.
A. I have so stated.
Q. Was it in that conversation that the judge informed Ingmundson that he had understood that he had got angry at Leroy?
A. It was, yes sir.
Q. No part of the reasons given by him for binding Ingmundson over, after Ingmundson was bound over?
A. I didn't understand that that was part of the reasons for binding him over.
Q. Did it occur after the decision was made by the court?
A. I don't recollect as to that, but my best impression is that it was not.
Q. What did you say two or three minutes ago on that subject?
A. On what subject?
Q. This same subject.
A. In what respect?
Q. In respect to whether this conversation occurred after the court had given this decision?
A. I stated that I thought that it occurred before he gave his decision. I may have misspoke myself.
Q. You don't think it was anything unusual the Judge's taking down the evidence that was taken there before him?
A. No sir, I thought it was perfectly proper.
Q. Magistrates often do that, don't they.
A. Yes sir.
Q. When did you draw this complaint?
A. The one that is here in court?
Q. Yes.
A. I drew it that Monday night.
Q. What day was that as connected with the day when the examination took place, how far apart was that?
A. I think that was the second day of April, and the examination took place on the 23d or 24th of April, I think, after I had got through with the Smith case.
Q. The case was continued by consent, was it not?
A. It was sir.
Q. You knew when you drew the complaint who the witnesses were, did you?
A. I did not.

Q. Nothing in the complaint shows who the important witnesses would be in the case?

A. It showed that there was a town treasurer, but who that town treasurer was—I don't know who the man was that received that order. I knew that Mr. Ingmundson was the only man.

Q. It gave the date of the order, didn't it?

A. Is it the report?

Q. Yes.

A. No sir.

Q. The report of the jury didn't give the date of the order?

A. No sir.

Q. How did you ascertain the date?

A. I guessed it out. I alleged it before the court sat.

Q. You made no effort to ascertain the exact fact in relation to it?

A. I didn't think it was material.

Q. So you mcde no enquiry?

A. I didn't allege the date of the order at all, I simply alleged that he received this such a day. I didn't produce the date *in* the complaint.

Q. It states that he received it for the town treasurer.

A. Yes, but that is on the 20th day of March, 1877.

Q. You made no effort to ascertain who the town treasurer was?

A. I thought I could find out.

Q. But you made no effort?

A. No sir; in fact, I didn't know anything about it; I had no order about it.

Q. Hadn't Sever O. Quam been indicted by the grand jury the term previous? and hadn't you drawn the indictment?

A. I had; yes sir.

Q. The treasurer of the town of Clayton?

A. He was at that time.

Q. That was in September, was it?

A. That was in September, 1876.

Q. And you supposed he had gone out of office, didn't you?

A. I supposed he had gone out of the State, at that time. He had ran away.

Q. He had ran away and forfeited his bail, hadn't he?

A. Yes sir. Who his successor was, I didn't know.

Q. Do you swear positively, that in the first charge to the grand jury, Judge Page told the jury that it was an indictable offense for the auditor to allow the band to practice in his office nights?

A. I did not.

Q. Haven't you already sworn to it in your examination-in-chief?

A. I have so stated that,—to the best of my recollection I so stated —I now so state, but I do not state it positively; because I may be mistaken.

Q. You knew, as a matter of fact, that there were very valuable papers in that office, didn't you?

A. I did; yes, sir.

Q. You knew that there were papers there relating to an action between the county and Smith, didn't you?

A. I did, sir; a very important suit, as Judge Page said.

Q. But your impression—your best impression is, that the judge told the jury that that was an indictable offense.

A. I would like to give you just what I understood the judge to say.

Q. No; I want an answer to the question.
A. Yes, my best impression is that he so stated.
Q. That he used that language?
A. That he said this?
Q. No, I didn't ask you this.
A. That it was misconduct in office?
Q. And an indictable offense?
A. I said a misconduct in office.
Q. Did you draw the inference?
A. I may possibly have done that by his saying that it was misconduct in office, and hence would be an indictable offense.
Q. Then you won't pretend to swear at all that he used the words, "that it was an an indictable offense."
A. To the best of my recollection I think it was.
Q. And yet you say to the best of your recollection it was an indictable offence; that it was your inference?
A. No sir, you misunderstood me.

Mr. CAMPBELL. I think the counsel puts words into the witness's mouth.

Mr. LOSEY. The witness is a lawyer, and he is able to protect himself.
Q. At the fall term of 1873, do you swear that Judge Page called the attention of the grand jury to the county treasurer's office particularly?
A. Not in 1873, he did in 1876.
Q. I mean in September, 1876, I stand corrected.
A. He called the attention of the grand jury to irregularities that he understood existed in the county treasurer's office.
Q. What did he say in relation to that particular subject matter?
A. He says, "Gentlemen, information has come to me that the town treasurer of the town of Clayton is a defaulter," and he asked the grand jury to investigate the matter, and then he told them that there was a higher officer in the county than this town treasurer, that he understood, where irregularities existed in his office—it was in the county treasurer's office. He stated what that was—that he understood that Ingmundson had kept his money deposited in the bank, and that he drew out of that fund for private purposes, and for public objects; when he wanted anything for his private use he drew it out of the fund to pay it, and if he wanted to pay a county or town order, he drew it out; that was the idea that he wanted to convey at that time.
Q. And that is the idea that you conveyed to the Senate in relation to the subject matter, when you gave your evidence in your direct examination?
A. I don't think I conveyed any such idea.
Q. You was asked to give all you could remember of Judge Page's language, and you stated that you did.
A. I don't think I was asked to state all that he stated; they asked me to state what Judge Page stated with reference—
Q. Do you know as a matter of fact whether the jury for that term made any investigation?
A. I do not.
Q. Did you interpose a letter: the matter of pay after the grand jury adjourned?

A. No sir.
Q. Did you look it up after the charge of the court?
A. No sir.
Q. Did you make any effort to investigate it at all?
A. My recollection is that I did.
Q. You were county attorney?
A. Yes sir, I was at that time.
Q. Did you subpœna any witnesses?
A. My recollection is that I called the attention of the grand jury—
Q. Well, will you answer my question; did you subpœna any witnesses?
A. I did'nt subpœna any witnesses in any case; I let the grand jury do that.
Q. Did you name any witnesses to the grand jury.
A. I think I did; I think I named the bank where this money was deposited, and I also instructed the grand jury that they would have access to Mr. Ingmundson's books and records, and to examine those; that was at the September term of 1876.
Q. Was the same subject matter of this town order investigated at all at that term?
A. No sir; not to my knowledge.
Q. The court, as I understand you, then called the attention of the grand jury to the fact that the county treasurer was depositing money in a bank, or in different banks around the country?
A. Whether it was a bank or different banks I cannot state positively. I think it had reference to two banks in Austin.
Q. As a matter of fact do you know that he was doing it then?
A. I did not at that time.
Q. Was not the attention of the grand jury called to the fact that he was depositing money in a bank at Le Roy, Spring Valley and Austin; those three places in the county?
A. I don't think it was at that time.
Q. Was it at any other time?
A. I have seen such things in the newspaper.
Q. Not what you saw in newspapers. Was it at any other time?
A. Not to my recollection; I don't think it was.
Q. Answer my questions and you will save trouble?
A. I intend to do so, Mr. Losey.
Q. There had been several defalcations among the officers in that county, hadn't there, Mr. French, during your term of office?

Mr. CAMPBELL. That is objectionable.

Mr. DAVIS. It is merely preliminary, Mr. Campbell, it won't be pursued.
Q. Had you investigated this subject of the charges?
A. I had after they were indicted; after indictments were found.
Q. But you hadn't previously?
A. No sir; not the facts.
Q. Had your attention been called to the facts before they were indicted?
A. They were.
Q. But you hadn't investigated?
A. My attention was called right there in court--that was the first I knew about it.

Q. Have you conversed frequently with different persons, as to what occurred before that grand jury?
A. At which term?
Q. The September term of 1876—the March term of '77?
A. I don't recollect of my conversing with any one, about the graud jury of the September term.
Q. Well, the March term?
A. I have.
Q. You have refreshed your memory about these conversations?
A. No sir, it was with reference to another matter.
Q. You have not conversed with any one to what you have sworn to here?
A. I have not sworn to anything that transpired before the grand jury.
Q. I mean in relation——
A. No sir; I rely entirely upon my recollection, and the memorandum I made at the time.
Q. Where is that memorandum?
A. I don't know.
Q. You have been refreshing your memory since last winter?
A. Perhaps the memorandum is about the court here. Judge Cameron told me to write it down, that Judge Page was constantly picking me up, and that I had better write it down; that I might want to use it sometime; that it might be useful sometime.
Q. Were you plotting at that time for the impeachment of Judge Page?
A. No sir, I was not.
Q. What was the memorandum made for? for what purpose?
A. For what Judge Cameron said, that Judge Page was always going for me, and that I had better make a record of it.
Q. What had the grand jury to do with you?
A. It was thought that it was an outrageous affair.
Q. Did he charge anything against you?
A. No sir; he was always picking up everything against me, though.
Q. Was it implied in the charge that you would not do your duty?
A. No sir.
Q. Did you take it that way?
A. No sir.

Mr. LOSEY. That is all.

RE-DIRECT EXAMINATION.

By Mr. CAMPBELL.
Q. State whether you and Judge Page were on intimate terms—on good terms at the time?
A. No sir.
Q. You were not?
A. No sir.
Q. Were you in 1876?
A. No sir.
Q. State whether it was the custom, if you know the custom, of Judge Page, in regard to examinations taken before him, in regard to writing down testimony?

Mr. DAVIS. The statute requires magistrates to reduce the depositions to writing, I think.

The PRESIDENT. Does the counsel have any objection to have it shown it was taken?

Mr. LOSEY. We think it will only cumber the record; it is the custom. We don't care anything about it.

Mr. CAMPBELL. I asked him if he knew, in the first place.

By Mr. CAMPBELL. Q. Do you know whether it was or not, the custom?

A. I don't know of having but one other examination before him, while I was county attorney, except this one. I don't know what his custom was. In both these cases he wrote the evidence.

Q. The only reason, then, that you wrote down on a memorandum, of Judge Page's charge to the grand jury, was because Judge Cameron called your attention to it, and requested you to do so?

A. It was like this. Mr. Cameron and I were talking, and Mr. Jones, I think, was present, and Mr. Baxter; and we were talking about the charge; we thought it was outrageous, and after they left, Judge Cameron says to me: "French, Page is always going for you every time he is getting a chance to go for you, you had better write that down."

Q. Was that the reason why you wrote that down?

A. That is the only reason; I didn't suppose Judge Page would be impeached at that time, or thought anything about it.

RE-CROSS-EXAMINATION.

By Mr. LOSEY. There are some other people down in that county that have gone for you for your sins and iniquities?

A. Some of his friends.

Q. You pretend to say that that is a fact?

A. Yes sir; I know it.

Q. You know it is as well as you know anything that you have testified to on this examination?

A. I am pretty sure of it.

Q. You are now under investigation by the surpreme court?

A. There are charges preferred against me by Mr. Meigs, at the instigation of Judge Page.

Q. Is Meigs a client of yours?

A. No sir. He used to be Page's post master. [Laughter.]

Q. He was not the post master of the government?

A. No sir.

Q. Mr. Cameron has been Ingmundson's attorney in that matter, has he not?

A. Yes sir.

GEORGE E. WILBUR, SWORN,

And examined on behalf of prosecution, testified:

By Mr. CAMPBELL:

Q. Where do you reside?

A. At Austin.

Q. How long have you resided in Austin?
A. I have resided there about ten years.
Q. Do you know the respondent in this action?
A. Yes sir.
Q. Were you a member of the grand jury at the September term for 1876?
A. I was.
Q. Did you hear the charge of the respondent to the grand jury at that time at the opening of the court?
A. I did.
Q. Will you state whether or not he called the attention of the grand jury to the county treasurer's office?
A. I am pretty positive that he did. He called the attention of the jury, and particularly to the duties of the grand jury to inquire into the offices. I cannot swear positively that he called the county treasurer's name, but if he did not it was left in such shape that there was not one of the jury but what knew what the reference was to.
Q. Then, to the best of your knowledge, he did authorize you to investigate the office of the county treasurer?
A. That is my impression.

Mr. LOSEY. We object to leading the witness.

Mr. CAMPBELL. I don't think that is leading at all; he is repeating what he said.
Q. Did that grand jury investigate in regard to this conduct of the county treasurer?
A. Yes sir.
Q. State whether they made a report or not?
A. They did make a report.
Q. Can you state what that report was?
A. I cannot; but I think I can give the substance of it.
Q. Will you give the substance of that report?
A. It amounted that they found no irregularities or nothing wrong in the county treasurer's affairs; that was about the amount of it.

CROSS-EXAMINATION

By Mr. DAVIS.

Q. Did that grand jury investigate the taking of this town order that has been under question here, for the town of Clayton?
A. I think that was brought up at that time; I don't remember.
Q. You are not positive, are you?
A. I don't remember distinctly about that, but I think it was brought up.
Q. What term was that?
A. The fall term of 1876.
Q. Are you sure that the grand jury investigated the Clayton order, at that time?
A. I could not be positive of it.

Mr. CAMPBELL. The witness will not be needed any more. Counsel for respondent sated that they had no objection to his retiring.

I. INGMUNDSON SWORN

And examined on behalf of the prosecution, testified:

By Mr. CAMPBELL. Where do you reside?
A. At Austin.
Q. In September, 1876, what office, if any, did you hold?
A. I was county treasurer.
Q. To come directly to it, were you a deputy clerk at that time?
A. Yes sir.
Q. Deputy clerk of the district court?
A. Yes sir.
Q. State whether the grand jury, at that term of court, made a report in regard to the county treasurer's office?
A. They did, sir.
Q. State whether you copied that report or not?
A. I did.
Q. State whether you made a true and accurate copy?
A. I made an exact copy of the report.
Q. Can you tell what that report was?
A. Yes.

By Mr. DAVIS. Q. Have you got the copy?
A. I have not the copy with me.

Mr. DAVIS. Where is it?

Mr. CAMPBELL. What is your object?

Mr. DAVIS. I interpose for the purpose of making an objection.

Mr. CAMPBELL. I don't care whether he answers this or not; I will withdraw it, if the counsel objects.

Mr. CAMPBELL. What did you do with that copy?
A. I handed it to the printer.

Q. What was the printer's name?
A. It was the Austin *Register*, and I handed another copy to the Austin *Transcript*.
Q. The Austin *Transcript* has got a boss, hasn't it? What were the names?
A. The *Register*, I gave a copy to Mr. Davidson, and I als gave a copy to Mr. Bassford.
Q. Did you ever give but the one copy to Davidson or Bassford?
A. I think that is all, sir.
Q. If you gave more than one were they each exact copies of the order?
A. Exact copies; yes sir.

Mr. CAMPBELL. That is all, Mr. Ingmandson.
To the COURT: We will re-call him on that point.

CROSS-EXAMINATION BY MR. LOSEY.

Q. When did you give them these copies?
A. It was some time after the adjournment of court; I don't remember the length of time exactly.
Q. Before their next issue?
A. I think not, sir; I am not positive in that point.

Q. Why did you give them to the newspapers?
A. To be published.

C. H. DAVIDSON, BEING RECALLED

in behalf of the prosecution, testified.

By Mr. CAMPBELL. Mr. Davidson, you reside in Austin?
A. Yes, sir.
Q. [Handing paper to the witness.]
Q. You are an editor?
A. Yes sir.
Q. Of what paper?
A. The Austin Register.
Q. State if you received a copy of a report of Mr. Ingmundson, of the grand jury of that county, at any time?
A. I did.
Q. What time did you receive it?
A. I think it was the September term, 1876.
Q. Examine what purports to be the report in your hands, and see if that is a correct copy of the report given you by Mr. Ingmundson.
A. (After examination.) Yes, sir; I believe.

CROSS-EXAMINED BY MR. LOSEY.

Q. Have you got the paper here that that is published in?
A. No, sir.
Q. Was it not published at the end of rather a vicious editorial?
A. No, sir.
Q. You are sure that it is a copy of the full report, as furnished you by Mr. Ingmundson?
A. Yes, sir.

Senator NELSON. If that report is offered in evidence we would like to have it read.

The clerk read the report as follows:

"The jury find in this investigation nothing irregular, or any appearance of wrong doing in any of the affairs of the county treasurer, [signed,] E. R. Campbell, clerk of the grand jury."

G. M. CAMERON, BEING RE-CALLED

in behalf of the prosecution, testified:

By Mr. CAMPBELL. Q. You reside in Austin?
A. Yes sir.
Q. You have been sworn in this case?
A. I have.
Q. You are an attorney by profession?
A. Yes sir.
Q. State whether you were present in the court at the September term of 1876.
A. I was.
Q. State whether you heard the charge of Judge Page to the grand jury?
A. I did.
Q. State what that charge was to the best of your recollection as far as the county treasurer's office was concerned?

A. He called the attention of the grand jury to some irregularities in the county treasurer's office; just what they were I don't recollect. He told them it was their duty to investigate in regard to the matter.

Q. Were you then present when the grand jury was impannelled after they were sworn in 1877—the March term?

A. I was.

Q. Will you state what the charge of the court was to the grand jury in regard to the county officers, as near as you can recollect it?

A. The Judge stated that he had been informed that there was some irregularities in the transaction of the business of the county treasurer, and spoke in regard to something connected with the town of Clayton, and told them it was their duty to investigate carefully in regard to the matter, and ascertain as to the facts in regard to it.

Mr. LOSEY. This was the '76 term?

A. This was the '77 term.

Mr. CAMPBELL. Is that all you recollect?

A. In regard to the matter of the first charge, that was substantially what he said; there was something said—I don't recollect just what the words were.

Q. About the county auditor—state what was said about that?

A. I don't recollect whether at that time he charged the grand jury anything in regard to the county officers or not, but during the term I heard him state something in regard to the county auditor allowing parties to go in there and practice: I think it was the band that assembled there to practice, and he stated to them at that time that that was improper, and it was the duty of the grand jury to enquire into it, and ascertain as to the fact in regard to that.

Q. Was anything said; anything further said?

A. I think he said at that time that if that was the practice, that it was a misdemenor, or something of that kind.

Q. Do you know whether he stated that it was indictable, or not?

A. I would not state.

Q. Now, Mr. Cameron, go on and detail what he said to that jury at the different times when you was there, in regard to the county treasurer.

A. At one time the grand jury came into court—I think it was the first time that my attention was particularly called after the first charge was made. At that time he read some law, and stated what their duty was in regard to it, and wound up that conversation to the grand jury by stating to them that if the facts would warrant it, it would be their duty to find an indictment; that if they could not find an indictment, to find a presentment; that if they could not find either a presentment or an indictment, that he wanted them to report the facts as found by them to the court. The grand jury went out of court then and came in again after a while and presented a document to the court, which the court looked at and stated to them that there was some informality to it, and directed them to retire.

Q. What did he say?

A. I think he stated it was not properly signed. He directed them to retire and correct it in that respect. The grand jury went out again and after some time returned and presented a document to the court; the court took it and examined it, and stated to them that the facts found by them, if true, constituted an indictable offence; and it was their duty if they believed if the facts were true to find an indictment in that state

of affairs. He talked to them at some little length, and they retired again. They came back into court afterwards and reported that they hadn't any further business. He then addressed himself to the grand jury and stated to them that they had failed to perform their duties as required by law, under their oaths; that in doing this they had been guilty of a violation of their oaths as jurors; that they could not place themselves between crime and its punishment by refusing to indict men who were guilty of crimes. He said it was a fortunate thing for the interests of justice that they were not the final arbitrators in matters of this kind; that there was a higher authority; that notwithstanding they had refused to do so, the court had the power to present the matter to another grand jury; that he would exercise that power in this instance, and he then directed the clerk to draw up the facts in the case, and have Ingmundson arrested and brought before him.

Q. Do you know what was contained in that report to the grand jury; can you give us the substance of it?

A. Which report?

Q. The report—the last report you have just spoken of in regard to the report of facts, that he had sent them out on?

A. I cannot state just what the facts are.

Q. Can you give the substance?

A. I don't think I can.

Q. State whether Mr. Ingmundson was arrested and brought before Judge Page?

A. He was arrested and brought before Judge Page.

Q. State whether you appeared as his attorney or not?

A. I did.

Q. Now detail what took place after his arrest?

A. He was arrested and taken before the judge and I appeared there. D. B. Coleman and the town treasurer of Clayton were there as witnesses for the prosecution. Mr. French was there. Mr. Cole was examined and the town treasurer was examined, and the court asked if we wished to introduce any evidence on the defense. I stated that we did not, and he asked if I had any remarks to make. I stated I had a few, and stated to the court at that time that I understood this matter had been before two grand juries; that Ingmundson had been exonerated; that it was clear from the evidence produced before him that Mr. Ingmundson, at least, had not been guilty of more than a mere irregularity, and it was evident that there was no intention on his part, to commit a crime, etc., and stated that I thought that under the circumstances, he ought not to be held to bail.

The judge stated at that time that it don't make any difference in regard to the intention; that every man was presumed to know the law. He then went on and made a statement to Mr. Ingmundson, when he was talking about fixing the amount of bail, that he didn't think that it was necessary, perhaps; that Ingmundson would appear; but he said there was a man named Huntington, who was supposed to be an honest man; that everybody thought he was; and that he had run away; and also stated there was S. O. Quam, who was supposed to be an honest man, and he ran away also and defaulted his bond; and he stated that he understood that Mr. Ingmundson had been guilty of other irregularities and offenses in his office, and that he had been talking about him.

Q. Talking about who?

A. About Judge Page; I don't recollect just what he said. He finally

wound up by fixing the bail, I think, at one thousand dollars; I would not swear positively. The bail was procured and Mr. Ingmundson was let to bail.

CROSS-EXAMINATION.

By Mr. DAVIS.

Q. Mr. Cameron, didn't Judge Page, in that charge to the grand jury, call the attention of that body to the well known fact that there had been defalcations in that county by public officers?

A. I think he did.

Q. Didn't he dwell on the alarming tendency in that way in our times?

A. Yes sir.

Q. Breaches of public trust?

A. I should say he did.

Q. Did he give specific instances that had happened in the county of Mower, in times past, or did he merely refer to facts well known in the community?

A. I won't be positive as to that.

Q. It was one or the other, was it not?

A. He might have done so.

Q. When the grand jury came in with their presentment, did you understand what facts it contained?

A. I did not understand.

Q. I mean, what was that document—that paper?

A. I don't know what was in it.

Q. Did the judge peruse it?

A. He looked over it the second time it was brought in—he read it, should say.

Q. Did he read it aloud?

A. To himself, I should say.

Q. Then he returned it and instructed those gentlemen that if the facts, as they are set forth were established by the evidence, that they constituted an indictable offense?

A. Yes sir.

Q. That was the grand jury of March, 1877?

A. Yes sir.

Q. You were Mr. Ingmundson's attorney at that time?

A. I was, after the judge had ordered Mr. French to have him arrested.

Q. It was then that your relations began with the case?

A. After that Mr. Ingmundson retained me immediately.

Q. Do I understand that after your employment that Mr. Ingmundson had been before that grand jury during that term?

A. I understood at this March term of 1877, I understood, that some matter had been investigated by the previous grand jury.

Q. Mr. Cameron, please answer my question. Had Mr. Ingmundson had access to the grand jury room a number of times?

A. I don't know anything about it.

Q. Did you subsequently learn anything about it?

Mr. CLOUGH. I don't see that that is material or cross-examination?

Mr. DAVIS [to Mr. Clough.] You object, do you?

Mr. CLOUGH. I do.

By Mr. DAVIS:

Q. When Judge Page was giving his reasons for letting Ingmundson to bail he stated, you say, that Huntington and Quamm had run away?

A. Yes sir.

Q. What was Huntington's official position?

A. He was town treasurer.

Q. He defaulted, did he?

A. That was the charge against him.

Q. He ran away?

A. He skinned; he is back there again.

Q. Did he come back there again since he skinned?

A. Last fall.

Q. Quamm was the town treasurer, was he not?

A. Yes sir.

Q. He defaulted?

A. Yes sir.

Q. He gave bail?

A. Yes sir.

Q. He ran away?

A. I don't know.

Q. He has never been heard of since; he is not back again in that community?

A. No.

Q. On that examination of Mr. Ingmundson before Judge Page, didn't Mr. Ingmundson request of Judge Page if he might ask him a question?

A. My impression is that he did.

Q. What was that question that he asked him?

A. I cannot state; do not recollect.

Q. Did the same talk come up on that occasion between him and the Judge?

A. The Judge talked to him principally, Ingmundson didn't say much, if anything.

Q. Mr. Ingmundson asked a question, didn't he?

A. I think so.

Q. Will you state positively, Mr. Cameron, that this remark of Judge Page, that Ingmundson had talked about him, was not in connection with that question which Ingmundson asked him, after the examination had closed, and he had been held to bail?

A. That is not my memory of it.

Q. Are you positive that the facts were as I state?

A. I am pretty certain that remark was made before the bail was fixed. That is my memory of it.

Q. Did Mr. Ingmundson ask leave to ask this question before the fact— the bail was fixed.

A. I would not state which, I won't state that he did in fact, but my impression is, that he did ask him a question.

Q. What is your impression as to it when he asked that question?

A. I think it was before he was bound over—before the bail was fixed.

Q. What was the question which Mr. Ingmundson asked him?

A. I don't know; I don't recollect.

Q. You were his counsel then, were you not?
A. Yes sir.
Q. Representing him in that case? Did any conversation take place after the bail was fixed?
A. My memory of it is, that we went away immediately; that there was no conversation; that is my memory of the transaction. I may be mistaken, but I don't think I am.
Q. Didn't Judge Page state to Ingmundson there, in regard to talking about him, that it had been abusive of the court, for bringing the grand jury to the attention of his delinquencies?
A. I didn't so understand.
Q. When did the court say that Ingmundson had talked about him?
A. It was in his chambers.
Q. In reply to Ingmundson—where was is that Ingmundson did the talking, the asking of the question to the court?
A. I am not positive as to that.
Q. What was Judge Page's language when he stated that Ingmundmundson had been talking about him? can you give me that?
A. It is about as you state: "I understand that you have been talking about me."
Q. What brought that about?
A. It came out in connection with the other irregularities.
Q. That is precisely what I am at; didn't he say that during this session of the grand jury which was investigating the matter, that Ingmundson had spoken—had talked abusively of the court in the street, for bringing his delinquency before the attention of the jury?
A. I don't think he did.
Q. Will you swear that he did not?
A. No.
Q. Were you examined before the committee of the House last winter?
A. Yes sir.
Q. Did you say anything in your testimony before that committee, as to Judge Page accusing Ingmundson of talking about him?
A. I don't recollect that I did.
Q. You were sworn on that occasion to testify the truth, were you not? the whole truth?
A. Yes sir.
Q. Who were you examined by?
A. Mr. Clough, I think.
Q. Did Mr. French assist, or suggest to Mr. Clough?
A. I don't recollect whether he did while I was examined.
Q. This is the first occasion when you have ever testified that Judge Page, on that occasion stated anything to Ingmundson, about his having talked about him.
A. Yes, sir.
Q. You say that it is?
A. Think it is.

N. M. HAMMOND, BEING RE-CALLED

on behalf of the prosecution, testified:
By Mr. CAMPBELL. Have you been sworn?
A. I have.
Q. Where do you reside?

A. In Austin.
Q. What is your occupation?
A. Hotel business.
Q. State whether you were in Austin in March, 1877?
A. I was.
Q. State whether you were a member of the grand jury, or not?
A. I was.
Q. Were you present in court at the time of the impanneling of the grand jury—at the time they were sworn?
A. Yes, sir.
Q. Did you hear the charge of the respondent to the grand jury?
A. I did.
Q. Will you state what that charge was in regard to county officers?
A. I cannot state the whole of it.
Q. As near as you can recollect.
A. The judge gave us quite a lengthy charge; told us what our duties were, and told us he had beln informed that there was irregularity in the county treasurer's office, and he wanted us to look into the matter—investigate the case carefully.
Q. Anything said about what those irregularities consisted of, if so, state what he said?
A. I think there was a town order that he spoke of; I am not positive, but I think so.
Q. Anything said about the county auditor?
A. Yes sir.
Q. What was said?
A. He said that he had been informed that the county auditor had been making it a practice of letting the band come there to play; he said that there were valuable books and papers that was there and it was no fit place for a band to meet; that there was a suit now, in dependence, in think in regard to something of that kind in the office there; don't recollect exactly what that was. There was a suit there.
Q. What else did he say about it? Did he say anything about the county commissioners allowing them to be there?
A. Yes sir.
Q. What did he say?
A. He said he had been informed that the county commissioners had given this county auditor privilege of playing there, and I think he instructed us to see the county commissioners in regard to that.
Q. Say anything about an indictment?
A. I am not positive on that.
Q. You are not positive?
A. No sir.
Q. Have you any recollection on the subject whether he did or not?
A. I could not say positively whether he did or not; it is my impression that he said it was an indictable offense for them to use the office for that, but I am not positive; that is my impression that he said that, but I am not certain.
Q. State if the grand jury returned into court, at any time during the session, if so, when they first returned?
A. Yes, we was in several times.
Q. Well, the first time you returned into court was anything further said about the county treasurer; if so, what was said?
A. I don't recollect what was said when we called in the first time.

Q. Well, the second time?
A. I don't recollect.
Q. Well at any time, detail the first time that you recollect?
A. Our attention was called to this county treasurer Ingmundson matter—I can't give the words, though of what was said—
No, I don't expect you to give the words, give the substance.
A. Well, he instructed us that the evidence, and according to law, that we should have found an indictment against the county treasurer, Mr. Ingmundson.
Q. He instructed you that you should have found an indictment—?
A. Yes sir; that is, according to the law and evidence—what we had instructions—we had had then—and what had been said before us.
Q. Well, at any other time did he give you instructions; state whether he told you to bring in the facts or not?
A. He did.
Q. Well, did you make any report?
A. Yes sir; at three different times, I think.
Q. What did he say to you the last time you brought in the facts?
A. The time we were discharged, do you mean?
Q. No, the time you brought in the facts.
A. I can't remember what it was.
Q. Have you stated all you recollect that he said to you in regard to investigating the office of county treasurer?
A. All that I think of now.
Q. How many times did he call your attention to the office of county treasurer?
A. I think our attention was called to it twice or three times.
Q Any more that that?
A. I think that was all.
Q. Well, what was said to you the last time you went in at the time you were discharged?
A. He talked to us quite a little while; I can't tell the words that he said, and finally he told us, "according to the law that we had, each and every one of us violated our oaths by not finding an indictment against the county treasurer."
Q. Anything else?
A. He turned round to the county attorney and ordered a warrant for the arrest of Mr. Ingmundson "right now."
Q. What was his manner in talking to you?
A. Well, I thought he was a little—considerably riled—that is the way I took it.
Q. From his manner you thought he was angry?
A. I did.

CROSS-EXAMINATION.

Mr. LOSEY. Q. Did I understand you to say that he turned around and ordered the arrest of Mr. Ingmundson right now?
A. That's what he said; yes sir.
Q. That was the exact language?
A. That was the exact language, for I recollect it very distinctly.
Q. You are quite clear in your recollection of what occurred there between the court and the grand jury during that term, are you?
A. Well, not all of it; no sir.
Q. You were quite clear as to some of the matters that occurred?

A. Yes sir.
Q. You have stated that the grand jury came in at several times during the term. How frequently did they come in?
A. Well, different cases that they had.
Q. How frequently did they come in and request to be instructed, if at all.
A. Once, I think, only.
Q. Only once?
A. That is all I recollect of now.
Q. How frequently did the court instruct them in fact on the Ingmundson matter?
A. Two or three times.
Q. He instructed them without being requested by the grand jury to do so, did he, after the first charge?
A. Well I don't recollect of the grand jury asking him to be instructed.
Q. Was you foreman of the grand jury?
A. I was not.
Q. Did you know of the fact that Mr. Ingmundson came in before the grand jury to testify?
A. I know of his being in the jury room once.
Q. Did you know of his being in the jury room more than once?
A. No sir.
Q. Did he come in there to testify?
A. He was called in by the request of the foreman.
Q. Did he go on and make a statement to the grand jury in relation to the matters connected with his office?

Mr. Manager CAMPBELL. My impression is that what took place in the grand jury room they have no right to enquire into.

Mr. DAVIS. We withdraw it.
Q. How long was Mr. Ingmundson in the grand jury room?
A. I should say, perhaps five or ten minutes.
Q. Was he on the stand occupied by the witnesses, in the room, while there?
A. I don't think he was.
Q. Was he in the chair generally occupied by the witnesses, sworn before the grand jury during that term?
A. Yes sir.
Q. Was he sworn?
A. Was Mr. Ingmundson sworn?
Q. Yes?
A. I don't think he was; still I am not positive.
Q. Who was he questioned by?
A. The foreman.
Q. Was the matter of his indictment before the grand jury at that time?
A. At the time he was in there?
Q. Yes?
A. It was.
Q. It was the subject of consideration then, was it?
A. Yes sir.
Q. Had you been instructed that it was improper for him to appear before you?

A. No sir.
Q. Had not the court so instructed you at the beginning?
A. If he did I didn't hear it, or didn't understand it so.
Q. Wasn't that a part of the first charge to the jury?
A. It might have been.
Q. You didn't remember it?
A. No sir.
Q. How frequently did Lafayette French appear in there?
A. Lafayette French was in there a number of times.
Q. Was he there examining witnesses in more than one case.
A. I don't think he was.
Q. Do you know?
A. I don't think he examined any; I am not certain; my impression is, that he did not examine any witness.
Q. How many times did that grand jury ask to be discharged during that term?
A. Well, I could not say; I think we was in there three times or more.
Q. Did you ask to be discharged?
A. Well, I did not ask from the judge; it was through the foreman.
Q. Did the foreman ask that the jury be discharged?
A. Did he ask it?
Q. Did he ask the court?
A. I don't think that he did.
Q. Did he report "no further business" to the court?
A. Yes sir.
Q. When?
A. I think it was the second time that we came in on this Ingmundson matter.
Q. He reported no business before the grand jury then, when you came in at a time before you were finally discharged, and you so swear, do you?
A. Well, that is my impression, I think so: I am not positive, but that is my impression of it.
Q. What day of the year was it?
A. I couldn't tell you.
Q. How long before the grand jury was discharged was it?
A. I should say that it was two or three days.
Q. What did the foreman say to the court when he asked to be discharged?
A. I couldn't tell you.
Q. What did he say when he reported no further business?
A. I guess he didn't say anything, only handed him a paper.
Q. Handed him a paper for what, did you say?
A. When we got through with business, I say. I don't think he said anything; I don't recollect that he did.
Q. No; but when you went in the first time and asked to be discharged, what did he say?
A. I don't know sir, I can't tell you.
Q. You have no recollection of that?
A. No sir.
Q. Did you state now, as a fact, that they asked to be discharged more than once?

A. Yes sir.

Mr. LOSEY. That is all.

RE-DIRECT EXAMINATION.

Mr. Manager CAMPBELL. Q. Do you know whether the grand jury was sent for to come into court or not?

A. Yes sir. There was once ———

Q. What was said to you when you went in there; what did the judge say he sent for you for?

Mr. LOSEY. I object to you leading the witness.

Mr. CAMPBELL. I don't think that is leading at all; no one could send for him except the judge.

Q. Do you recollect what he said to you?

A. I do not.

Mr. CAMPBELL. It didn't do any hurt.

Mr. DAVIS. It didn't do any good.

Mr. LOSEY. It wouldn't have done any good if you had got an answer.

WILLIAM L. STILES, SWORN,

And examined on behalf of the prosecution, testified :

Mr. Manager CAMPBELL :

Q. Mr. Stiles, where do you reside ?

A. I reside in Pleasant Valley, Mower county, Minnesota.

Mr. CLOUGH. You will have to speak up, Mr. Stiles.

A. I'll speak up after a little.

Q. State whether you were a member of the grand jury at the March term of court for 1877.

A. I was.

Q. Were you present in court at the time the respondent charged the grand jury ?

A. I was.

Q. State what he said at the time you were sworn in as grand jurors in regard to investigating the county treasurer's office and other offices?

A. He read law to us and talked to us some, and then he said that he had been informed that there were irregularities in the county treasurer's office—Ingmundson's, and also in the auditor's office, Mr. McIntyre's.

Q. Did he speak about county commissioners ?

A. He said that he had understood that the county commissioners, the chairman of the board of county commissioners, had given permission to the brass band to meet there and practice, and it was contrary to law, and they had no right to do it, he wanted we should investigate it, and see about it, and said that there was valuable papers there that they was liable to extract—carry away from the office; and it was no place for them to meet—boys—and after office hours—and play. In the matter of Mr. Ingmundson, he said that there was an order, a town order of the town of Clayton, that he paid contrary to law. He had been informed, he said he had been informed of this; and he wanted we should investigate it, and if we found it was so, it was an indictable

offense, and we should indict the county treasurer, and if we couldn't find an indictment against him, we should find a presentment.

Q. Well, did you retire?

A. We did; yes sir, after it got through.

Q. How soon after that did you come into court?

A. Well, I think—I couldn't tell exactly ; but I don't think it was a great while.

Q. Anything said to you then about the county treasurer?

A. I don't think there was.

Q. Well, was there at any time after that?

A. Yes, sir; after we had got through with all the criminal cases, all the criminals that were confined in jail, and all the indictments of criminals that were confined in jail, we got through with the cases and reported to the judge ; we went in, I supposed, for the purpose of being discharged ; we had got through, as I supposed, but I don't think that the foreman made any formal request of the judge to discharge us; but I supposed (I for myself was satisfied) that we had done enough, and it was time we was discharged, and I supposed they all thought so, I supposed the foreman would 'tend to that, and—

Q. No matter ; what was said ?

Mr. LOSEY. Well, your honor, that is not responsive to the question?

Mr. CAMPBELL. We must take witnesses as they are made.

The WITNESS. Well, he told us we had been very prompt in everything he had charged us, except the examination of the county treasurer and the county auditor's office. Well, by the way, we had examined them before, but he didn't appear to know it; but we had done it. He said we hadn't, but we had, [laughter] and we didn't find nothing to indict him nor to present him, nor nothing of the kind; [laughter] and we supposed that we had got through with him.

Well, he charged us over again, and I think that time he handed us some more papers—some other things, he did at one time, that he charged us afterwards, and I think it was that time, and he charged us that he wanted we should go and examine, and I think we had not been down in the treasurer's office, not until he charged us the second time, and then we went down. The chairman of the board appointed a committee of five. We all went, and this committee examined the books and papers of the treasurer's office, and found that Mr. Ingmundson had paid a town order on the town of Clayton of about $114.00, and held it as a voucher for the money instead of a receipt, and he had taken it previous to the regular day that the apportionment should be made; but Ingmundson knew the money was there. He give the town treasurer the money, or a check on the Leroy bank for the money, and told him he would hold the order as a voucher until he came, and it was all divided, and he knew just who it belonged to and he would give it to him. Previous to his coming the second time, it appeared that this treasurer had run away and another treasurer came for the balance, wanted all the money, and Ingmundson wanted he should take the order as a receipt to make up the amount that the town of Clayton should have. After we had got through with all the business we reported again, and the judge told us that we had neglected the county treasurer's office, and we had neglected the county auditor's office, and he wanted the thing investigated and it *must* be investigated; charged us everything about it, and we went back and we had some talk about it.

Q. You need not tell what was said in the grand jury room; tell what he said in court?

A. When we got through we brought in a paper before the judge or to the judge, and reported that we had found irregularities in the county treasurer's office but not sufficient, I think it said, to justify us in finding an indictment, and then he told us that that was no report at all. He wanted to know the facts, he didn't want to know what we thought about it, he wanted to know the facts in the case, and we went back again and clerk made out a report, as near as he could, what those irregularities were, and the number of times that he charged us. I couldn't tell how many times it was, but the last time we went in we carried in the facts in the case, and Judge Page told us that if that was the facts we should have found an indictment against Mr. Ingmundson. He said that "either through fear, or we had been bribed, we had tried to place ourselves between criminals and the law, to prevent the punishment of crime; and we couldn't do it, [great laughter,] that is what he said. Then he turned to us and talks, he said, "gentlemen"—for he generally did, [laughter] "you have violated your oaths; you have perjured yourselves; every one of you," [great laughter;] that is what he said. And then he talked some but I don't recollect what he did say, but he talked some after that; and then he turned to the county attorney, Mr. French sat there, called him county attorney. Says he, "I order you to draw a complaint against Mr. Ingmundson, and have him arrested at once," and then he says, "*You are discharged,*" and as soon as he said so I got up and went out. [Great Laughter.]

CROSS-EXAMINATION.

Mr. LOSEY:

Q. Do you ever get excited?

A. What?

Q. Do you ever get excited?

A. Why, I have, yes sir.

Mr. Manager CAMPBELL. I want to ask you one more question. Was Judge Page excited or not? What was his manner when he was speaking to you about when you were the last time; state whether he appeared excited or otherwise?

A. Well, sir, he appeared to me as though he was very much excited, very much excited, yes sir—by his manner of talking to us.

Mr. LOSEY. Was there any excitement in court, on the several days when you came in?

A. Well, not so very much. No more than what would be naturallly supposed under the circumstances.

Q. When the Judge told you that the jury had evidently been bribed, or had been bribed, didn't it excite you a little?

A. It excited me just enough so as to recollect it. [Great laughter.]

Q. That was the extent of your excitement?

A. Yes, well I thought that he was Judge, and I knew he was a first-rate lawyer, and I supposed he knew. [Great laughter.]

Q. You thought he knew whether the grand jury had been bribed or not, did you?

A. Well, I thought he said so—I know what he said—

Q. And being Judge you thought he must know about it?

A. I thought he must know—yes. [Renewed laughter.]

Q. Well, when he told you you had perjured yourselves, every one of you, and had violated your oaths, did that get up any excitement in your mind?

A. Nothing more than what it had. [Laughter.]

Q. What did you think about that?

A. Well, that was what I thought—I thought that was quite a crime.

Q. You did?

A. I did.

Q. It occurred to you that he was charging you with quite a crime?

A. Yes sir, it did. I thought that was a high crime.

Q. I suppose you are thoroughly convinced that that was the exact language that the Judge used at that time?

A. I am; yes sir. I believe that is just the language the judge used.

Q. You don't think your excitement lends any color to your statement?

A. I don't; no sir.

Q. You think the language of the judge was just as strong as you have got it here?

A. I think it was, word for word; yes sir, just as I have given it.

Q. Can you tell what preceded this statement, that you had violated your oaths and committed perjury, every one of you?

A. Yes sir; he said that we, either through fear or had been bribed, we had tried to put ourselves between criminals and the law, to prevent the punishment of crime; and that we couldn't, or couldn't do it; that is what preceded it.

Q. What followed it?

A. He said you have violated your oaths and perjured yourselves, every one of you.

Q. Well, what followed that?

A. Well, he talked some and then he turned to Mr. French and told Mr. French that he ordered him to draw up the complaint against Mr. Ingmundson, and have him arrested at once; and then he turned to the grand jury and said, you are discharged; or, "gentlemen, you are discharged;" he generally used, "gentlemen." I ain't sure whether he did or not then. [Laughter.]

Q. How many times did the grand jury come into court and ask to be discharged during that term?

A. I don't think they did but just once.

Q. That is when they were discharged?

A. Yes sir; I think that is the only time.

Q. That they came in?

A. Yes sir. [Witness turning around and addressing the President.] Would it be proper for me to tell what I thought? [Great laughter.]

The PRESIDENT. Answer the question.

Q. You have made some affidavits in connection with this matter, have you not?

A. Yes sir.

Q. Let me ask you a question: I want you to look at your signature here. [Paper handed witness.]

Q Is that your signature to that paper?

A. I believe it is; it looks like my handwriting; I don't doubt but that I signed that.

Q. It purports to have been signed on the 10th day of August, 1877, before Wm. H. Crandall, notary public; do you remember the fact of making an affidavit before Mr. Crandall?

A. I do; yes sir.

Q. Do you?

A. Yes sir, I said I did.

Q. About this matter?

A. Yes sir, about that matter.

Q. This affidavit, a portion of it, reads this way: "That after the grand jury——

Mr. Manager CAMPBELL. Wait a moment.

Mr. LOSEY. Q. Did you not state in this affidavit as follows: "That after the grand jury had completed the work before them, they came into court and asked to be discharged. That said judge charged the grand jury at great length to investigate one Ingmundson, the said county treasurer; that said jury fully and fairly investigated said matter and found nothing upon which to justify in their minds the finding of an indictment, and again returned into court and sought to be discharged."

Q. Did you state that?

A. I may have said that, yes sir; I supposed that our appearing there, I knew that I wanted to be discharged, and I knew that was what they all said, and I supposed we did inform the Judge; but they say that it wasn't so.

Q. You are now of a different opinion, are you?

A. Why, I am of the opinion that we did not, in writing, ask the Judge to discharge us but once.

Q. Did you at all ask the Judge to discharge you?

A. I think that the time we were discharged the foreman asked to be discharged. Yes sir.

Q. Had he asked before that the jury be discharged?

A. Well, I don't know that he had.

Q. Then you are you not quite certain of the facts when you swore to this affidavit? You stated it a little stronger than you intended to, didn't you?

A. Well, I thought in substance that we had done it; but I don't think we had, now, in legal form.

Q. Who wrote the affidavit?

A. I couldn't tell you sir; I didn't write it.

Q. Who brought it to you to sign?

A. Well, Mr. Crandall was there and another man, I forgot who it was.

Q. Was it written up before?

A. Yes sir; it was. I mean the filled hand writing; but they read it to me. I didn't have my specs, they read it to me, but I presume they read it right.

Q. And all you konw about it was when out in the harvest field?

A. About that affidavit being written?

Q. Yes?

A. No sir.

Mr. LOSEY. That is all.

Mr. NELSON moved to adjourn,

And the roll being called, there were yeas 30, and nays none as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Clement, Clough, Donnelly, Doran, Drew, Edgerton, Edwards, Gilfillan C. D., Goodrich, Hall, Henry, Hersey, Houlton, Macdonald, McClure, McHench, McNelly, Mealey, Morrison, Morton, Nelson, Remore, Rice, Shaleen, Smith, Swanstrom, Waite and Wheat.

So the motion prevailed.

Adjourned.

Attest:

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

SIXTEENTH DAY.

ST. PAUL, FRIDAY, MAY 31, 1878.

The Senate was called to order by the President.

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

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

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

The sergeant-at-arms having made proclamation,

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

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

The journal of proceedings of the Senate, sitting for the trial of Sherman Page upon articles of impeachment, for Monday, May 27th, and Tuesday May 28th, were read and adopted.

R. A. JONES SWORN

and examined on behalf of the prosecution, testified:

Mr. Manager CAMPBELL.—

Q. Where do you reside?

A. At Rochester, in this State.

Q. What is your occupation?

A. A lawyer.

Q. State if you know the respondent.

A. I do.

Q. Were you present at a term of court held in the city of Austin, in March, 1877?

A. A year ago last March, I was sir.

Q. State if you were present when the grand jury was impannelled and sworn?

A. When I went into the court room the court was charging the grand jury.

Q. State if you heard anything said in that charge in reference to the county treasurer's office and other county officers of the county. If so, state to the best of your recollection.

A. I heard the court charge the grand jury at the opening charge, with reference te the county treasurer and county auditor; no other officer that I recollect.

Q. State what that was to the best of your recollection.

A. I heard Judge Page instruct the grand jury that he had received information, or had been informed perhaps, that there were some matters in the county treasurer's office, had been transacted there, that it would be their duty to investigate; he said to them that he referred to a matter between the county treasurer and the town of Clayton or the treasurer of the town of Clayton, I wouldn't be certain which. That he had been informed—that if what he had been informed was true, the treasurer ought to be indicted. Of course my recollection of this is merely fragmentary. The Judge instructed the jury perhaps for fifteen minutes on that subject; ten to twenty minutes. That was on the first day of the term of court.

Q. What did he say about the county auditor?

A. He said to them that he was informed that the county auditor was in the habit of allowing a band of musicians to meet in his office for the purpose of practice. That the county auditor's office was an important office, was very largely the deposit of the records of the county that were in a somewhat exposed condition, and such conduct on the part of the county auditor was illegal, and if they found the facts to be as he had represented them, it would be their duty to find an indictment or presentment against the county auditor. That perhaps it was not the subject of an indictment, but at least it would be of a presentment.

Q. State Mr. Jones, if you heard him charge or instruct the grand jury on the subject of the county treasurer, more than once, if so, how many times.

A. Three different times during that term of court.

Q. Will you state what he said at each of those times?

A. I could not do so.

Q. As nearly as you can?

A. Well, as nearly as I can would not be very near.

Q. Can you give the substance of what he said?

A. I don't think I could. He made the speech or their charge, and while I paid very particular attention to it, my recollection of it is fragmentary, I could not attempt to delineate what Judge Page said in any detailed form—certain characteristics of it that a man would never forget, and yet he never could describe it.

Q. Can you not state the substance?

A. I can state some thing that he said, but I could not state them in any connected manner.

Q. Won't you state what you recollect?

A. The second time I heard him instruct the grand jury at that term, was, perhaps, the third or fourth day of the term, I could not be particular as to the day. The grand jury came into the room and handed him some paper, I don't know what that was, at any rate, he then went on to instruct them that the facts in relation to the county treasurer's office, which he had represented to them, were open and notorious and were not in dispute, and, as a question of law, he instructed them he was guilty of a felony and ought to be indicted, and that it did not make any difference, that the treasurer did not *mean* to do wrong, that he was supposed to know the law, and the intent followed the act, and if they found the facts as they existed, as was not in dispute, under their oaths it was their duty to find an indictment. That charge, I should think, occupied at least ten minutes, and possibly fifteen.

Q. What occurred the third time?

A. The third time that I heard him he was instructing the grand jury when I went into the room, holding a paper in his hand, and stated to them nearly as he did the second time, that the facts were not in dispute; that the county treasurer had no business to be before them to explain his acts, but that even if he had explained them, it would not affect his liability for what he had done; that under their oaths it was their duty on the facts as they existed to find an indictment; that their oaths were of course in the keeping of themselves and their own consciences, but it was impossible for him to see how under the state of facts and their oaths as grand jurors, they could fail to find an indictment.

Q. Were you there when he directed the county attorney to make a complaint—did you hear that?

A. I could not say with any positiveness that I was; I have an impression that I was there

Q. This is all you recollect, then?

A. It is all I recollect at this moment.

Q. What was the manner of Judge Page; whether he seemed to be excited, angry or otherwise?

A. Extremely so, I should say, sir.

Q. I wish to ask you one question in regard to the term that Judge Mitchell was there. At the time Judge Mitchell was there, what, if anything, was done or said about the criminal cases pending—this is in reference to the Mollison case that I am driving at now?

A. I have no recollection that the Mollison case was mentioned.

Q. I am not speaking of the Mollison case in particular, but about criminal cases that were on trial?

Mr. LOSEY. We object to that, the record is the best evidence of what was done in court.

Mr. Manager CAMPBELL. The records show they were continued; I wish to show by him how they were continued.

Mr. DAVIS. He says that he has no recollection about the Mollison case.

Mr. Manager CAMPBELL. I did not ask him particularly about the Mollison case, I gave that information to show you what I was driving at.

Mr. DAVIS. I am not adverting to the information you gave me, but what the witness himself has stated; you state that this evidence is

offered upon the Mollison case, Mr. Jones says he don't recollect anything having been said about the Mollison case.

Mr. Manager CAMPBELL. May it please the court, I wish to show by this witness if it be true that the criminal calendar was continued at the suggestion on a motion of the then district attorney, I think Mr. Wheeler, and that the Mollison case was on the criminal calendar, and was continued at the first day of the term; and that if the whole criminal calendar went over, of course the Mollison case went with it; I wish to show what was done, and what was said about the criminal calendar.

Mr. DAVIS. The objection is still more forcible. The counsel have introduced the record in evidence. In the handwriting of Judge Mitchell, opposite the case of Mr. Mollison, are these words: "Continued by consent." I object now to the testimony, as tending to contradict their own evidence, and also tending to contradict the record.

Mr. Manager CAMPBELL. There is no desire to contradict the calendar, but I wish to show this—and I can show it if they will let me—which is true, that this criminal calendar, it was agreed before the adjourned term, that this criminal business was to go over; that it was not to be taken up before Judge Mitchell.

The PRESIDENT. I think they may ask the question.

Mr. LOSEY. Do you expect to show knowledge on the part of Judge Page of that fact?

Mr. CAMPBELL. I do, sir. I do, sir. That Judge Page was a judge presiding at the time it was agreed that this calendar should go over. If it don't have any effect, it don't do any hurt.

THE WITNESS. I don't remember anything having happened at the time Judge Mitchell was on the bench, but I went to that term with Judge Mitchell, with reference to some civil business; of course, at this distance of time, my recollection is not very absolute about it; my recollection, however, is this: Judge Mitchell took the calendar in court and, perhaps, called some criminal case; I don t remember whether he did or not; my recollection is that Mr. Wheeler, then county attorney, stated to Judge Mitchell that the criminal calendar had been continued at the general term; I am very sure that there was no case called for trial of any kind, of a criminal nature, while he was there. I was there all the time he was there, and went away when he went away.

CROSS-EXAMINATION.

Mr. LOSEY. How long were you at the Mower county term in March, 1877?

A. I went there on the first day of the term. I think I went home on Thursday of that week and came back on the following Saturday or Monday. I wouldn't be certain whether it was Saturday or Monday when I came back.

Q. You was gone then in the neighborhood of three or four days during the first week of the term, or the first and second week of the term?

A. Two or three days I should say.

Q. From Thursday to Monday it would have been four or five days, wouldn't it?

A. No sir, I should say not. I should say it would be three or four if I went on Thursday and came back on Monday. I went away, probably, on Thursday noon.

Q. You came back when?

A. Either on Saturday noon or Monday noon, and I declare I don't know which it was.

Q. You state you heard a fragmentary part of the charge made to the grand jury the first day of the term?

A. Well, I didn't mean so. I came in while the judge was charging the jury.

Q. And you can only remember a fragment of what you did hear?

A. My recollection of it is fragmentary, sir.

Q. Anything unusual in that charge at that time, in your opinion?

A. In the language used, no sir.

Q. Nothing unusual in the language used?

A. No sir; that first day.

Q. The charge was such as you have frequently heard in courts, from judges, was it not?

A. Well, I would not say that I ever heard that subject charged upon before by a court to a jury, but as far as the words used I saw nothing improper in it.

Q. You never heard of a judge's charging a jury in relation to their duties to examine and see whether public officers had been guilty of malfeasance in office?

A. I have, I think, at every term of court since I have been in the State.

Q. Wasn't that the subject on which he charged the jury at that time?

A. No sir. He specifically mentioned the county treasurer's office.

Q. Did you see anything particularly wrong in that?

A. I did not.

Mr. Manager CAMPBELL. That is a question for this court to determine whether there was anything wrong.

Mr. LOSEY. Well, this man is a profound lawyer, and I thought I would get his opinion. It don't cost anything. [Laughter.]

Q. Did the court charge the jury again, in relation to the matter of the county treasurer's office, or the auditor's office during the first week of the term?

A. My recollection is that way, sir; not with reference to the auditor's office. I don't remember of hearing that mentioned again.

Q. Are you quite positive in that. Was it not the second week of the term?

A. I feel very confident of it.

Q. That it was the first week?

A. Yes sir.

Q. The jury at that time presented a paper, did they not?

A. They did.

Q. Did you see the paper?

A. Only as the Judge held it in his hand. I did not see it to see the contents of it

Q. Did you notice whether the court read the paper or not?

A. I know he observed it in an attitude of reading, when it was handed to him by the foreman of the grand jury.

Q. Did the court then state that the jury had called upon him to be instructed as to the statute construction, and so forth, and so on?
A. I have no recollection of it.
Q. Did not the jury, in fact, come in and ask to be instructed as to the construction to be placed upon some statute?
A. Not in my presence.
Q. If the record of the court showed that to be a fact, what would you say as to your memory concerning it?
A. I should say that that was at some time when I was not there.
Q. That is what you would say?
A. I would.
Q. If the record of the court showed as a matter of fact, that the grand jury did not come in but three times, what would you say then in relation to it?
A. I should say that either the record or I was mistaken. [Laughter.] At two of these times I was not present when he commenced his instructions to the grand jury.
Q. You was'nt in?
A. I did'nt happen in, I went purpose.
Q. You went purpose?
A. Yes sir.
Q. Some little excitement there?
A. There was considerable.
Q. About this matter?
A. Yes sir, or excitement, a good deal of talk.
Q. Some excitement among grand jurors in relation to it?
A. I don't know.
Q. Did you talk with any of the grand jurors?
A. I talked with one of the grand jurors after the grand jury was discharged, not before.
Q. Were you retained as the attorney of Mr. Ingmundson?
A. I went there especially for that purpose, because I was.
Q. You took considerable interest in what the grand jury were doing, did you not?
A. Welll, I could't say that; I took a good deal of interest in that matter.
Q. Did you recommend your client to go before the grand jury and explain the matter?
A. I didn't know that he went in; didn't recommend him to until after I heard the Judge allude to it in his charge. I inferred from what the judge said that he had been there; that was the first I heard of it.
Q. You knew that if he had been in there, while the matter of his indictment was the subject of consideration, that it would vitiate the indictment, didn't you?
A. I should have given that as my opinion if I had been asked.
Q. Well, that is your opinion now?
A. I have a doubt about it.
Q. But you didn't know of his having been in there?
A. I did not.
Q. You learned the fact about that time, did you?
A. I learned it from what the judge said.
Q. Didn't you learn it from your client?
A. I did not.

Q. Didn't you ask him the question?
A. I did not.
Q. Didn't you talk with him about it?
A. I did not.
Q. Not while he was in there?
A. No sir.
Q. After the grand jury was through?
A. Not up to this day.
Q. You never talked with him about it?
A. I never did before or afterwards.
Q. According to your recollection, he told the jury that if they found these facts to be true, it would be their duty to bring in an indictment—or a presentment?
A. He used that word as to the county auditor.
Q. As to the county auditor?
A. Yes sir, he used those two words in connection with the county auditor.
Q. Is your memory at all defective as to just the language that was used by the court?
A. I should says it was *very* defective, sir.
Q. Did the court say it would be their duty to bring in an indictment, or that it would be an indictable offense, if the facts were as stated?
A. My recollection would be that it would be their duty to bring in an indictment, that would be my recollection.
Q. Duty to bring in an indictment?
A. That would be my recollection.
Q. How many times do you remember of the jury's coming into court and asking for instructions on this question?
A. I don't know that they ever did, I saw them come in.
Q. How many times do you remember of their coming into court and presenting the court with a paper, and the court commencing a talk in relation to this case?
A. Once.
Q. That was the first time they came in, after they had been originally instructed, was it?
A. It was. That is the first time that I saw them come in.
Q. What did the court call their attention to at that time in relation to that presentment?
A. Nothing.
Q. Now, Mr. Jones, as a matter of fact, did not the court at that time state to the grand jury that the paper that they had presented to him, while it stated facts in relation to the Ingmundson matter, was not signed, and was not such a formal presentment as was required under the statute?
A. No sir, not in my hearing.
Q. You have a positive recollection in relation to that matter, have you?
A. Well, I can say this much in relation to that, that all I heard Judge Page instruct the jury at that time, from which I could infer the character of the paper that was presented to him would relate to the intention of the defendant or of the party accused, Mr. Ingmundson. I supposed from the remarks that they had asked him some question as to the necessity of an intention existing on the part of the accused, to commit crime—I suppose so.

Q. Then he instructed the jury, as I understand you, that the doing of the act, was not, in and of itself, proof of the intent, the statute expressly prohibiting it.

A. I did not hear him use those words.

Q. Wasn't that the substance of what he said to the jury?

A. It would be a fair deduction from what he said to the jury.

Q. You, as a lawyer, concluded that that was what he meant, didn't you?

A. I should have to say no.

Q. You have to say no?

A. I have to say no to that question?

Q. If it was a fair deduction why do you say "No?"

A. Because it inferred more.

Q. It inferred more?

A. Yes sir.

Q. As a lawyer, you thought the court intended to so instruct the grand jury, did you?

A. As you have stated?

Q. Yes?

A. I say, as a lawyer, I thought that was a fair deduction of what he stated; at the same time, what he said implied very much more, than what you have stated.

Q. Now you say your recollection is very fragmentary concerning this matter?

A. Yes sir.

Q. Don't you think that the fragments you have picked up and sworn to might be considerably modified, if we had the whole charge as given?

A. I have no doubt it would.

Q. You caught chance expessions, didn't you?

A. I didn't think so.

Q. Well you certainly mean you did not catch the whole of it?

A. I caught the expressions. I don't think they were chance expressions.

Q. Well, you caught expressions during the progress of this charge?

A. I did.

Q. And these expressions were fixed upon your mind?

A. They were.

Q. Are you accustomed to being in court and trying cases the most of your time?

A. Not the most of my time, sir. A great deal of the time I am.

Q. You are in the habit of trying a case through and remembering what the evidence is, are you?

A. Yes sir.

Q. You have a trained memory to remember things as you hear them in court?

A. Well, for temporary purposes; yes sir.

Q. Aren't you in the habit of trying cases and conveying the matter of the case through the case, in your mind?

A. Yes sir.

Q. If you are interested in a case, and employed as an attorney, you try to fix in your mind every thing that occurs in regard to that case, as it happens either in court or out of court until it is finally disposed of, don't you?

A. Well, everything that seems to me to be important in the case, yes sir.

Q. This matter that occurred there seemed to youto be important in the Ingmundson case, didn't it?

A. The matter of the instruction to the grand jury?

Q. Yes?

A. Well it seemed to me so.

Q. But, notwithstanding all this, you can't remember any more than you stated here?

A. I have no doubt I could if I reflected upon it for the purpose of doing so.

Q. Didn't the judge call the attention of the grand jury to the facts connected with Ingmundson and Coleman, or the Coleman order taken by Mr. Ingmundson?

A. I would not like to say that he did or did not. I knew the facts myself, and had heard them talked about, and my recollection might be at fault if I should say that he did because it may have been some other matter.

Q. You might have mixed up knowledge you obtained elsewhere with knowledge you obtained in court?

A. Yes; sir.

Q. You can't draw a line between those matters?

A. It might be somewhat difficult for me to do so. I might infer that he stated the facts from the fact that I knew them myself.

Q. Do you remember what the presentment of the grand jury was?

A. I never saw it.

Q. What are the relations between you and Judge Page as to being friendly or unfriendly, prior to his being judge of the district?

A. Well, I can't say what his sentiments may have been, mine were very hostile to Mr. Page after and before I ever saw him, and remained so until after he was elected judge. Since he has been judge I have never tried a case before any judge who used me more fairly than Judge Page.

Q. I believe you state that you were at enmity previous to Judge Page's election to office?

A. I would not like to say that I was at enmity with him. I did say that my feelings toward him were hostile, and so much so that I wouldn't speak to him on the street, prior to his being elected judge, unless it was on a matter of absolute necessity in the matter of business.

Q. You are on speaking terms since that time?

A. Decidedly so; the Judge has treated me very kindly; since he has been Judge. my relation so far as I know have been very friendly.

Q. Don't you know as a matter of fact, that he has treated you with uniform courtesy and fairness.

A. I would as soon try a case before him as Judge Mitchell, who is a warm friend of mine.

Q. You call him then a fair and impartial Judge?

A. So far as I am concerned.

Senator GILFILLAN, J. B., submitted a question in writing, which was as follows:

Q. Please describe particularly and definitely the appearance, manner and tone of Judge Page in charging the grand jury respecting matters in the affairs of the county treasurer and county auditor, at each of the three several times, as to which you have testified?

A. I don't know, gentlemen, how it is possible for me to do that. Of course counsel and Senators understand it would be largely a matter of opinion, and I am not an actor to imitate it. If with these remarks I am to go on, I am now ready to tell all I can tell about it. During the first charge of Judge Page to the grand jury, as I have already said, his language so far as I now recollect, or the impression made upon my mind at the time was unexceptionable; there was nothing I would have taken exception to. His manner was quite excited; he was very white; his eyes looked anger, if I may so express it.

He was *very* emphatic—his tone of voice was decidedly loud. During the second time the same characteristics appeared, except in a much more exaggerated form. And the third time it was—I don't know what to say. [Laughter.]

Mr. LOSEY. Oh, say it!

A. I don't know how to express it, Mr. Losey. It was—well—perhaps "terrific" would be too exaggerated a word, and yet I think there is none that supplies the place of it.

Mr. LOSEY. Mr. Jones, is Judge Page a man of positive character?

A. Decidedly so, in my judgment.

Q. Are you a man of positive character?

A. Supposed to be. [Laughter.]

Q. Did you hear the judge's charge to the grand jury in Fillmore county in relation to the fact that the jailor was in the habit of neglecting his duty, which his attention had been called to.

A. I did not, not to my recollection; I might have done so; I frequently go to Judge Page's court, in Fillmore county.

Q. Do you think it accounts for anything, the fact that a man is pale sometimes, and other times of a little different color?

A. From my own experience, I should say not.

Q. If you were very pale do you think it might indicate that you were out of health or mad with the whole world?

A. I don't know what my color is when I am mad; and my impression is that when I am ill, my color is rather hightiened than reduced. [Laughter.]

Q. The judge is not as ruddy as you are, is he?

A. I should say, not.

Q. He isn't ruddy at all, is he; wasn't then?

A. I have no recollection of ever seeing Judge Page anything than rather a pale man.

Q. He is in the habit, is he not, in court, of speaking in a decided manner, always?

A. Well, I should say, not always, but that would be characteristic of his remarks in court.

Q. Isn't that the nature of the man?

A. I think so.

Q. He is a firm man naturally, isn't he?

A. Very much so, I should think.

Q. Now, do you think his tone of voice was any louder than it ordinarily is, in charging a jury?

A. When he charged this grand jury?

Q. Yes.

A. Several times it was; the volume of it was increased several times; that is to say, it was considerably more than double the volume of voice that he usually uses.

Q. Usually uses in charging grand juries?
A. Yes sir.
Q. Did he make any gestures?
A. If so, they did not attract my attention.
Q. Did he read from a paper?
A. He had a paper in his hand the first time he instructed the jury. That he occasionally referred to, but not in the sense of reading a narrative.
Q. Did he read from a paper a second or a third time?
A. He looked at the paper before he commenced instructing them, but did not read from it in his instruction to the grand jury.
Q. Now be candid; don't you think that the interest to your client and your interest in the case, lent a little color to your views at that time concerning what was taking place in court?
A. It is possible, of course; I don't think so, though.
Q. But it is possible?
A. Yes.

W. T. WILKIN SWORN

And examined on behalf of the prosecution, testified:
Mr. Manager CAMPBELL.
Q. Where do you reside?
A. At Austin.
Q. You know the respondent?
A. I do.
Q. What is your occupation?
A. I am in the banking business.
Q. State if you were present at any time during the general term of court for the March term?
A. I was, a part of one day.
Q. State if while you were there the grand jury came in?
A. They did.
Q. What if anything did you hear the judge say to the grand jury in reference to the county officers, especially the treasurer, auditor or commissioners?
A. This charge to the grand jury when I was present, was expressly about the Auditor's office. I can give the substance of what he said there, of course I can't give the exact words. He told the jury that he had called them in for the purpose of calling their special attention to irregularities in the county auditor's office. I understood him to say, "gentlemen, I have called you in for the purpose of calling your attention to some irregularities in the county auditor's office." He said that the auditor was in the habit of taking quite a large number of men into his office after business hours, ostensibly for the purpose of practice as a band; said there were a good many valuable books and papers in that office, and if one or more of those books or papers should be lost it might be a great loss to the county; and he said, in fact, gentlemen, there is a suit involving many thousand dollars now being tried, and if those books should be taken away the county might be beaten in that suit. And he said further, that he understood that this irregularity, if it was as he had been informed, that it was indictable, and it was their sworn duty to look it up.

Further, he said he understood that the county commissioners by some action of the board had ordered and sanctioned the meetings.

He said that if that were the case, they should be indicted, every one of them. The latter part of his charge was in a very disagreeable, loud and angry voice.

Q. Is that all?

A. As nearly as I can state what occurred at that time. I don't think he charged on any other point, except the auditor's office.

CROSS-EXAMINATION.

Mr. LOSEY:

Q. Did the court at the time of making the charge read any statute to the jury that you heard?

A. I don't think he did.

Q. Were you present during the whole charge?

A. I was. I was in during the trial; I was a witness and sat right under the judge—right close up to him at the time the charge was made.

Q. At the time the charge was made?

A. This specified term?

Q. This was a specific charge made then after the general charge to the grand jury had been made?

A. Yes sir.

Q. What day of the week was it made on?

A. I couldn't tell you

Q. What week of the term was it made on?

A. I think it was the first week of the term, but I will not be certain.

Q. Was you a member of the pettit jury that term?

A. No. I was a witness. I had a case. My partner had a case, and I was a witness in the case.

Q. Who was your partner?

A. J. C. Easton.

Q Were you a partner of Silvester Smith's.

A. I was.

Q. Did the court allude particularly to papers that were in the auditor's office at the time you heard the charge made?

A. He did, yes. He said there were valuable papers in that office.

Q. In that charge did he call your attention to that case?

A. He mentioned the case. He did not mention the case as being a case between the county and Silvester Smith, but he said there was a case then in course of trial in which the county had a large interest.

Q. You don't think he read from any statute?

A. I don't think he did.

Q. Do you say that he charged particularly about the auditor's office, mentioning it by name?

A. I said I was not sure whether he said it was one of the offices of the county or the auditor's office, but I understood what office it was in relation to, because I know the band was in the habit of meeting in that office.

Q. You have not been friendly with Judge Page, have you?

A. Not a friend of Judge Page. I never had any quarrels with Judge Page.

Q. Well, you haven't been friendly with him, have you?

A. Not particularly friendly. I am on speaking terms with him.

Q. Very intimate friend of the county treasurer, Mr. Ingmundson?
A. Yes sir, I think something of Mr. Ingmundson.
Q. He deposited in your bank the county funds, didn't he?
A. Well, a part of the funds.
Q. You paid him interest on those funds, didn't you?
A. I paid him interest on it a part of the first year he was treasurer.
Q. Have you not paid interest since?
A. I can't tell you just how long it was ; we have not paid interest for some time.
Q. Do you owe it—have you an agreement to pay it ?
A. No sir.
Q. What is you bank, a private bank ?
A. It is.
Q. You are private bankers ; you and Mr. Easton ?
B. We are ; Mr. Smith and Mr. Easton.
Q. How many banks have you ?
A. I am only interested in this one.
Q. Have you attended any meetings for the purpose of arranging for the impeachment of Judge Page ?
A. I have not, sir.
Q. Have you contributed money towards it ?
A. I have.
Q. About how much did you contribute ?
A. I think I paid them thirty-one dollars and some cents.
Q. Paid who ?
A. The committee.
Q. What committe was it ; who were the committee ?
A. I couldn't tell you now ; I think I paid the money to W. H. Crandall.
Q. You didn't pay it to French ?
A. No sir.
Q. You paid it to Crandall ?
A. Yes sir.
Q. When did you pay it ?
A. I couldn't tell you when.
Q. Lately ?
A. Not very lately ; no sir ; last winter.
Q. You paid all you paid last winter, did you? Are you pledged to pay any more?
A. I have not.
Q. Were you up here pressing the matter before the committee last winter?
A. No sir.
Q: Were you up here during the time the matter was before the committee?
A. I was not.
Q. Was you sworn in the case?
A. I was not.
Q. You was not here in St. Paul at all?
A. I was.
Q. How long did you remain here?
A. I think something over a week.
Q. That was during the session of the committee?
A. After the committee had reported.

Q. Well, while the matter was before the House, and after the committee had reported?

A. I was there, yes sir.

Q. You were taking quite an active part in pushing the matter, weren't you?

A. I can't say that I was. I was here.

Q. Weren't you talking with the members about it?

A. No sir.

Q. Didn't you come here for that purpose?

A. No sir.

Q. You came on other business?

A. I came on my own business, I came here to be here during that trial, that is, until the impeachment matter was decided.

Q. You was a good deal interested in it, wer'n't you?

A. I felt some interest, yes sir.

Q. You did not talk with any of the members?

A. No sir, not a member.

Senator HENRY. I would like to submit a question. The question was handed up, and the President read as follows:

Q. What is the general reputation of this respondent in Mower county, this State, as to vindictiveness and impartiality?

Mr. DAVIS. Who puts that question, Mr. President?

The PRESIDENT. Senator Henry.

Mr. DAVIS. It is the practice of courts, for the purpose of raising an exception, to allow the counsel to object to a question when put by the judge. With all respect to the Senate, we desire to object to that question, it is manifest that an inquiry of that kind opens a door to a vast field.

Mr. Manager CAMPBELL. Governor, will you wait a moment, I would like to hear that question argued. The President then read the question.

Mr. Manager CAMPBELL. I hardly think it is a proper question.

The PRESIDENT. The chair will rule that it is not proper, if the Senate desires to submit it, the chair will submit it.

Senator HENRY. I will withdraw it, sir.

C. C. CRANE, SWORN,

And examined on behalf of the prosecution, testified:

Mr. Manager CAMPBELL. Q. Mr Crane, where do you reside?

A. In the town of Lansing, sir, Mower county.

Q. You are acquainted with Judge Page?

A. Yes sir.

Q. You were a member of the grand jury, March term of 1877, were you?

A. Yes sir.

Q. Acted as clerk?

A. Yes sir.

Q. Will you state what his charge was in the opening of court to you in regard to the county auditor, or county officers generally, and especially in regard to the treasurer and auditor's office?

A. Well, he called our attention to the county treasurer's office,

stating that there had been certain irregularities committed there, according to information that had been given to him, and he stated that there was a certain town order had been paid by Mr. Ingmundson that was irregular, and that he desired us to investigate it, and if there was facts in the case, as he read the law to us, it was an indictable offense; but if we did not think that the facts were sufficient for an indictment, that we should proceed by a presentment; and if not by presentment, that we should present the facts in the case.

Q. Was that all said at the opening?

A. Yes, sir, that was the way I remember it; he then called our attention to the auditor's office; that the band had made a practice of meeting there, which was wrong—irregular; had no right to do it; there was valuable papers stored there, and I think he mentioned that if the county board of commissioners had given privilege to do it, that they also had committed a wrong; that they had no right to do; that it strictly belonged to the county, and it should not be used for public purposes of that kind.

Q. State whether the grand jury did investigate.

A. We did; yes, sir.

Q. State if you were called into court again.

A. We came into court twice, I think, on points of law, to receive information from the court; after that we brought in an informal statement in reference to the matter.

Q. What do you mean by informal statement?

A. Well, it was a statement as to the opinion of the grand jury; what they thought of the case of Mr. Ingmundson.

Q. Why do you term it "informal?"

A. Well, I think that is what the judge called it, when he called our attention to it; I think he called it an "informal statement," when he called our attention to it; he read the statement over, and stated that that was not what he desired; that he instructed us that we should find an indictment if the case warranted it, and if there was not sufficient evidence for an indictment, we should proceed by presentment; and, if we couldn't find either, we should bring him in the facts in the case.

We then retired again and brought in a statement made out by one of the grand jurors, and presented it to the court. The judge examined it, looked it over, and said if these were the facts in the case, and they were substantiated by evidence, that it was an indictable offence. I think he read some law to us at that time, too, if I remember correctly. We then retired after that again, and came in and asked to be discharged. He took up this last paper that we brought in, and he looked it over and stated that if these were the facts in the case, substantiated by evidence, that we had certainly violated our oaths as grand jurors, but that he could not dictate to our consciences, that our oaths were our own, and that he was glad, or something of that sort, that the law was such that no grand jury could stand between the law and the punishment of crime. He then discharged us, and directed the county attorney to make out a complaint against Mr. Ingmundson, according to the statement as had been presented to him.

Q. What is your occupation?

A. I am in the milling business, sir.

Q. Did Judge Page come to your mill, soon after this—soon after court closed, or sometime after?

A. He came over in—I think it was July,—in reference to the matter; yes sir.

Q. What did Judge Page say about his charge to the grand jury, or his treatment of the grand jury at that time?

A. I think it was in July, as it was after the bar committee had met in Austin, that he came over there, one day, and spoke about an affidavit I had made in reference to that matter; and during the conversation he stated that if he had known that Mr. Ingmundson had been before us at the time the grand jury sat, he would have been more severe than he was. We was talking about the matter at that time.

Q. Did he use this expression?

Mr. LOSEY. Oh, we object to the counsel of putting into the mouth of the witness the expressions.

The PRESIDENT. Let the witness state what Judge Page said.

Mr. Manager CAMPBELL. I know, but I have a right to refresh his memory.

Mr. DAVIS. No, you havn't any right to refresh his memory.

Mr. Manager CAMPBELL. Well, did he say anything about not giving the grand jury enough, or anything like that; if he did, what did he say?

Mr. DAVIS. We object.

The WITNESS. No, I don't think he did, I don't remember that he did.

Q. Have you given us about a detailed statement of the facts as you recollect them?

A. Yes sir.

CROSS-EXAMINATION.

Mr. LOSEY. Do you reside in Austin?

A. No sir, I reside in Lansing.

Q. About how far from Austin?

A. Oh, it is a mile or that matter.

Q. You are an intimate friend of Mr. Ingmundson's?

A. Well, no sir; not particulaaly so, no more than I am of any other citizen of Austin.

Q. Were you instrumental in getting Mr. Ingmundson in before the grand jury at all?

A. No sir.

Q. You knew of his being there?

A. I did, yes sir.

Q. Did you not know at the time that the court had instructed you that it was improper to permit any person to come before the grand jury whose case was under consideration?

A. No sir, I was not; and I don't think any of the grand jury was. If they had they would have objected to it.

Q. Certain of the grand jurors have already sworn that that was the fact?

A. Very well, then, I think they was very lame that they allowed him to come in there. I didn't hear no such thing, myself.

Q. Did the judge charge the grand jury more than once on that subject matter of the treasurer's office?

A. I think he did, yes sir. I think he charged us, on the commencement of it, and I will not swear positively as to this; and I think on Thursday of the last week he again called our attention to it; wanted to know why we had been so dilatory, or something of that sort, in not attending to the matter. I will not swear positively that that is the case.

Q. Did the jury, at any time, come in and ask to be discharged before they were finally discharged?

A. No sir.

Q. They were discharged when the foreman first asked to be discharged?

A. Yes sir.

Q. What informality did the court call your attention to in the statement that you had made as a grand jury?

A. Well, it was not according to the statement that he asked for; he asked for a statement of facts.

Q. No, what informality was there in the statement of facts?

A Why it did not state the fact; it stated—

Q. You made an affidavit, did you not?

A. Yes sir.

Q. It was on the 13th day of August, 1877, before W. H. Crandall, notary public?

A. Yes sir.

Q. Did Mr. Crandall bring the affidavit to you?

A. No sir; I went up into the office and gave it to him; he said they desired such a statement; the lawyers in Austin desired a statement of the facts, and I went up there and gave it to him, as near as I could. He did not come after me.

Q. Was that affidavit written before or after you went to the office?

A. No sir, it was written after I got there.

Q. Didn't you swear in that statement that the grand jury went out and returned into court with an informal statement, which was not signed by the foreman?

A. Yes sir.

Q. Then you did make a statement of facts that was *not* a statement of facts?

A. That was the informal statement that I stated in my direct examination; a resolution that was neither signed, ——— Judge Page stated to us that it was neither signed by the foreman nor the clerk; stated that he wanted a statement of the facts in the case.

Q. What did the court say to you—that it was not such a statement as the grand jury could make in contemplation of law?

A. No sir; I think not. I think he said it was not such a statement as he desired; it was not a statement of facts, it was simply a statement as to our opinion of the facts.

Q. Didn't you state in your affidavit, when the court said such a statement was not what was contemplated; that it was not a statement of the case, and that it was not signed by the foreman, and asked the grand jury to return a true statement of facts as they found them, which was done?

A. Well, that is just what I say; that is what I attempt to say now; it is just what I have said, I believe. I might have worded it a little different, that is the point I wish to convey; that that was not a statement of facts in the case, that it was simply a memorandum that

covered our opinion in the matter; that there was not sufficient evidence for an indictment.

Q. You went out and made a statement of the facts, as you had found them by an investigation?

A. Yes sir.

Q. What was that statement? You was clerk and drew the statement?

A. No sir, I did not.

Q. One of the grand jury. Who drew the statement?

A. One of the grand jury, his name is Mr. ——— well, he lives in the town of Clayton; he is deaf—Mr. Coleman, I think, drew the statement.

Q. That was the gentleman to whom this town order was payable?

A. Yes sir.

Q. You mean the first statement?

A. No sir, the second statement he drew, if I remember correctly. The first statement was drawn by Mr. Bacon, of Leroy.

Q. And the second statement of fact containing the evidence that had been taken before the grand jury was drawn by Mr. Coleman?

A. I think so, yes sir; it may have been copied by Mr. Knox, I am not positive as to that; but I think Mr. Coleman drew the statement.

Q. What was the language of the court when you brought in the statement of facts?

A. Well, he stated that if this statement was substantiated by evidence, sufficient evidence, that it was an indictable offense; that was about the sum and substance of it.

Q. That was about all he said?

A. At that time, I think so, yes sir.

Q. When you were finally discharged, what did he say?

A. Well, he told us that, if this was a statement of the facts and was substantiated by evidence, that we had certainly violated the oaths that we took as grand jurymen.

Q. Is that the exact language?

A. Well, I think it is, it is very near that; it was the import of it.

Q. That was the impression you got from it?

A. Yes sir.

Q. Can you recollect the facts that were sworn to by the grand jury, at that time?

A. No sir, not distinctly; I remember some of them.

Q. Who was this order, that was under investigation, made payable to?

A. To Mr. Coleman, I think.

Q. What was its amount?

A. $114 and some odd cents, I think, if I remember correctly.

Q. Did it appear in proof before the grand jury that Mr Coleman had presented this order to Sever O. Quamm, who was then town treasurer?

A. O. Quamm paid twenty dollars, let Coleman keep the order, and said he would have to go to Austin to get the balance to pay it; that afterwards, O. Quamm paid the balance with Ingmundson check on the bank of Leroy and took up the order.

Q. Did it further appear that O. Quamm then carried this paid order to Ingmundson, who gave him the money upon it, and that Ingmundson held it until the new treasurer of the town of Clayton, Sever Har-

alson, was elected, and then refused to pay the money belonging to the town, some five hundred dollars, as shown and proved by the auditor's warrant, unless he, Haralson, the treasurer, would take this order as money; Haralson demanding the money of Ingmundson, (the money of the town) and Ingmundson, knowing that the order had been paid, but refused to pay over the money of the town until he compelled Haralson to take the order. Did such facts appear?

Mr. CLOUGH. Now, objection is made, on the part of the managers, to that question, on two grounds: In the first place, that the question is not proper cross-examination, the managers not having in the examination in chief made inquiry as to what appeared in evidence before the grand jury; that is the first ground of objection.

The second ground of objection which we make at this time is that the secrets of the grand jury room are sacred, and what is introduced in evidence before the grand jury, sitting in the grand jury room, and conducting their business—what transactions occur there cannot be divulged by any member of the grand jury at any other time or place, save only when some person is being prosecuted for the commission of perjury before that grand jury. Those are the grounds of our objections. It seems to me that it is only necessary to state them.

Mr. DAVIS. Mr. President, I would inquire if my learned trie nds have any authorities on that point, or any statutory references?

Mr. CLOUGH. Yes sir.

Mr. CAMPBELL. I refer the Senate to page 639, section 40, of the General Statutes of this State:

"Every grand juror shall keep secret whatever he himself or any other grand juror said, or in what manner he or any other grand juror voted on any matter before them."

"Sec. 41. Any grand juror may, however, be required by any court to disclose the testimony of any witnesses examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witnesses before the court, or to disclose the testimony given before them by any other person upon a charge against him for perjury, in giving his testimony, or upon his trial therefor."

We claim that the converse of that would be true.

"Sec. 42. A grand juror cannot be questioned for anything he says, or any vote he gives, in the grand jury room, relative to a matter legally pending before the grand jury, except for a perjury of which he may be guilty in making an accusation, or giving testimony to his fellow jurors."

Here is the oath: "You and each of you do solemnly swear that you will diligently inquire and true presentment make of all public offenses committed or triable within this county of which you have legal evidence, according to your charge; the counsel of the State, your own counsel, and that of your fellows, you shall keep secret; you will present no person through malice, hatred or ill will, nor leave any person unpresented through fear, favor or affection, or reward, or the promise or the hope thereof, but you will present things truly as they come to your knowledge, to the best of your understanding, according to the laws of this State. So help you God."

I think the Judge is bound also to charge them that they are to keep the secrets of the grand jury, at least they always do, and I think the statutes require it.

Mr. DAVIS. Mr. President and gentlemen of the Senate, we stood, yesterday, upon the verge of the discussion of this subject, but not being prepared at that time to argue the matter upon the authorities, we obviated a precipitation of the issue by waiving the questions which would raise it; We are now prepared to submit this morning, upon authority, saying very little by way of argument, why the present is one of the exceptional cases in which at common law, and under statutes like our own, testimony of this character is admissible.

In regard to the statute of Minnesota, which has just been cited, the members of our profession, upon the floor of the Senate, will doubtless cheerfully attest the truth of what I say, when I affirm it is merely declaratory of the principles of the common law upon the duties of grand jurors, respecting the keeping secret their counsel, and what transpires in their deliberations, so that if I can produce common law authorities, to say nothing of authorities pronounced upon statutes similar to our own, that questions like these, are proper under circumstances like these, this statute affords no obstacle to the admission of the testimony which we seek to offer.

In regard to the statute of Minnesota, we do not ask that this grand jury shall disclose what he or any other grand juror said on that proceeding. We do not ask that he shall detail the testimony of any witness; we do not ask in regard to any vote which he may have given upon the matter under investigation by that body. Now, although it is a general rule that a grand juror may not be questioned, yet that rule gives way whenever the interests of public justice or the establishment of private right, requires the disclosure of what took place in the grand jury room, especially when those events can be elucidated in no other way.

When the question is fairly and directly in issue, for the purpose of determining the right of the public, or private right, and there is no other source of evidence by which that right can be determined, I affirm, upon principle, and I think I can demonstrate by authority, that a juror can be required to disclose whatever took place in the grand jury room.

Mr. Manager CAMPBELL. It seems to me, Gov. Davis, that this discussion might be avoided perhaps, if you would allow the Senate, or the court, to decide upon our first objection. Our first objection is; that it is not cross examination, but that it is, if anything, their case. I think the Senate should decide that first; if they should decide that in our favor then the other question should be postponed until you come to the defense. I don't like to interrupt the counsel without his consent, but I think that question should be first determined, whether they have the right to ask this on the cross examination.

Mr. DAVIS. I rise to a point of order; I don't think it is fair to interrupt counsel.

Mr. Manager CAMPBELL. Not without your consent.

Mr. DAVIS. I don't consent. Most certainly I don't. My learned friend, Mr. Clough, made two objections. I am answering the second; before I conclude I shall endeavor to answer the first. [Continuing.] Now I shall say very little, by way of argument, upon this proposition and will content myself with reading the authorities upon that subject.

I cite from the first volume of Wharton on Evidence, section 601.

"It was at one time supposed that a grand juror was required by his oath of secrecy, to be silent as to what transpired in the grand jury room; but it is now held that such evidence whenever it is material to explain what was the issue before the grand jury, or what was the testimony of particular witnesses, will be required. This is the statutory rule in Massachusetts and New York; a grand juror's testimony, however, will not be received to impeach the finding of his fellows, or even to show what was a vote on the finding. So a petit juror is not ordinarily permitted to disclose the deliberations of the jury, when consulting in their private room; he is however competent to testify as to the issues actually passed on by the jury of which he was a member, when such question is material on a subsequent trial."

Mr. Manager CAMPBELL. Will you allow me to see that when you get through?

Mr. DAVIS. When I get through, certainly. The principle, as enunciated by this last and most distinguished commentator on the law of evidence, may be condensed into this expression of his that "it is now held that such evidence, wherever it is material to explain what was the issue before the grand jury, or what was the testimony of particular witnesses will be required."

I cite from the fifth of Blackford, page 21, which was the case of Burnham *vs.* Hatfield "Upon the trial," says the court in his opinion, "the defendant offered to prove by a member of a previous grand jury some admissions respecting the cause of action made by the plaintiff on his examination before the grand jury. This evidence was objected to and the objection sustained.

"We think the witness ought to have been examined. The oath to grand jurors to keep their proceedings secret, does not prevent the public or an individual from proving by one of the jurors in a court of justice what passed before the grand jury." I cite the case of The State *against* Broughton; it is an opinion given by Chief Justice Ruffin, one of the most distinguished jurists that has ever administered the law in this country: "By the policy of the law grand juries act in secret; and, with the view of sustaining that policy, it is prescribed that a grand juror shall, amongst other things, swear 'that the State's counsel, your fellows, and your own, you shall keep sacred.

"The whole sense in which those words are to be received, or the duration of the secrecy imposed; we do not find accurately stated by any ancient writer on the common law. There are some reasons for the rule which are obvious enough; and as far as the public interests can be subserved by it, the secrecy ought to be kept, not only while the grand jury continues empanneled, but it ought also to be subsequently observed. The principal ground of policy is, no doubt, to inspire the jury with a confidence of security in the discharge of their responsible duties, so that they may deliberate and decide without an apprehension of any detriment from an accused or any other person, but be free, 'true presentment to make.' Therefore it is clear that at no time, nor upon any occasion, ought a grand juror to make known who concurred in, or opposed the presentment; as the power to do so would or might, in some degree, impair that perfect freedom from external bias which a grand juror ought to feel.

"It is probable, likewise, that another ground is, that it might lead to their escape of criminals, if their friends or others, on the grand jury were at liberty to make known the institution and progress of an inquisition into their guilt. But as that reason can operate only while the accused is at large, it would seem that as far as that rule depends on that it would not be obligatory after his arrest. We think, too, that in furtherance of justice, the law may have intended to forbid a grand juror from giving aid to one indicted, and thus found to be, probably, guilty, in his efforts to defeat the prosecution, by publishing the evidence before the grand jury, and thus enabling him to counteract it, perhaps by foul means, after he knew where the case pinched. That would be betraying 'the State's counsel' which is necessarily opened to the grand jury. But that is the immunity of the public, and not the privilege of the witness; and, therefore, it would seem that the rule should create an obligation on the conscience of the juror, and be enforced by a court only when the public justice may be advanced by it, and that it cannot be urged by the witness himself, when it would defeat justice, and thus encourage witnesses, before that body, to commit perjury by false statements, or the suppression of the truth.

"For it is obvious, that if grand jurors are, through all time and to all purposes, prohibited from disclosing and proving the testimony of witnesses before them, there is a perfect exemption from temporal punishment of perjury before a grand jury. The consequences of such a doctrine would be alarming; for, besides the danger of tempting witnesses to commit so great a crime without the fear of punishment, grand jurors would have no credible evidence on which to act on the one hand, and the citizen on the other, would be deprived of one of his most boasted and valuable protections against arbitrary accusations and arrests. It would be extraordinary were witnesses enabled thus to perjure themselves without responsibility."

I cite from the eleventh of Cushing, the case of The Commonwealth against Hill, Bigelow, justice: "The exceptions taken to the instructions given to the jury in the present case have not been insisted on. This charge was certainly sufficiently favorable to the defendant.

"The main point now urged in behalf of the defendant relates to the competency of the foreman of the grand jury as a witness to prove the particular fact to which he was admitted to testify at the trial. To understand the precise objection made to this evidence, it is necessary to bear in mind the purpose for which it is offered. The defendant relied on a variance between the allegation in the indictment and the proof in this; the indictment alleged that the property which the defendant was charged with having received was stolen by a person unknown, and belonged to a person to the jurors unknown. Silas McLellan, the principal thief, being called as a witness by the commonwealth, testified that he stole the property named in the indictment, and that it belonged to White & Locke, and that he testified to these facts before the grand jury that found the present indictment; to control this evidence and rebut the alleged variance, the government called the foreman of the grand jury and put to him the single question whether the said McLellan was a witness before the grand jury at the September term of the court, when this indictment was found, to which he answered in the negative. It is to the competency of this evidence, that the defendant now urges his exception.

"The sole ground of objection is that it is against public policy, and the fundamental principles upon which the institution of the grand jury is based, to admit any member of that body to testify to any fact which has transpired before them in the course of their investigations; but this is stating the rule much too broadly. The extent of the limitation upon the testimony of grand jurors, is best defined by the terms of their oath of office, by which the commonwealth's counsel, their fellows', and their own, they are to keep secret; they cannot therefore be permitted to state how any member of the jury voted on the opinion expressed by their fellows or themselves upon any question before them, nor to disclose the fact that an indictment for a felony has been found against any person not in custody, or under recognizance, nor to state in detail the evidence on which the indictment is founded. To this extent, the free, impartial, unbiased administration of justice requires that the proceedings before grand juries be kept secret; by no other means can perfect freedom of deliberation and opinion among jurors be effectually securred, and the ends of an energetic administration of criminal justice surely attained: but we are not aware that the sanction of secrecy has ever been extended beyond this, we know of no authority which carries the rule of exclusion further, and we can see no ground of policy, or sound reason for its extension.

" This rule has been substantially recognized by the revised statutes of the commonwealth, which would seem to be a significant indication of the extent to which public policy, upon which the rule mainly rests, requires it to be carried. It seem to us, therefore, that a member of a grand jury may testify to any fact, otherwise co npetent, which does not violate the restrictions above stated. In the present case the testimony of the foreman, that the principal thief was not a witness before the grand jury at the term of the court at which this indictment was found, was admissible and relevant to the inquiry before the traverse jury, and the exception to it cannot be sustained."

I quote the case of the Commowealth against Mead, 12 Gray's Mass. Reports, 167. In that case a witness for the commonwealth was present before the traverse jury and gave testimony to a certain effect. It was proposed to impeach him by proving that he swore differently before the grand jury. The court say: " The only other question arising in the case, is whether the testimony of grand jurors is admissible to prove that one of the witnesses, in behalf of the prosecution, testified differently on his exmination before them from the testimony given by him before the jury of trials. As to the competency of such evidence the authorities are not uniform. The weight of them is in favor of its admissibility. On principle it seems to be competent."

"The reasons, on which the sanction of secrecy which the common law gives to proceedings before grand juries is founded, are said in the books to be three fold. One is, that the utmost freedom of disclosure of alleged crimes and offenses by prosecutors may be secured. A second is, that perjury, and subornation of perjury may be prevented by withholding the knowledge of facts testified to before the grand jury, which if known it would be for the interest of the accused, or their confederates, to attempt to disprove by procuring false testimony. The third is to conceal the fact that an indictment is found against a party in order to avoid the danger that he may escape and elude arrest upon it before the presentment is made. To accomplish these purposes, the rule excluding evi-

dence, to the extent stated in Commonwealth against Hill, 11 Cushing, 140, seems to be well established, and it is embodied substantially in the words of the oath of office which such grand juror takes on entering on the discharge of his duties.

"But when these purposes are accomplished, the necessity and expediency of retaining the seal of secrecy are at an end. After the indictment is found and presented, and the accused is held to answer, and the trial before the traverse jury is begun, all the facts relative to the crime charged, and its prosecution are necessarily opened, and no harm can arise to the cause of public justice by longer withholding facts material and relevant to the issue, merely because their disclosure may lead to the development of some part of the proceedings before the grand jury. On the contrary, great hardships and injustice might often be occasioned by depriving a party of important evidence essential to his defense, by enforcing a rule of exclusion, having its origin and foundation in public policy, after the reasons on which this rule is based have ceased to exist. The case at bar furnishes a good illustration of the truth of the remark. No possible injury to the interests or rights of the government, that we can see could happen, by a disclosure of the testimony given by the witness before the grand jury, which was excluded by the ruling of the court, certainly none has been suggested by the learned attorney for the commonweath.

"On the other hand, it is clear that the rights of the accused might be greatly affected and his peril greatly increased, if he can be shut out from showing the fact that an important witness against him is unworthy of credit, or that his testimony before the jury of trials, is to be taken with great caution and doubt, because on a previous occasion when called to testify on oath he had given a different account of the same transaction, from that which he has stated in his evidence at the trial. In the absence of a binding authority on this point, we think the exclusion of such evidence is not sanctioned by any rule of law, or sound principle of public policy."

These are the authorities upon which we base our proposition. Now, so far as we have gone in the investigation of the action of the grand jury in this Ingmundson case, it appears that a certain paper, sometimes inaccurately called a "presentment"—at other times a "report," was handed up by the grand jury to the court, which paper, the witnessss for the prosecution aver, contained the facts which had been found by that body. That paper is missing. It is not in the records of the county of Mower, where it ought to be, and witnesses are put upon the stand to give their recollection of what it contained. Whether these witnesses give their recollection of its contents accurately, is a matter of great importance, perhaps, to the respondent, inasmuch as they state that paper to be a transcript of all that took place before the grand jury, and it must be manifest to Senators, irrespective of any technical considerations, that, if we can reproduce what did take place, and bring the cross-light of those tranactions to bear upon that paper, the cause of truth certainly will be most substantially advanced by such proceeding.

The relations of the respondent in this case to the grand jury—what he did—what cause he had for doing as he did, in the light of all the surrounding circumstances of that case, are the momentous matters now pressing for consideration.

It is perfectly apparent that, from the time a report, which now no longer exists, was submitted to the consideration of the respondent, that he felt bound to give specific directions to the grand jury, as to what their duty was, if the facts were as stated therein. These jurors have reproduced that report, or rather Mr. French, (for he recited it verbatim,) endeavored to do so. We are not bound by this statement that it is a true copy of the facts that took place in the grand jury room.

Now here is a grand juror upon the stand. I think he was the clerk of that jury, and the one of all the others who should be best informed in regard to what transpired, and we have a right to appeal to him as to what actually occurred, as he kept this record which no longer exists. His testimony is part of that general testimony for the prosecution, in regard to the attitude and demeanor of this respondent, based upon what that grand jury had done, and have the managers the right to say that because they have not gone into the grand jury room to deduce what took place there, that therefore we cannot do it upon cross-examinations. It is the very question in issue. In any issue, civil or criminal, the rules of proof cannot be revolutionized by the plaintiff or defendant producing a witness in his own behalf, directing his attention to one single segregated instance of a series of transactions, and then say because they have not gone into the whole issue, that we cannot go into a cross-examination to impeach the veracity, to test the recollection, and to establish the truth of what the witness has said.

The principle is this, that when a witness is produced upon the stand to testify to any facts, the counsel cross-examining him, for all the purposes I have just mentioned, are entitled to have all the circumstances, as part of the *res gestae*, concerning which he has just testified, and that is my answer to the first objection made by my learned friends, that they have not gone into this matter. They have gone into the sessions of the grand jury; its request to be discharged; the instructions to them; the report that has been made; all that has been gone into. It seems to me, therefore, that we are entitled to establish by this witness everything in regard to the acts, parts and allegations, in which he played so prominent a part.

It has become very apparent, as the result of the discussion before you, and the votes of this body, that this investigation is not to be conducted under any technical or severe rule, as applied to either side. We stood up here in the opening days of this trial, and urged, with great confidence, a strict construction of the constitution, as a protection of what we imagined our rights to be. The Senate in its liberality, and perhaps as we may conclude, when the heat of this discussion and trial is over, in its wisdom, decided otherwise.

Now, upon the question of testimony, when the truth confessedly knocks at your door and states in its own voice that it is here, you will not think it necessary that any little piddling omission in the cross-examination should be allowed to close the mouth of a witness who acted so prominent a part in a very important and momentous event.

Mr. Manager CAMPBELL. I submit, Mr. President, that in this examination, we have not attempted to be technical, but have thrown down the bars and allowed the respondent to ask any and all questions, whether alleged or otherwise, and but very little of the cross-examina-

tion has been conducted strictly under the rules. We are not technical. This is a matter that concerns the Senate more than it does us. We do not fear the disclosures of the grand jury room. We are perfectly willing that they should all come out, but we do say that if this Senate will let in the disclosures of that grand jury room, they do it on their own motion, and not with our consent. We believe it to be a direct violation of law, and that this court will not compel grand juries to disclose what took place in their room.

Our statute prescribes what may be proven, and what may not be proven, the authorities read by the learned gentleman simply sustain our statute. Our statute is more liberal than the common law. Now, section 40 says: "Every grand juror shall keep secret whatever he himself, or any other grand juror said, or in what manner he or any other grand juror voted on a matter before them."

Whatever is said in our grand jury room, under our statute, is to be kept secret.

Now here is the next section: "Any grand juror may, however, be required by any court to disclose the testimony of any witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witnesses before the court, or to disclose the testimony given before them by any other person upon a charge against him for perjury, in giving his testimony, or upon his trial therefor."

"Section 42. A grand juror cannot be questioned for anything he says or any vote he gives in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may be guilty in making an accusation, or giving testimony to his fellow jurors."

Our statute is more liberal than the common law. It is passed for the purpose of setting this question at rest, and I submit that if the authorities the gentlemen has just read in regard to that indictment, are so, the indictment that they claim is wrong, because the evidence before the grand jury does not sustain the indictment. The property stolen was proven before the grand jury to be the property of a certain individual. The indictment alleged it to be an indictment for property stolen from a person unknown.

Upon that question, that was a matter directly in issue, and witnesses might be called and might be sworn under our statute. So if a person was accused of perjury, and the witness goes upon the stand and testifies in the case pending, then a witness may be called to show that he testified differently before the grand jury. That is our statutory provision, and that is the authority, and that is the extent of the authority read. We have not time to examine these authorities fully. We have not time to discuss this. The counsel upon the other side came here fully prepared with their authorities, to argue this question. We are not prepared, and I presume the Senate is not prepared to decide upon this question hastily, but I say, from a cursory view of the authorities given, that our objection on the merits is fully sustained by the authorities read. Take their first authority: "It was at one time supposed that a grand juror was required by his oath of secresy to be silent as to what transpired in the grand jury rooms, but it is now held that such evidence, wherever it is material to explain what was the issue before the grand jury, or what was the testimony of particular witnesses, will be required."

Now, I ask if the question here involves any thing of this kind? He asked the witness what appeared as in evidence.

TO COUNSEL FOR RESPONDENT. I believe that is the question?

Mr. DAVIS. That is about it.

Mr. CLOUGH. He asked the witness if certain things appeared in evidence—certain statements.

Mr. CAMPBELL. That is the substance of it, as counsel says; what appeared in evidence. And suppose this witness says that such and such things appeared. Is that evidence before this court? It is for this court to determine upon evidence, what appeared, not his information. He is not here as an expert to say what occurred in that grand jury room. The evidence may appear to him in a shape entirely different from another juror's understanding of it. But if he is permitted here to tell just precisely what was said and done in that grand jury room; if it could ascertain just what occurred there, would such a proceeding not be manifestly wrong? The court can judge and determine for themselves in this matter.

Let me follow this a little further: What has Judge Page to do with the secrets of that grand jury room? How could it affect him, what took place there is not in issue here. He only knew of the action of that grand jury by what transpired in court—what took place in open court is the only matter that we have investigated. Now, we say anything and everything that took place in open court, that Judge Page could legitimately know, you are free to ask about, but what took place in the hidden recesses of that grand jury room he did not know, and had no right to know, and what business has he in there. We have not asked upon that, it is not cross-examination. Further than that, the counsel is not satisfied with following a legitimate cross-examination but he is making their case. He puts that grand jury on trial, upon their defense as an excuse for his conduct. I read from page 59 of the book containing the respondent's answer. Speaking of Ingmundson, he says:

"Respondent is informed and verily believes that said Ingmundson was constantly, during said term of court, in communication with certain members of said jury, and was by them informed of what transpired in the jury-room relative to his case. That he, said Ingmundson, had beeome greatly offended and enraged on account of the attention of said grand jury having been called to his official misconduct, and in the presence and hearing of said jurors and other persons in attendance upon court, used very abusive, profane and indecent language.

"That through his influence and the influence of his personal friends, some of whom were members of the said jury, an effort was made to postpone and finally to prevent a thorough or any investigation of said officer by said grand jury, and to shield and protect said Ingmundson from investigations, That for this purpose said jurors postponed investigation, in disregard of said instructions and their duty, until a late period in the session, and until all of the business necessary to be transacted ought to have been and might have been completed. That they refused to be guided by the law as given them by the court, disregarded and denounced the instructions given them, and some of them publicly denounced the court in an angry and abusive manner for having directed their attention to said county treasurer. That, disregarding their high duties and sacred obligations, a number of said jurors unlawfully

and maliciously combined together to resist the enforcement of law, and to prevent the administration of justice and the punishment of crime, and that in furtherance of said purpose and in disregard of the law and instructions of the court, the jury called said treasurer before them while they were in session at two different times, when the subject of his misconduct was under consideration, and permitted and required him to make lengthy statements as to the affairs in his office."

Now I submit your honor if this is not their case, and not ours. I submit if they have any right to this testimony at all; if they have not the right to make it with their witnesses, and not make it on the cross examination.

I claim, in the first place, that this questioning is not cross-examination.

Second. That as to what took place in the grand jury room, is not in issue here. All that is in issue or can have any thing to do with this case, is what appears in open court; that the judge had a right to know; it is all he did know. This matter—the conspiracy in the grand jury room that he alleges, if there was any, must have come to his knowledge afterwards, and he had no right to know it, and could not, and the presumptions are that he was not possessed of such knowledge.

I think our first objection is sufficient at this time. It is well, perhaps, that this question should be argued now, so that when the matter comes up on their case, in the attempt to introduce this kind of evidence, the court may be prepared to decide it. The claim now is that they have no right to this evidence.

Senator NELSON. I move that the court retire to consult upon this question.

Senator EDGERTON. Do the managers care to argue this question?

Mr. Manager CAMPBELL. I don't care except as to the order. If you say openly and boldly, it shall go in, why we don't care. It is a matter in your own conscience.

Senator NELSON. Before we go into secret session, I should like to have the reporter read the question objected to.

The question was read as follows:

"Q. Did it further appear that O. Quam then carried this paid order to Ingmundson, who gave him the money upon it, and that Ingmundson held it until the new treasurer of the town of Clayton, Sever Haralson was elected, and then refused to pay the money belonging to the town, some five hundred dollars, as shown and proved by the auditor's warrant, unless he, Haralson, the treasurer, would take this order as money, Haralson demanding this money of Ingmundson (the money of the town) and Ingmundson, knowing that the order had been passed, but refused to pay over the money of the town, until he compelled Haralson to take the order. Did such facts appear?"

The question being taken upon the motion to go into secret session, and

The roll being called, there were yeas 25, and nays 11, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Bonniwell, Clough, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Godrich, Hall, Henry, Hersey, Houlton, Lienau, McNelly, Morehouse, Morrison, Morton, Nelson, Shaleen, Smith, Waite, and Wheat.

Those who voted in the negative were--
Messrs. Clement, Deuel, Doran, Macdonald, McClure, McHench, Mealy, Pillsbury, Remore, Swanstrom, and Waldron.
So the motion prevailed.

And the court went into secret session.
Mr. Edgerton offered the following, which was adopted:
Ordered: That the question propounded by the respondent is not proper cross-examination.

Mr. Waldron offered the following resolution:
Resolved, That we have no more secret sessions for the purpose of considering the admissibility of evidence.
Notice of debate being given by Mr. Henry, the resolution was laid over.

On motion. the court took a recess until 3 P. M.

AFTERNOON SESSION.

The PRESIDENT. The Senate has directed the chair to announce that, upon their deliberations, they have decided that the question propounded to the witness last upon the stand, is not proper cross-examination.

MR. C. C. CRANE RE-CALLED FOR CROSS-EXAMINATION.

Mr. LOSEY. Was Mr. Coleman on the grand jury?
A. He was; yes, sir.
Q. Not the same person to whom the order was made payable?
A. It is, sir.
Q. You have given us, I believe, the statements that were made by Judge Page to the jury, when they came into court the last time and were finally discharged, have you not?
A. Yes, sir.
Q. Please repeat what you have stated in regard to that.
A. At the time we brought in the statements that were reported as published—as facts in the case?
Q. The last, when you brought in the presentment.
A. We brought in no presentment.
Q. Well, when the jury was discharged, I mean?
A. Well, we brought in no paper at that time; we simply came in and said we had no further business.
Q. Then what occurred?
A. He took the paper that we had brought in previously, and stated that if those were the facts in the case and they was substantiated by evidence, it certainly constituted an indictable offense.
Q. Go on?
A. And that we had violated our oaths as grand jurors in not finding an indictment under those facts, but ———
Q. Did he not state—well. go on?
A. But that he could not dictate to our consciences; that our oaths were our own, and that no grand juror—that the law was such that no grand jury could stand between justice and the punishment of crime; that was about the words that was used. He then discharged us and told the county attorney to make out a complaint against Mr. Ingmundson, from the facts as reported by the grand jury.

Q. Was not the talk in relation to your violating your oaths something like this: "That if the grand jury had been influenced by improper motives in their action, *then* they were guilty of violating their oaths." Reflect upon that Mr. Crane?

A. No sir; I don't think that at that particular time that that was mentioned, he stated that during the conversation, but I think it was previous to that time.

Q. That was part of the statement make by him right then and there, was it?

Q. Then you think that, after stating that if the grand jury had been influenced by improper motives in their action they had violated their oaths, he went on and stated further that they *had* violated their oaths?

A. Yes sir, that is the way I remember it—as such grand jurors.

Q. Do you pretend, Mr. Crane, to be accurate in your memory as to just what did occur there; in all of its connections?

A. Well, I think I remember the main portions of his charge, yes sir.

Q. Well, no doubt you do. But do you pretend to be accurate in relation to what occurred there, taken in connection with all that occurred?

A. Well, I think I am accurate as any other man could be at this length of time from the time it transpired.

Q. Well, no doubt of that, but do you claim to be accurate?

A; Well, I most generally consider a point, before I make any statements with reference to it pretty well.

Q. Have you considered this considerably?

A. Well no, not particularly so, that is, I have thought the matter over since I was subpœnaed here, particularly.

Q. Have you talked with the then grand jurors there, so as to make it certain?

A. No sir; I have talked with them more, really, since I have been up here, since I have been off the stand.

Q. This is what I mean: have you talked with them since you came up here?

A. No, not till to-day noon. I talked with one of them when I was coming up here.

Q. You have just come up?

A. I just came up last night. I got here this morning about seven o'clock.

Q. Have you talked with any of the grand jurors at home concerning what occurred, and refreshed your memory in that way?

A. No sir, not to refresh my memory. I have spoken to some man, I think, in reference to the matter once, and one other grand juror, during the time; and that is all, I think, that I have ever spoken to in reference to the matter, previous to to-day noon.

Q. You don't think, then, that when the judge stated to the jury that they had violated their oaths, that there was any condition attached to it, or any language used in connection with it except what you have given?

A. Well, he had been talking to us I presume five minutes, during that conversation. I presume it was five minutes.

Q. Well, did he state to you that if the facts were so and so, and you

had found such to be the facts and then refused to find an indictment, that you had violated your oaths?

A. Well, I think that is the way I stated it; very nearly in those words.

Q. He went over all the facts, did he, in the case?

A. Well, no, I don't think he read them at all at that time.

Q. Well, he repeated them over, did he?

A. No sir, I think not.

Q. They had been repeated by him, previously, to the grand jury, hadn't they?

A. I don't think he read that paper to the grand jury, no sir.

Q. Well, he was speaking on the basis of the paper which you had handed to him, was he not?

A. Yes sir.

Q. And of the facts which that paper contained?

A. Yes sir.

Q. You are acquainted with Judge Page, are you?

A. Yes sir.

Q. When he charged the grand jury, originally, did you think he addressed you in any louder tone than usual?

A. On the first charge?

Q. On the first charge?

A. No sir, I should say not. It was in his characteristic way, but very emphatic.

Q. He has an emphatic way of speaking, always, does he not?

A. Yes sir, rather dignified.

Q. Impressive?

A. Yes, rather.

Q. Did you notice whether his tone was any louder than usual when he finally addressed you in court?

A. Well, I think his tone was when he discharged us.

Q. Well, just answer my question; whether you think it was any louder than usual?

A. Well, perhaps I could state it better by the way I understood his tone of voice.

Q. No, I want an answer to my question. Answer my question; whether you think his tone of voice was any louder than usual when he addressed you in discharging the jury finally?

A. Well, I can't say that it was very loud, particularly; it was very emphatic.

Q. Was it any louder than usual?

A. Well, it was more sarcastic than loud.

Q. Was it any louder than usual?

A. Well, I don't know that it was particularly louder than usual; that's his usual mode of talking to the grand jury.

Q. The sarcasm of it would have to be judged of from the language used, would it not, largely?

A. Well, a person—

Q. Well, please answer my question; the sarcasm of it would have to be judged of largely from the language used, wouldn't it?

A. Well, and in the *manner*.

Q. Well, largely from the language used?

A. Yes sir, in a measure.

Q. You have given the language?

A. Partially; there was a portion of it that I don't remember.

Q. The manner you can't give?

A. No sir, that would be impossible; nobody but Judge Page could give that. [Laughter.]

Q. It is peculiar to himself, is it not?

A. I think so; yes sir.

Q. Was there a considerable excitement in Austin in regard to the matter that was being considered by the grand jnry—the Ingmundson matter?

A. After the grand jury was discharged there was considerable talk about it, yes sir.

Q. Hadn't there been considerable, previously?

A. Well, I hadn't heard a great deal of it up to that time.

Q. You had heard some?

A. I live out of town, and of course when we were discharged I had went home.

Q. You had heard some of it?

A. Oh! I had heard a street talk; yes sir.

Q. Did you during the adjournment hear of some excitement—adjournments from day to day of the grand jury?

A No sir, I don't think there was much of any excitement; that ii, not to my knowledge at that time particularly.

Q. Now, Mr. Crane, you spoke of the charge in regard to the auditor's office, I believe?

A. Yes sir.

Q. Do you remember coming into court and reporting concerning that matter?

A. Yes sir, I think we did.

Q. Now do you remember, that at that time the court stated to you that all that it would be necessary for you to do in relation to it, would be to call the auditor before you, and the county commissioners or the chairman, and see whether they proposed to discontinue it, and if they did, you need not take any further notice of it; discontinue the practice, I mean, of letting these assemblies come in?

A. Yes sir, I think that was about the talk.

Q. Between the grand jury and the judge, was it?

A. Yes sir; he had understood that the commissioners had sanctioned this thing, but that if they would discontinue it, that was inferred that that would be the end of it; that it should be stopped; that there were a great many valuable records there, and a crowd gathering in the auditor's office might take some of them away; they might become destroyed.

Q. Well, you as grand jurors, advised the court that the auditor and the chairman of the board of commissioners admitted the impropriety of the practice and proposed to discontinue it, and the court told you that no further notice need be taken of it?

A. Well, I don't think they admitted the impropriety of it, but they said they would discontinue it.

Q. And the court told you that no further notice need be taken of it, did he?

A. I won't be positive as to that.

Q. Well, isn't that your best impression?

A. Well, about the substance of it if I remember correctly.

RE-DIRECT EXAMINATION.

Mr. Manager CAMPBELL.

Q. Did I understand you to say that he told you to call the county commissioners before you?

A. I don't think answered that way, that he told us to call them before us. I didn't understand it that way.

Mr. LOSEY. I did not so understand you to answer it that way.

Q. Did you say that he told you to call the commissioners before you?

A. No sir, I think he said we could call them before us, and if they said they would discontinue the matter that was all right.

Q. You did call them before you?

A. Yes sir.

Q. They said they would discontinue it?

A. Yes sir.

Q. You reported that to the court?

A. We did.

RE-CROSS EXAMINATION.

By Mr. LOSEY. Q. Did the grand jury, during that term, examine the county offices as required by statute?

A, Yes sir.

Q. And report to the court?

A. Yes sir; I think we did.

LEVI FOSS, SWORN

And examined on behalf of the prosecution, testified:

Mr. Manager CAMPBELL.

Q. Where dou reside?

A. In Windom, Mower county.

Q. State whether you were a grand juror for Mower county, March term, 1877:

A. I was.

Q. Were you present when the grand jury were sworn?

A. Yes sir.

Q. Did you hear the charge of Judge Page?

A. Yes sir.

Q. State what that charge was, especially in respect to the county officers; give us your verson of it?

A. After we came into court he charged us, and said: that there were some irregularities existing in the county auditor's and the county treasurer's offices, and he wanted us to investigate the matter; and consequently one order of the town of Clayton; he said that Mr. Ingmundson had been doing illegal business, and he was informed it was an indictable case, and he wanted us to investigate; and we retired to our room.

Q. Did he say anything about the county auditor or county commissioners at that time?

A. He said something about the county auditor.

Q. What did he say?

A. He said that he understood that the brass band met there for to play, after office hours, and if it did, it was an indictable offense, also.

Q. Well, did he say anything about the grand jury?

A. Yes; after he gave us the charge, he said we were a nice, noble set of looking grand jurors; intelligent set; and he supposed that we should do our duty faithfully, and he put confidence in us that we should do it. [Laughter.]

Q. Pleased to think he had so intelligent a grand jury?

A. Yes, I thought I was going to have a good time. [Laughter.]

Q. Well now, you say you retired to your room then. How soon did you go back into court.

A. When we carried a document of indictment, I think, on some other charge.

Q. Anything said about the county treasurer's office at that time, if so, what was said?

A. Well I think he said that we had not investigated that business yet, and he wanted us to do it.

Q. State what he said as near as you can.

A. And he said if we could not bring in an indictment to bring in a presentment and, if not a presentment, to give him the facts just as we found them, and we likewise went to our room again, and got the facts from the county treasurer's books. There was a committee too, but I believe we went as a body, all of us down there, and examined the books; we did not find anything, irregularity enough to find an indictment, and we also reported.

Q. Well, when you made your report, what did he say to you then?

A. I think he said he was astonished—he seemed to be a little astonished that we hadn't reported favorable to what he wanted.

Q. Altered his mind about your intelligence, did he?

A. At that time he did.

Q. Well, go on and state what he said?

A. Well, then he told us that we must investigate the business concerning the county auditor's office, and the county treasurer's office, and we retired again to our room, and then I think there was a report drawn up to present the facts; there was a resolution report drawn up to admit the facts to the judge, the court, and I think we went in again and admitted the facts to him, as nigh as I can remember.

Q. What did he say to you?

A. Well, he said as that paper stated the facts, he couldn't see why that we didn't find an indictment, he certainly thought that that was sufficient for indictment, and that we had violated our oaths in not finding the same. He said we must be led by some—something as though we had been bribed, or some way brought in there that we had been bribed some way, to clear Ingmundson from crime. He said that we had perjured ourselves, and then he turned to the county attorney and wanted him to make out ———

Q. Was this the last time you are talking about now?

Q. Something near the last time, I believe.

Q. After you had made that report of facts, were you sent out again?

A. Yes, we were sent out again. This was the next time after.

Q. What did you do when you came the next time?

A. Well I believe we reported then the facts of the case, just as it was! that some little irregularity in the county treasurer's office—but not through the county treasurer—by his clerk concerning an order—and that we did'nt find an indictment; there was'nt proof enough to form an indictment.

Q. Well, what did he say to you then?

A. Why then he went on and stated that we had violated our oaths, and that we was'nt what he expected we were. When he first commenced he was very indignant in his talk at the time, and he spoke to us about it and I felt as though that—he seemed to be indignant over the matter to think that we did not find an indictment, and turned around to the county attorney and told him to make out a paper for the arrest of Ingmundson, as the law directed, and have him arrested, and turned to the grand jury and says: "You are discharged."

Q. Well now, Mr. Foss, what was his manner after the first charge?

A. His manner, in my way of looking at it, was very indignant, and I felt it at the time. I thought his voice was loud. I thought he seemed to be angry at the time.

CROSS EXAMINATION.

Mr. LOSEY:

Q. Had you been in Judge Page's court much, previous to this time?

A. I had not, a great deal.

Q. Have you been in there many times since?

A. I think I haven't, no sir.

Q. Have you ever attended court since that time'

A. I believe I have once been there in court.

Q. How many times did the grand jury ask to be discharged?

A. I think, in a formal way, but once, in my estimation.

Q. And that was when? when they were discharged?

A. Yes sir, I think it was.

Q. You have made an affidavit in connection with the proceedings of the grand jury, have you not, Mr. Foss?

A. No sir, I signed an affidavit.

Q. Didn't you swear to it before William A. Crandall, notary public?

A. No sir.

Q. Is that your signatuae, Mr. Foss? (Showing witness paper.)

A. Yes sir.

Q. It says, "Subscribed and sworn to before me, this 9th day of August, 1877,

William H. Crandall, Notary Public."

It has got his notarial seal on it. Didn't you make that affidavit, didn't you swear to it?

A. I think I did not give my oath to that.

Q. How did you come to sign the paper?

A. Well, it was presented to me and read to me; I was in the harvest field and I didn't have my spectacles there, and I didn't read it myself, and he read it and I signed my name to it.

Q. Didn't you raise your hands?

A. No sir.

Q. Didn't he swear you at all?

A. I think not.

Q. Are you positive about that?

A. Yes sir.

Q. Just as positive as to any other matter you have sworn to?

A. Yes sir.

Q. Then you have never made an affidavit in connection with this matter?

A. I signed that affidavit.

Q. Well, I understood you that you had never made an affidavit; that is, you have never sworn to an affidavit.

A. I think I haven't.

Q. Does this contain a statement of facts as you understood them at the time you signed it?

A. Well, I think it does pretty near, as nigh as I could tell the story. They read it over to me, and I thought it agreed pretty well with what I heard in court.

Q. Did Mr. Crandall have a bottle of ink with him in the harvest field?

A I guess not. No, Mr. Crandall did not.

Q. Who did have ink in the harvest field?

A. Mr. Harwood, I think.

Q. A. A. Harwood?

A. Yes sir.

Q. Was Mr. Crandall with him?

A. Mr. Crandall was with him.

Q. Did Mr. Crandall put his signature to the paper then?

A. I didn't see him.

Q. This paper states, "after deliberating upon said matter," speaking of the Ingmundson matter, "for the period of five days, during which time said jury reported several times and asked to be discharged, that they were as frequently sent back to their room by said judge." Is that true?

A. No, sir; I don't consider that true; the way I consider that was like this: The grand jury was all—

Q. Well, wait a moment; I don't care about an explanation. You say this statement isn't true?

A. Not all of it; no, sir. [Handing witness the paper.]

Q. Can you see the writing so you can read it? [Reads for the witness.] "That after deliberating on said matter for the period of five days, during which time said jury reported several times and asked to be discharged, that they were as frequently sent back to their room by said judge." What part of that is false, and what true?

A. I don't think there is hardly any of that true, exactly, because, I want to explain just how it was—

Wait a moment. [Reading.] "That each time that said jury was asked to be discharged, said judge used abusive and insulting language to them." Is that true?

A. No sir, not as I calculate to state it.

(Continuing)—"and that finally when they were about to be discharged, said judge told said jury that they had violated their oaths, and were guilty of perjury."

Q. Is that true?

A. Xes sir, that is pretty near true.

Q. That is pretty near true?

A. It is just true, in my estimation.

Q. Do you swear that Judge Page used just that language?

A. Well, I do as nigh as I can recollect.

Q. Did you have any talk with Mr. Crandall about this?

A. I think not.

Q. What did Harwood and Crandall tell you they wanted this affidavit for?

A. I don't recollect as they told me what they wanted it for?

Q. You stated you discovered some little irregularities in Mr. Ingmundson's office, through the clerks?

A. Yes sir.

Q. Committed by the clerks, and not by Ingmundson?

A. That is what it appeared.

Q. Can you tell what these irregularities were?

A. Why, it was on that Clayton order, and an order on Marshall.

Q. Well, you found the facts, and the court laid down the law to you, as applicable to the facts. Isn't that the way it was?

A. Well he said it was the facts, and I supposed it was law, when he said that.

Q. No, the jury found the facts, didn't they?

A. Yes sir.

Q. And carried the facts to the court?

A. We found the facts that I stated to you.

Q. And the court told you as a matter of law, that that constituted an indictable offense?

A. Yes sir.

Q. You knew you were sworn to receive the law from the Judge, didn't you?

A. Yes.

Q. You concluded you would violate the law notwithstanding the Judge had laid it down to you?

A. No sir, I didn't think we were violating the law at all.

Q. So you didn't believe the law laid down by the court was correct?

A. Well, I didn't think that law corroborated. [Laughter.]

Q. You didn't think the law laid down by the court was correct?

A. I didn't think the law was correct on that, because the law was this: that if we found, in our judgment, an indictable offense, to come before him and report; but my mind was that there was not an indictable offense, therefore, I—

Q. You concluded that it was not indictable for the reason that you didn't think it was wilfully done? You found the facts and the court told you that the facts constituted an offense?

A. We found the facts, yes sir, as I told you, they were.

Q. The court told you that the facts constituted an offense?

A. Why, yes, he said if that was the facts.

Q. And you didn't believe that the court told you correctly?

A. Not on that point, I didn't.

Q. And consequently you overrode the law?

A. No, I don't consider that we overrode the law.

Q. Because you didn't believe the court laid down the law properly? [A pause.]

A. That is it, I guess. [Laughter.]

Q. You spoke of the charge of the judge, and that he informed you that certain matters had come to his notice; what language did you say the court used in relation to these matters?

A. Why he said that he understood that there had been irregularities committed in the county treasurer's and county auditor's office, and he wanted us to investigate the matter.

Q. Well, what did he tell you?

A. After we took the oath, I think he told us that we was a nice looking body of grand jurors; he supposed we should do every thing right.

Q. He used that language, did he?

A. Something similar to that, yes.

Q. Well, did he use that language?

A. He said we were good looking men. [Laughter.]

Q. Did you think he told the truth?

A. Not hardly, on my case.

Q. That was the way he started out in his charge, by telling you that you were nice, good looking men?

A. Yes sir, that is the way he started out.

Q. Told you you were noble looking men?

A. Well, I understood him so.

Q. Wasn't you feeling pretty good because of that fact? [Laughter.]

A. Yes sir, it puffed me up some.

Q. Well, I believe you stated what the court told you after he told you this, and what I have been trying to get at was what the court instructed you in relation to this offense?

A. Why, I believe I have told you two or three times.

Q. No, I don't think you have. I ask you to use the language that you originally used in relation to the matter as to what the court told you about this being indictable, and so forth and so on?

A. Well, he went on and read from the statutes, I think, what constituted the law, and how we should proceed, and told us if what he had been informed was true certainly it was an indictable offense, and he wanted we should look careful and see how it was; and if we could not find an indictment, make a presentment, and then he went on and—

Q. Was that used in the first charge? Didn't he tell you that you had a right to find an indictment, or make a presentment, as you saw fit?

A. Yes, I think he did.

Q. What time was it when you saw Mr. Harwood and Mr. Crandall? Was it on the 9th day of August, 1877?

A. Somewhere near that, I think.

RE-DIRECT EXAMINATION.

Mr. Manager CAMPBELL. Q. You said some portions that he read to you out of the affidavit, as he read it to you, was not true, as you understood it, and you wished to make an explanation?

A. I meant to have said that it was not word for word, that is what I meant.

Q. Do you mean to say that it is not true in substance in your opinion?

A. No sir, the sum and substance of that paper I think is true.

Q. What part of it is it that you object to as being not precisely true?

A. About the coming in of the grand jury, and requesting to be discharged.

Q. That, you say, isn't true?

A. No, we didn't do it in a formal way, it was the mind of the grand jurors, all of them, we talked it over considerable—we got kind

of disgusted in keeping us dallying along on that question, and we felt we wanted to be discharged, and get out of it.

Mr. LOSEY. What the grand jury felt in regard to the matter, is not presumed to have been brought to the attention of the judge, and I object to that.

Mr. CAMPBELL. Q. State how long a time you were kept there exclusively on that business?

Mr. LOSEY. Well it has not appeared that they were kept there at all; it is assuming that they were kept there, and there is nothing in the evidence to show it. We object.

Mr. Manager CAMPBELL:

Q. How long a time were you there in the whole term?

A. Eleven days I think.

Q. How much of that time was consumed in this matter in regard to the county treasurer's business?

A. Well, considerable of it.

Q. Well, considerable—it might have been one hour.

A. Well, four or five days I should think, because the testimony about that town order, it took Mr. Coleman a day or two, or two days, to give his testimony.

Q. Now, the counsel has made you say that you were sworn to take the law from the court; did you take any such oath to your knowledge?

A. No sir, I did not, as I understand it.

Q. State whether this was the oath you took: "You, and each of you, do solemnly swear that you will diligently enquire and true presentment make of all public offenses committed or triable within this county, of which you have legal evidence, according to your charge."

Mr. DAVIS. According to what?

Mr. CAMPBELL. Reading. "According to your charge."

Mr. DAVIS. Yes.

Mr. CAMPBELL. [Continuing.] "The counsel of the State, your own counsel, and that of your fellows, you shall keep secret; you will present no person through malice, hatred, or ill will; nor have any person presented through fear, favor or affection, or reward, or the promise or hope thereof; but you will present things truly, as they come to your knowledge to the best of your understanding according to the laws of this State, so help you God."

A. Yes sir; that is what I intended to do.

Q. You intended to comply with that oath?

A. I did; I think I *did*.

Q. What were the reasons that you did not bring an indictment against Ingmundson?

Mr. LOSEY. That we object to.

The PRESIDENT. The objection will be sustained.

Q. This affidavit that they have talked about, did Page ever say anything to you about that affidavit?

A. Page?

Q. Yes.

A. I think he did.

Q. What did he ever say to you about it?

A. He came to my place one day, about the last of August, I think, and said that I had made an affidavit, and he wanted me to take back

what I had presented there, and he took out the bar committee report and read it to me, and wanted to know if that was not correct in all essential points. I told him I didn't think it was; and then he read from that part where the grand jury asked to be discharged. I told him I didn't think that was hardly correct in that, but I didn't see anything else but what was right. He got his pencil and paper and was going to take down another affidavit. I told him that I didn't want him to do any such thing; that I would look over the affidavit; and I was coming to town; if I saw anything in that affidavit that wasn't true, I would come to him and talk it over. He stepped under the shade trees there, and took his dinner—he and Billy Merrick—and went on.

Mr. LOSEY. Mr. Merrick was there at the time of this conversation, was he?

He was.

Mr. LOSEY. Mr. Merrick of Austin?

A. Yes sir.

Mr. LOSEY. Was that affidavit brought to you, read to you?

A. I think it was.

J. D. WOODARD, RECALLED,

On behalf of the prosecution, testified:

By Mr. CAMPBELL. Where do you reside?

A. In the town of Lyle, in Mower county.

Q. What's your occupation?

A. Farmer.

Q. You were one of the grand jury of the March term of 1877?

A. Yes sir.

Q. Present n court at the charge of the judge to the grand jury?

A. Yes sir, I was.

A. Yes sir.

Q. Present in court at the charge of the judge to the grand jury?

A. Yes sir, I was.

Q. State what that charge was as far as it concerns, especially in regard to these county officers?

A. I think it was Tuesday morning when we went in there, and the court was called to order, the names were called and we were all present and the judge gave us what—I don't know what you may call it—instruction. He thought we looked as though we were intelligent men, I thought he was not acquainted with me; he gave us quite a lecture; and finally he gave us a list of the cases that we were to have, and among them was one in regard to the county treasurer's office, and one in regard to the county auditor's office; he said there was transoction brought to his notice in the county treasurer's office that an order came from the town of Clayton, that the treasurer had received an order and paid it, that the order was not cancelled, and in some way—he did not pretend to know how it was, that that order had been paid twice, and the town of Clayton was out that amount. The order was for $114.00 and I think 52, I am not certain; and he read some portions of the law to us and told us to retire and examine into the facts, and if we found them to warrant an indictment in our judgment, that we should do so, and if not an indictment a presentment; and we retired to the room.

Then we retired and examined cases, and examined this one the first of any, as you may say, and found that nothing indictable, or presentable, as you may say, was done by the county treasurer. He also told us in his charge, that if there was a fact in there that would require witnesses, we would be allowed to call them. The foreman of the jury, Andrew Knox, while we were having this matter of Ingmundson under consideration, told me—I won't be sure that he told me in particular, but I was one of the jurors that was there—he said some one go and call the county treasurer.

Q. What took place in the grand jury room I would rather you would not state. I am not speaking of any evidence there, but the facts, you can state them.

A. Well, he explained the matter so that he was satisfied that there was nothing done, that he didn't intend at any rate to do wrong; and that there was no irregularity that the treasurer had committed, on that point that we were to investigate. I mean to say that the facts were referred to a committee of five, and we took a recess. Some of of them went into the treasurer's office to examine the books. They found nothing whatever, except he had taken this order, but it was all explained to us so that it was satisfactory to quite a majority of the jurors. We considered that was the end of it, and had no difficulty in making a report to the judge.

We reported from time to time on different matters, and I think it was the second week, perhaps Tuesday or Wednesday, I won't say positive which, he wanted to know if we had investigated that matter.

Mr. LOSEY. Q. When was this?

A. It was the second week—Tuesday or Wednesday, I am not positive as to that, along about the middle of the week sometime.

Mr. CAMPBELL. The matters that you are telling about now, that he asked you if you had investigated the matter, was that the matter of the county treasurer?

A. Yes sir. The others he didn't seem to refer to at all after that, he considered that we were able to dispose of them amongst others, if we didn't see fit to make a presentment why he let it drop, but this he seemed bound to take more notice of than any of the other. I was not acquainted with him or the county treasurer at that time, except that I was in the county treasurer's office when I paid my taxes. We went back on this matter and was put again into the jury room, and no definite conclusion came to us as you might say.

We reported, I think, two or three times—two or three different times that he charged us on this point. Once we reported that there was, but not sufficient to warrant an indictment; that there was some irregularities that was presented to him. There was also some paper presented to him, that had the evidence in it, but it was not signed by the foreman; and he stated that that was an informal way of proceeding, and sent us back again.

Q. Is that all he stated—that was just informal? What was his manner?

A. His manner, from time to time, increased, that is, his anger, when he seemed to be angry—increased from time to time.

Q. You reported back that there was nothing against the treasurer, and he seemed to be angry, did he?

A. Seemed to be bound that we should not go out of there until we indicted him. I often made the remark that, I would stay there until hell froze over.

Mr. LOSEY. Never mind, [after a pause] go on.

Mr. CAMPBELL. Never mind what *you* said, we want what *Judge Page* said when he charged you in regard to what he called the informality of the report?

A. The substance of it was he didn't see why we were so loth to examine the county treasurer's office or to make a presentment of the facts. That was the subject of it. Unless we were either influenced by friendship, or had been bribed, or something to that effect. As for me I know I hadn't been bribed; I don't know how the rest stood.

Q. You went back, then, and made a formal report, did you afterwards?

A. Yes, more formal. One juryman, I think it was, drew up the report, instead of the foreman. I could not say who it was, my impression is it was D. B. Coleman, that was the last report we made or the report to the last report. We carried in the facts, he then sent us back again and told us if those were the facts, and they could be proven, that they constituted an indictable offense, as much as to say we should go and indict the treasurer.

We went back and deliberated on it, and went in again and presented the facts as they were, and at this time he seemed to be quite angry and spoke in a very loud, harsh tone; I don't know but what it is his common way of speaking. I am not acquainted with him, but I never heard any such language used by any one else to any persons who were considering they were doing their public duty. His language was very harsh and strong. He told us that we had violated our oaths or perjured ourselves; that it was a good thing that there was a higher power than grand jurors, and then ordered the county attorney to draw up a statement of facts that a warrant might be issued for the arrest of the county treasurer, and have him indicted or something to that effect. He then turns to us and told us we were discharged.

Mr. LOSEY. You say you are not accustomed to his manner so as you can tell whether he appeared angry or otherwise.

A. I stated that he did appear angry. His anger appeared to increase every time he addressed us.

From Mr. CAMPBELL: What was his language, was he insulting?

A. I can't remember his exact language. He stated that we had violated our oaths, and it was a good thing that we could not stand between criminals and the law.

CROSS EXAMINATION.

By Mr. LOSEY:

Q. Have you ever made an affidavit in this matter?

A. That is, I signed a statement, but I didn't make an affidavit before a justice of the peace.

Q. Is that your signature? (handing the paper to witness.)

A. I should say it was.

Q. Is that the statement that you signed?

A. I can tell better by looking it over.

Q. Well, is that your signature?

A. Yes.

Q. It purported to be sworn to on the 11th day of August, 1877, and it purports to be signed by J. M. Clark, justice of the peace?

A. Yes sir.

Q. Who was present at the time you signed it?

A. No one but A. A. Harwood.

Q. Is this a forgery of the name of the justice of the peace?

A. No sir, it is not; that is ,you mean me to say whether it is Mr. Clark's signature or not?

Q. I asked you the question, and you answered me no sir. You never appeared before Clark, and swore to it?

A. No sir.

Q. You never swore to it at all?

A. No sir.

Q. Is that your signature to this endorsement, on the back of this affidavit?

A. That is my signature, yes sir. If that was read to me, as I think it was, why, it is all right; if not, it is not. I would like to explain about those signatures, if you will allow me to do so.

Q. The court will allow you to make any explanation you wish to make.

The PRESIDENT. The court will permit you to explain at the proper time.

Mr. CLOUGH. I will give you an opportunity.

Mr. LOSEY. This was published as an affidavit by you, was it not?

A. Yes, I believe it was.

Q. Signature and all; I mean the signature I have called your attention to, and the affidavit itself.

A. The signature that was published?

Q. Yes sir, was not your name attached to the paper that was published?

A. I think so, yes sir.

Q. You are the gentleman who took it upon yourself to go down and get Mr. Ingmundson, are you?

A. At the request of the foreman, yes sir.

Q. And you brought him into the grand jury room?

A. Yes sir, he came up with me.

Q. You had a very distinct recollection of what the judge had told you in relation to bringing parties before you whose matters were being investigated?

A. He told us if any one could explain away, that we would be allowed to have the evidence.

Q. Did he expressly explain to you that in case you brought before you any person whose name was under consideration, that it would vitiate an indictment found against such person?

A. I don't remember any such language.

Q. You have stated that Mr. Ingmundson came into the grand jury room and explained the matter?

A. Yes sir; I think he did.

Q. How many times was he in there?

A. I don't know as I stated that he explained it in there, but if he explained it to us while they were examining the books he also explained it in there.

Q. You were one of his particular friends in that matter, were you not?

A. No sir, I was not; I———

Mr. LOSEY. How———

Mr. CLOUGH. Why don't you let him answer you fully?

Mr. LOSEY. He gave me a complete answer to the question, to which I am satisfied.

A. I said it was explained to me at that time.

Q. Notwithstanding the fact that you were a grand juror, you saw fit to have him up and explain it to you?

A. I wanted an explanation.

Q. You wanted to avoid finding an indictment, didn't you?

A. No sir; not if the facts warranted one.

Q. Hadn't he been talking to you on that subject?

A. No one except Judge Page.

Q, No one except the charge of the court?

A. No sir, except there in the grand jury room.

Q. You hadn't talked among yourselves in relation to the matter, and discussed it?

A. Yes sir; in the jury room.

Q. You had become quite excited, hadn't you?

A. No sir.

Q. Hadn't the other jurors?

Mr. CLOUGH. Wait a moment; we object.

The PRESIDENT. I don't think it proper.

Mr. DAVIS. My learned friends have got the benefit of the conclusion in their direct examination—we did not object to it.

Mr. CLOUGH. All that was stated was the bare fact that Mr. Ingmundson was before the grand jury and explained the matter. Nothing was said as to what Mr. Ingmundson had said on that occasion. Nothing was stated as to what any of the grand jurors had said, and the presiding officer will bear me witness that when the witness was proceeding to state something that might have been an occurrence in the grand jury room, that Manager Campbell stopped him and prevented him from going further.

The PRESIDENT. I recollect that fact.

Mr. CLOUGH. Now we have not shown what any grand juror stated, or what might have been stated in the grand jury room. This witness has taken an oath not to disclose any thing that any grand juror had said or taken, and we insist that that oath is binding at all times and upon all persons.

The PRESIDENT. I don't think the question ought to be asked—should not be asked.

By Mr. LOSEY to witness. You stated that you came into court the first Tuesday or Wednesday of the second week.

A. No sir, I didn't so state.

Q. What did you state in relation to that then?

A. I state the first time that he spoke to us about this Ingmundson affair, that is, when he addressed us Tuesday or Wednesday of the next week.

Q. On what day were you discharged?

A. On Saturday, the week following after we were empanneled.

Q. Did you bring into court a presentment, or a statement at the time the court first spoke to you in relation to the Ingmundson matter, after he had given you his first charge?

A. I don't think we did; no sir.

Q. Didn't you bring in a statement which the court told you was an incomplete presentment of the case; and was not that the occasion of his calling your attention to the matter again?

A. Not at that time, to the best of my recollection.

Q. Not at that time?

A. No sir. I think that was Thursday or Friday, along towards the last of the week.

Q. You had brought in on Thursday or Friday an informal statement, had you?

A. Yes sir.

Q. Were you in court asking for instructions in regard to the construction of the statutes that applied to Ingmundson's case, at the time the court called your attention again to the matter?

A. No sir, I think not.

Q. You swear that the court brought the matter voluntarily, without any request from the grand jury?

A. I don't think he was requested in public before the grand jury.

Q. Answer my question, do you swear?

A. To the best of my recollection he did.

Q. Read the statement on the back of that affidavit, or, if you cannot read readily, I will read it to you. Who was present at the time you signed this statement?

A. Read it first and I will tell you?

Mr. LOSEY read the indorsement on the paper in question, as follows:

"I hereby certify that I have read the statement of facts made by the Bar committee to investigate the acts of Judge Page as to the Ingmundson case, and this statement is true; that I never swore to the affidavit published as my own; that the same was procured and written by A. A. Harwood not in my presence; was read to me hastily in the field, and I did not fully understand its import and effect. I did not appear before the justice of the peace whose name is affixed to said affidavit.

[Signed] "J. D. WOODARD."

A. Judge Page, Wm. Merrick, and Hans Hanson.

Q. Did you sign this statement then as written?

A. Yes, sir; but I want to explain what the circumstances were.

Mr. CLOUGH. I will give you a chance.

Mr. LOSEY. State what occurred between the court and the jury at the time the jury came in and were finally discharged. Give the exact language used by the court on the occasion.

A. I don't think I can.

Q. Still you swear you have given it here already, or pretended to.

A. Not all of it.

Q. Give the language used by the court as far as you can.

A. When we came in with the facts as they were called in that case he seemed to be very angry.

Q. Is this the time you were discharged?

A. Yes, that is the time Judge Page seemed quite angry, and spoke

in a pretty loud and very severe tone; that we had disappointed him and violated our oaths, and perjured ourselves in not finding an indictment, and I don't remember just all that he said; then he turned to the county attorney and ordered him to draw up a statement embodying those facts, so that the county treasurer might be arrested.

Q. Are you quite positive that the judge told you you had perjured yourselves!

A. Yes sir, to the best of my recollection he did, that we had committed perjury.

Q. He told you you had violated your oaths?

A. Yes sir.

Q. Can you tell in what connection he used that language?

A. I don't know that I can, except that we disappointed him, or he was disappointed in our ability; that he seemed to think on the first day we were capable of performing our duty. He also stated on the first day that he would not read as much as he generally did; that he did not think we needed it; and that the last time he stated that we had disappointed him, and were not as capable as he thought we first were.

Q. Did he tell you that if the facts as found by you were true, it was your duty to find an indictment?

A. He said something to that effect.

Q. Didn't he tell you that before you went out the last time?

A. That I cannot say. We were in there, I think, three times the last day, on this same matter.

Q. Are you very clear in your recollection of what occurred there between the court and the grand jury? Do you pretend to give a full account of it?

A. Yes, along the latter end, especially when he began to lecture us.

Q. Do you pretend to give a very full account of all that was said? You have given, then, the substance of it as you understand it. Now, do you pretend to give it in full?

A. I don't pretend to recollect it all.

Q. You are giving us the impression that it made on your mind?

A. Yes sir.

Q. Do you remember the court instructing you as to what would constitute an offense in relation to this matter of this town order?

A. Yes sir, that is partly.

Q. Did you have something of a talk in relation to the law as laid down by the court?

A. He didn't read the law fully to us.

Q. Did you have some discussion of the law as laid down by the court?

A. I think the county attorney came in there once.

Mr. CLOUGH. I object to it.

The PRESIDENT. You can answer that question.

A. It was in the jury room.

Q. You didn't think the law as laid down by the court was correct in relation to that matter, did you?

A. Yes sir.

Q. Had the court instructed you that if you found the facts as you did find them in relation to this town order, that it was your duty to indict?

A. He said like this: If we found them to be as he had laid down, and it was done unlawfully and maliciously, that we should find an in-

dictment, but if there had been simply a little mistake made, as it was in the county auditor's office, that we should not.

Q. That is the way the court instructed you?

A. That is the way I took it?

Q. That is the way he instructed you?

A. That is the way I understood it.

Q. Do you recollect whether he charged you as to whether the intention had anything to do with the crime or not?

A. I am pretty positive that he did.

Q. What did he say about that?

A. I could not state his exact words.

Q. What is the substance of what he said?

A. If an act was committed without intent, or something to that effect, it might be looked over, we would have to pass our own judgment on it, or something of that effect, but if it was an intentional act, we should find an indictment.

Q. You don't think, then, that Mr. Ingmundson intended to pay these town funds, or rather to retain sufficient of these town funds to pay this order that he had.

Mr. CLOUGH. I object. What the grand jury did, or what this man did as a grand juror, is entirely immaterial. I insist that no grand juror who acted there, can be brought to tell what his motives were.

Mr. LOSEY. I withdraw the question.

Q. You say Mr. Cameron drew up the last report?

A. I stated I thought it was him, I won't be positive.

Q. Did you have an examination of the facts after your attention had been called to it, after the Wednesday or Thursday of the second week of the term?

A. Examine witnesses do you mean?

Q. Yes.

A. I can't say whether we did or not; it seems to me we did, but I am not positive.

Q. Had you ever seen Judge Page presiding before this term at which you were then present?

A. I had been in there once before; that was during the Jaynes trial.

Q. You stated that his manner was harsh and he used strong language; do you mean strong in expresssion?

A. Yes sir.

Q. Did Judge Page talk any louder than he ordinarily talked, at that time?

A. At the opening?

Q. Yes?

A. I could not say, because I am not acquainted with the man; I never heard him open court before.

Q. He talked in a clear, distinct tone, did he?

A. Yes sir, at the opening.

Mr. DAVIS. Q. Mr. Woodard, do I understand you to say that Judge Page charged the jury in regard to this Ingmundson matter; that if he did these acts without any wrongful intent that the jury might overlook it?

A. That is the way I understand it; or to any other man.

Q. That if a man committed a mistake without a wrongful intent, that the jury might overlook it?

A. No sir, I don't consider it was a criminal offense.

Q. Well, any offenses; that if a man committed a crime without wrongful intent, that the jury might overlook it?

A. No sir, not in that particular.

Q. What did he say in regard to the question of intent?

A. It was about the county auditor's office, I think; that we could examine the county commissioners—the substance of it was, that if they promised not to do so again, or discontinued the habit of practicing there, to take no further notice of it. I supposed we could do the same in any other case.

RE-DIRECT EXAMINATION

By Mr. CLOUGH.

Q. Then when Judge Page spoke to you is regard to the intent with which the act was done, it was not in connection with the Ingmundson matter?

A. No.

Q. Now you said you wanted to make an explanation in respect to the affidavit, and the indorsement upon it?

A. I do.

Q. You can do so?

A. An explanation in regard to the affidavit?

Q. Yes.

A. A. A. Harwood came down to my house in harvest last; can I explain it in full; it was at noon when he came there, and we had just finished dinner. He wanted to know if I would make a statement of the facts, in regard to the last term of court, and I told him I would as near as I could recollect it. We had considerable talk over it, it was then time to go to work, we were then getting grain ready for harvesting, and I told him if he would go into the house and write out a statement that I would sign it in the field; I told him I didn't have any time to waste. He done so. He came out and wanted I should go before J. N. Clark, a justice of the peace. Clark's place was only a hundred yards or so from us, and he was also in the harvest field, and I told him I considered it just the same as if I was under oath, by my signing it, that he could tell Clark so.

Then in regard to this other statement here Judge Page and Mr. Merrick came to my house between sundown and dark, one day; he seemed to be very glad to see me, and so on, and finally produced that affidavit and asked me if I had signed it; I told him I had; we were then sitting on a pile of stone, and he wanted to know if I considered what was in there was so; I told him I did, to my best recollection; I told him then that the language was perhaps a little stronger than what I would have used if I had written it myself; he asked me if I went before Clark to swear to it, and I told him I did not; then he read it over and read it in some such firm way as he did to the jury; a pretty harsh tone, and as soon as he had done, he said he would not stand any such language, such as mine was; that was the greatest libel that he had yet had; he did not make any threats, but I inferred what it would be that he meant; then he read over the statement of the majority report of that bar committee; I told him I could not sign that with a

clear conscience; then he read off the minority report, and I told him I would sign that; he sat down and read off something, or pretended to read it; it was then so dark that you could hardly see to write; it was nearly dark, and I signed it; the next thing that I saw about it was that it was published in Hotchkiss' paper that I signed so and so; still, I signed it; you might say I was bulldozed into it.

Mr. LOSEY. Won't you tell me how you were bull dozed into it in any other manner than that you have stated?

A. There was some more talk, that is, in the first part of the conversation.

Q. Any threats made?

A. He said he would not stand it.

Q. Any threats made?

A. There were no direct threats.

Q. You said he read you a minority report; about how long was that report?

A. I think there was only three or four lines in it.

Q. That report was, "That we deem some acts of the judge in relation to the case of I. Ingmundson, as well as some other matters that have come to our notice, are justly subject to proper criticism," and is that it?

A. Yes sir.

Q. The tone of the judge when he read the affidavit over to you was about the same as when he charged the grand jury?

A. When he discharged us.

Q. You didn't notice much difference in his tone at the two times?

A. It was not as harsh as when he discharged us?

Q. You said it was in a harsh tone, about like it?

A. Yes, but still not as harsh.

By Mr. CLOUGH. Do I understand you to say that when you saw the publication in the paper of what purported to be your last statement, that it differed from what Judge Page read to you when you signed it?

A. I don't think they were, still it is my signature. I didn't think that I had signed any such thing as he published.

Q. What he read to you, you do not understand to be the same document?

A. Yes sir, I don't think it was the same as that was published.

Mr. LOSEY. Q. Was the document as published, any different from what the document was as signed by you?

A. I could not say. I had not seen that document from that day to this.

Q. Do you think it was any different?

A. I think it was about the same.

Q. Do you think it wes any different?

A. I don't. I can't say that I do.

Mr. CLOUGH. Q. You have never compared the two?

A. No sir, I have not.

Q. It is a mere guess whether they are the same or not?

A. Yes sir.

MR. CRANDALL BEING RECALLED.

On behalf of the prosecution testifies:

Mr. CAMPBELL. Q. You have been sworn?
A. Yes sir.
Q. You are an attorney practicing in Mower county?
A. Yes sir.
Q. You were present at the charging of this grand jury?
A. I was.
Q. The March term of 1877?
A. Yes sir.
State the substance of that charge as you recollect it, especially in re ard to the county officers?
A. The opening charge, you mean?
Q. Yes sir.
A. After telling the grand jury—instructing the grand jury as to their duties, he instructed them that they were authorized to inquire into the conduct and management of the several offices of the county; he called their attention to certain irregularities that had come to his knowledge in the management of the office of the county treasurer, and the county auditor, and he stated to them in reference to the county auditor's office, that he had been informed that the county auditor was allowing the band to meet in his office for the purpose of practicing, and that he also understood that this had been done with the sanction and approval of the county commissioners; he stated to them that it was not proper.

Senator WAITE: I would like to inquire if counsel consider it necessary to swear so many witnesses upon this one fact?

Mr. Manager CAMPBELL: We do, certainly.

Senator WAITE: I don't want to interpose, I don't know whether it is hardly proper, but I think I would make the suggestion, that as such a great number of witnesses have already been sworn upon the same fact, it don't appear to me to be hardly necessary to pursue this kind of testimony any further, unless the counsel deem it important. If all the grand jurors and officers of that court are to be sworn upon this one fact, it would, I presume, take a very much longer time to get through with what had been gone over so often. Still, as I said before, I don't wish to object, if the counsel consider it necessary, although I think that some portion of this testimony can be dispensed with.

Mr. Manager CAMPBELL. I will state in regard to this that anticipating, as I probably can do, the conflict of testimony that there will be upon this point, I have deemed it necessary to have quite a number of witnesses upon this particular point. I look upon it as being an important article, and from my knowledge of the testimony on the preliminary investigation, I have reason to anticipate a conflict of testimony, and also upon their answer, and for that reason we have called more witnesses upon that point than upon any other. And two more witnesses will be perhaps the extent; and we expect to finish up our testimony upon this point this evening.

Mr. CAMPBELL (to the witness.) Go on.
A. Judge Page stated to the grand jury that it would be improper for the county auditor to allow persons to meet in his office for the purpose of practice, and asked them to investigate the matter. He stated that there were documents in the office, and so forth—important records kept there; that it was improper for them to allow them to meet there

for the purpose of practice; that if the county commissioners had allowed that, that *they* ought to be investigated also.

He called the attention of the grand jury to irregularities in the county treasurer's office with reference to a certaintown order, and asked them to inquire into that matter fully; that is the substance of what was said, as I recollect, to the first charge.

Q. Well, state what next was said on this subject; and when, as near as you can.

A. I think that was the only time that I was present in court while the grand jury were charged, except when they were finally dismissed. I may have been in and out, but not to hear a full charge.

Q. At the time of the final dismissal tell us what took place.

A. At the time of the final dismissal the grand jury came into court, and their foreman, I think, handed to the court a paper on which, I judged from the remarks of the court, related to the Ingmundson investigation. He stated to them that the facts, found in that report, constituted an indictable offense; that it was their duty to have found an indictment, and that in not doing so that they had violated their oaths. He said, fortunately, for the grand jurors were not the final arbitrators in matters of that kind that there was a higher power, and he then turned to the county attorney and directed him to make a complaint, embodying the facts found in this report, that a warrant might be issued and Ingmundson arrested.

Q. You had been in the habit of practicing in Judge Page's court, have you not, for how many years?

A. I have been in Judge Page's court about six years, but I have not been in actual practice in Judge Page's court.

Q. You understand his manner of charging jurors, grand and pettit?

A. I think I do, sir.

Q. What was his manner at the time of discharging these grand jurors compared with the others?

A. Well sir, it was very violent, in my judgment.

Q. Very violent?

A. Yes sir.

Q. Can you describe it?

A. I don't think I could.

Q. Will you try?

A. I don't think I could do justice to Judge Page in making the attempt, Mr. Campbell, to describe his action in that matter. He exhibited a great deal of anger and a great deal of feeling. He turned very pale and was very much excited indeed.

Q. You have had some experience in court; how long have you been practicing?

A. For about six years.

Q. Have you ever seen or heard a judge conduct himself in a manner that Judge Page did at that time?

Mr. DAVIS. We object to that.

The PRESIDENT. That is hardly a fair question or proper question.

Mr. CAMPBELL. I would like to hear the question answered.

The PRESIDENT. I will submit it to the Senate.

Mr. Manager CAMPBELL. I will give my reason for it: A lawyer that is in the habit of being in court year after year, becomes an expert in the matter; perhaps it is not a matter strictly that comes under the

head of expert, but he can judge whether the conduct and manner of the judge was similar to any other judge that he ever heard.

The PRESIDENT. Have the managers shown that he ever heard any other?

Mr. Manager CAMPBELL. I asked him if he had ever practiced law, and if he had been in the habit of being in courts a number of years, and he stated that he had.

The PRESIDENT. I didn't so understand; still I should think the question an improper one.

Mr. Manager CAMPBELL. Well I will drop it

Q. How did it compare with Judge Page's own conduct generally in charging juries?

Mr. DAVIS. We object to that; that is a mere conclusion of this witness; we cannot trace it, analyise it, or dissect it in any way. This is going a great way, your honor.

The PRESIDENT. I don't think that is hardly proper. I think that is rather too broad. If the counsel will state precisely what has been testified to here, it would perhaps be better.

Mr. Manager CAMPBELL. It seems to me that is a little too limited. It appears here at his first charge that Judge Page was very mild and pleasant, and you might say, trying to please the grand jurors.

The PRESIDENT. It will perhaps save time for me lo submit the question to the court.

The question being taken on receiving this question, and

The roll being called, there were yeas 9, and nays 14, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Clement, Clough, Drew, Hall, Houlton, Lienau, Macdonald and Shaleen.

Those who voted in the negative were—

Messrs. Armstrong, Deuel, Edwards, Gilfillan C. D., Gilfillan John B., Goodrich, McClure, McHench, Morrison, Morton, Pillsbury, Rice, Waite and Wheat.

So the question was rejected.

Mr. CAMPBELL. To counsel for the respondent. Take the witness.

Mr. DAVIS. Stand down, Mr. Crandall, no questions.

Mr. Waite moved that when this court adjourn it do adjourn until Monday at 2:30 o'clock, P. M.

Mr. Nelson moved to amend that when the Senate adjourn it do adjourn until 9:30 oclock to-morrow morning.

And the roll being called, there were yeas 14, and nays 11, as follows:

Those who voted in the affirmative were—

Messrs. Bailey, Clough, Drew, Gilfillan, C. D., Goodrich, Hall, Houlton, Macdonald, Nelson. Pillsbury, Rice, Shaleen, Swanstrom, and Waite.

Those who voted in the negative were—

Messrs. Armstrong, Bonniwell, Clement, Deuel, Edwards, Gilfillan John B., McClure, McHench. Morrison, Morton and Wheat.

So the amendment was adopted.

Mr. Nelson moved to reconsider the vote whereby the amendment was adopted.

The question being taken on the motion to reconsider,

And the roll being called, there were yeas 24, and nays 2, as follows:
Those who voted in the affirmative were—
Messrs. Armstrong, Bailey, Bonniwell, Clement, Deuel, Drew Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Houlton, Macdonald, McClure, McHench, Morrison, Morton, Nelson, Pillsbury, Rice, Shaleen, Waldron and Wheat.
Those who voted in the negative were—
Messrs. Clough and Waite.
So the motion to reconsider prevailed.

The question recurring on the motion that when the court adjourn it do adjourn to Monday at 2:30 oclock,
And the roll being called, there were yeas 24, and nays 2 as follows:
Those who voted in the affirmative were—
Messrs. Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Drew, Edwards, Finseth, Gilfillan C. D., Gilfilan John B., Hall, Houlton, Macdonald, McClure, McHench, Morrison, Morton, Nelson, Pillsbury, Rice, Shaleen, Waldron and Wheat.
Messrs. Goodrich and Swanstrom voted in the negative.
So the motion prevailed.

C. J. SHORT SWORN,

And examined on behalf of the prosecution, testified.

Mr. Manager CAMPBELL. Q. Where do you reside?
A. I reside at Brownsdale.
Q. What is your occupation?
A. My present business is the practice of law, I have been practicing for the last two years.
Q. Were you present at the term of court of March, 1877?
A. I was.
Q. Did you hear this charge of Judge Page that has been referred to here?
A. I heard the charge.
Q. Will you state how many times you heard him allude to the county treasurer and county auditor—I mean to the county treasurer's office; on how many different days?
A. I think I heard him allude to it five different times; I could not say on how many different days.
Q. State what his charge was in regard to the county treasurer's office?
A. I heard his general charge, calling their attention to certain irregularities, especially in regard to an order on the town of Clayton, and telling them to investigate the facts; if they were such as had been stated to him that it was an indictable offense.
Q. Well, in regard to the county auditor, state whether he said anything, and if so, what he said?
A. In regard to the county auditor he stated that he had heard that the auditor was in the habit of having the band come in there and practice, that such a course was improper and unsafe, with the county records there; he told them to investigate it, and take such action as they saw fit.
Q. Well, what next did he say to them about the county treasurer's office?

Well, I think as late as Tuesday of the second week of the term, Tuesday or Wednesday, he told the grand jury that there was a matter that he had called their attention to at the beginning of the term, that they could not have investigated as it was their duty to have done, and called their attention to it to investigate it.

Q. What did he then say?

A. Nothing further only to call their attention to it; the next time he referred to the statement that they had brought in, and told them that it was not such as the court would accept, and directed them once more to investigate the matter, and if they found that the facts were such as tn warrant them in finding an indictment, to find an indictment, or if a presentment, to find a presentment; otherwise, to simply state the facts; they brought in that time a statement of facts, I supposed; they brought in a paper. That was presented to him. He stated to them that if the facts were such as they had found, it was their duty to find an indictment upon those facts, and stated that there must be something that was keeping them back, that they hadn't done it, and directed them to consider the matter again; he seemed earnest and somewhat angry.

Q. Did he say anything about its being an indictable offense?

A. He told them that if the facts were such as they had presented, that it was their duty to find an indictment. They came in again and asked to be dismissed, and he said to them at that time—the last time that they came in—that the grand jury had not discharged their duties; that they had violated their oaths; stated that it was well for the administration of justice that there was a higher power than grand juries; that they could not stand between those who had violated the law and the administration of justice.

Q. Well, what was his manner; did he seem irritated or otherwise?

A. His tone, the last time, was considerably louder than usual, and in a very angry, excited manner. His face was pale, and his eyes showed anger.

CROSS-EXAMINATION.

Mr. LOSEY:

Q. Are you acquainted with Judge Page.

A. Yes sir.

Q. Where in this State have you practiced law?

A. I practiced law for ten years.

Q. Where in this State?

A. In the village of Austin, I practiced law ten years, from 1859 to 1869.

Q. Since that time you have been where?

A. Since that time I have been on a farm, until the last two years I have been practicing law in Mower county, at Brownsdale, since that time.

Q. Do you know C. T. Huntington, of Dexter?

A. No sir.

Q. C. H. Huntington?

A. No sir, I know a man by the name of Nelson Huntington, of Dexter.

Q. Nelson Huntington, of Dexter, was it?

A. I think his name is Nelson A. Huntington.

Q. I mean the town treasurer, who was indicted?

A Yes sir.

Q. He was indicted for lending you the money of the town, wasn't he?

A. No sir, he wasn't.

Q. You advised him, that he had a right to the town money of the town, didn't you?

A. No sir, I didn't.

Q. Were you a member of this grand jury?

A. I don't know but I was; I was called a member of one grand jury the first term, but I began practicing law, and did not sit on the grand jury; I did not act with them.

Q. Were you in court at each time when they came in?

A. I was in court until Friday of the first week, from Tuesday until the close of the term, or at least until Saturday, late. I had a case for trial immediately after the grand jury were discharged.

JOHN RAWLEY SWORN,

And examined on behalf of tne prosecution, testified:

Mr. Manager CAMPBELL:

Q. Were you a member of the grand jury?

A. I was; March '77, I was.

Q. You heard the charge of Judge Page at the opening of the court?

A. Yes sir.

Q. Did he charge you to investigate the county treasurer's office?

A. Yes sir.

Q. How many times did he charge you on that point?

A. Once at the commencement, and when we made our report. I think about three times.

Q. State what he said to you at the last time you were in, and when you were discharged?

A. At the winding up?

Q. Yes sir?

A. Judge Page said like this (witness indicates) holding his report: "The facts stated in your report to me constitutes an indictable offense. You have *violated* your oaths in not finding an indictment. It is good for the public that grand jurors are not the final arbitrators; you can't stand—no; (witness hesitating) there is a higher power than grand jurors, you can't stand between criminals and the execution of the law."

Q. What else did he say?

A. Then,—then—— the next, gentlemen, was something like this: "You took an oath to leave no man unpresented through fear, favor or reward; your conduct in this matter—you have *violated* your oaths; you can't conspire with the county treasurer in the *violation* of law, and commission of fraud";—turned to the county attorney, ordered him to make out a complaint that a warrant might be issued, and Mr. Ingmundson arrested;—turned to the grand jurors and says: "Jurors, you are dismissed."

Q. What was his manner?

A. His manner was accordin' with the words I have given you. [Laughter.]

Q. Was he angry, or otherwise?

A. I haven't been in court with Judge Page never before; I couldn't say that he was angry, nor he was pleased. I thought he wasn't very much pleased of course, but as for my stating that he was angry, I wouldn't; but it was decisive.

Q. You are not acquainted with his manner?

A. I never was in court before where Judge Page presided. The other charges were about the same as I have heard repeated time and time again. It would be of no use, I think, to no tribunal whatever.

CROSS-EXAMINATION.

Mr. LOSEY.

Q. Have you talked up this matter with any one?

A. O, yes, I have spoken about it, since I have been here, several times. When they give in their testimony, I have said that's about correct, and that ain't correct, according to my faith.

Q. You give about what you recollect of it?

A. I do, right straight along. I think it was about word for word.

Q. Did his direction to the district attorney take place before he discharged the jury, or after he discharged the jury?

A. Before.

Q. Before?

A. Before.

Q. What is your occupation?

A. I am a farmer.

W. S. ROOT RECALLED

On behalf of the prosecution, testified:

Mr. Manager CAMPBELL. Where do you reside, Mr. Root?

A. I reside in Murray county sir.

Q. What is your occupation?

A. Farmer.

Q. Were you a member of the grand jury?

A. I was not sir.

Q. Were you there?

A. I was sir, acting in the capacity of a petit juror.

Q. Did you hear the charge to the grand jury?

A. I did, sir.

Q. State what he charged the grand jury in regard to the county treasurer's office at first, whether he charged it was an indictable offense or not.

A. To make it short, he charged the grand jury to this effect: That there were irregularities, as he had been informed, in the auditor's office, and also in the treasurer's office, and he wished them to investigate them thoroughly ard carefully, and if the charges would warrant an indictment to indict them; if they could present them, make a presentment. That is about the sum and substance. I was paying but a little attention in regard to the matter, any way.

Q. Did you hear the last charge to the grand jury?

A. No sir, I did not.

Q. Did you hear any others?

A. I did, sir.

Q. How many times did you hear him mention the treasurer's office?

A. Well, I should say perhaps once or twice; perhaps twice. I am not clear really, on that point.

Q. What did you hear him say in regard to that, during the progress of the court?

A. I think that he repeated to them in my hearing once or twice afterwards, something to the same effect, or that they had been rather dilatory, and he thought there was something the matter, that they had

not inquired into this matter more particularly and earlier in the session of the court.

Q. Anything said about it being an indictable offense, if so what did he say?

A. He told them they had made a presentment, or some sort of a paper they had made to him, I took it to be a presentment; he thought the facts contained therein was an indictable offense, and that they would be warranted in making an indictment.

Q. Have you told all you recollect about it?

A. That is about all I recollect.

Mr. Manager CAMPBELL. That is all we have to introduce on this charge, except Mr. Ingmundson, and I have no doubt but what that will be quite lengthy, especially on the cross-examination.

Mr. MACDONALD moved to adjourn,

And the roll being called, there were yeas 26, and nays 1, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Bailey, Bonniwell, Clement, Clough, Deuel, Doran, Drew, Edwards, Gilfillan C. D., Goodrich, Hall, Houlton, Lienau, Macdonald, McClure, McHench, Mealey, Morehouse, Morrison, Morton, Nelson, Rice, Shaleen, Swanstrom and Wheat.

Mr. Waldron voted in the negative.

So the motion prevailed.

Adjourned.

Attest:

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

SEVENTEENTH DAY.

ST. PAUL, MONDAY, JUNE 3, 1878.

The Senate met at 2:30 P. M., pursuant to adjournment, and

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

Messrs. Ahrens, Armstrong, Bailey, Deuel, Donnelly, Drew, Gilfillan C. D., Gilfillan John B., Goodrich, Henry, Hersey, Langdon, McClure, McHench, McNelly, Nelson, Pillsbury, Rice, Smith, Waite and Waldron.

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

The sergeant-at-arms having made proclamation,

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

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

The journal of proceedings of the Senate, sitting for the trial of Sherman Page upon articles of impeachment, for Wednesday, May 29th, was read and adopted.

EXECUTIVE COMMUNICATION.

The following communication was received from his Excellency, John S. Pillsbury, Governor:

STATE OF MINNESOTA,
EXECUTIVE DEPARTMENT,
ST. PAUL, June 3, 1878.

Hon. J. B. Wakefield, President of the Senate:

SIR: I have the honor to inform the President and members of the Senate, that the commencement exercises will take place at the University of Minnesota, on Thursday, the 6th inst., at 9½ o'clock A. M. In behalf of the Regents and Faculty, I extend a cordial invitation to the members and officers of the Senate to witness the graduating exercises. I am also requested in behalf of the Alumni, to extend a cordial invitation to the Alumni dinner, to be given at the Nicollet House at 2 o'clock P. M., same day.

Very respectfully,

J. S. PILLSBURY,
Governor.

The PRESIDENT. Are the honorable managers ready to proceed with the testimony?

Mr. Manager CAMPBELL. I believe we are ready. It seems, to me, Mr. President, we ought to have a fuller Senate than this to hear the testimony in a matter of this importance; still, I am not very particular about it.

The PRESIDENT. Does the Senate desire to proceed? If no objections are heard; the managers will proceed.

Mr. CAMPBELL. Call Mr. Ingmundson.

The PRESIDENT. Mr. Ingmundson, take the stand.

I. INGMUNDSON RECALLED

On behalf of the prosecution, testified:

Mr. Manager CAMPBELL. Q. Mr. Ingmundson, where do you reside?

A. Austin.

Q. How long have you resided in Austin?

A. Since March, 1874.

Q. What official position do you hold in Mower county, if any?

A. I am county treasurer, sir.

Q. What position did you hold in March, 1877?

A. I was county treasurer.

Q. How long had you been county treasurer?

A. Since the first of March, 1874.

Q. From March 1874, up to September 1876, or about that time what had been your relations with the respondent, friendly or otherwise?

A. They had been friendly up to the fall of 1875.

Q. Up to the fall of '75; state whether you had been on intimate terms, or otherwise?

A. Well, I used to go gunning with the respondent very often, and we were, as I supposed, on *very* friendly terms.

Q. Was there any change—you say you were friendly up to 1875; state whether there was ever any change on his part, if so, about what time?

A. Sometime, I think, in the latter part of September of 1875.

Q. Well, what change of conduct, if any, did you notice on the part of the respondent?

A. He didn't appear to notice me when he met me on the street, or met me anywhere—didn't speak to me except on business.

Q. State if you spoke to him?

A. I did, on several occasions.

Q. Well?

A. But I was not recognized.

Q. But was not not recognized?

A. I was not recognized except when I spoke to him on business.

Q. State any particular occurrence that you recollect when you spoke to him, and relate the circumstances?

A. I would simply recognize him with a salute, meeting him on the street or any place; I can't recall any particular time except—I would not swear positively that I did speak to him in the office and he not recognize me. I know he did not recognize me in the office, but at the same time, I am not certain that I spoke to him there. The first time I noticed he appeared estranged; I asked him the first time I noticed that there was any estrangement on his part, if he was ready to go out on a hunting excursion that we had planned for a certain day; I have no recollection as to the exact day—I think it was the following Friday; this being Wednesday that I spoke to him, I think.

Q. About what month?

A. It was in the latter part of the month of September.

Mr. DAVIS. I would like to know what year this is; '75?

A. '75; he answered me that he would not go out.

Mr. Manager CAMPBELL. Q. That all the conversation you had?

A. That was all the conversation, sir, he turned and went out of the office at that time—all that I can remember now.

Q. From that time on you say he would not recognize you?

A. Yes; from that time on he spoke to me on business.

Q. What, if anything occurred to cause this estrangement, if you know?

A. He had a convention—Republican convention—held in the court house, and I was taken up as a candidate for re-election as county treasurer by the republicans, and my republicanism was called in question by a few in that convention, and I was asked to come up and define my position, which I did; and made a few remarks in which I stated that I acknowledged I had worked for the opposition in the country on several occasions, because I did not believe in the "one man-power" in politics; that, I always supposed, afterwards, to be the reason.

Mr. DAVIS. Never mind what you supposed.

Mr. Manager CAMPBELL. From the time of making this speech, state whether there was any difference in the ——

Mr. DAVIS. I object to the form of the question; let us have the history of his relations.

Mr. Manager CAMPBELL. State whether you were recognized by Judge Page after that?

Mr. DAVIS. I object to the form of the question; let us have the whole history.

Mr. Manager CAMPBELL. My question is, state whether you were or were not recognized by Judge Page after that?

A. I was not, after I had explained.

Mr. DAVIS. Does the court rule the question proper?

The PRESIDENT. I do not see any objection to that question.

The witness. After I had spoken to him in the office on the following day, asking him whether he was prepared to go out on the hunting excursion we had planned; after that time I wasn't recognized.

Mr. Manager CAMPBELL. State when this excursion was planned; whether it was planned before this convention or otherwise?

A. Yes sir, a few days before this convention.

Q. You were arrested and brought before Judge Page?

A. Yes sir.

Q. After that were you?

A. Yes sir.

Q. On a complaint made by the district attorney?

A. Yes sir.

Q. Well, now state what took place there; what was said to you by Judge Page, and what was his manner towards you?

A. The first time I was brought up an adjournment was ordered for a certain number of days—I don't remember how many days—and then I think there was a second adjournment; and the last time when I was brought up there, there was an examination of witnesses for the prosecution. When I first went into court in chambers (the Judge held his court in chambers at that time) I went in with counsel and waived an examination, or the Judge stated that he wished to have witnesses subpœnaed, and hence ordered the adjournment.

Q. That is the first time?

A. That is the first time.

Q. Anything said to you by the judge?

A. Not at that time. The second time the adjournment, I think, was had because the witnesses were not present, the third time proceeded with the examination of witnesses. After the witnesses had been examined, my attorney, Mr. Cameron, made a short plea, in which he stated substantially that he could not see by the witnesses examined, that there had been any irregularities committed in the office, but if there had, that it did not show any intent on the part of the defendant to do wrong; but the judge answered him that it was no difference as to intent; that a man was supposed to know the law. The question was then upon the bail. There was quite a lengthy lecture by the judge before the bail was fixed. He said that he had been informed that there were grave crimes committed by the defendant; that he had been informed that he mixed up the funds in the office—that if a man came in with a county order and there was no money in the county fund, he would take it out of some other fund, and pay the amount of the order. If a man came in with a school order and there was no money for that purpose, that he would take it out of the county fund if there was any money in that particular fund, and so on, enumerating several funds; and, furthermore, that he had heard that the defendant had been talking about him scandalously, throughout the county, and especially at Leroy He furthermore said that he did not suppose (I would not attempt to give the exact language here), he did not suppose it was necessary to put the defendant under bonds. He had no idea but what he would appear at the next sitting of the court; "But," said he, "we can not tell; here is Mr. Nelson Huntington, the treasurer of Dexter, who was proved a defaulter and forfeited his bail;" or words to that effect.

"A man would suppose by looking at him that he was an honest man;" and he also mentioned Sever O. Qualm, the defaulting treasurer of the township of Clayton; that he didn't know anything about Sever O. Qualm, but he supposed—o he would suppose—by looking at him, that he was an honest man; and he afterwards said he would put the defendant under a thousand dollars bail to appear at the next sitting of the court.

Q. Was there anything said by you at that time?

A. During the proceedings there I asked the judge if I might ask a question. He gave me permission. I asked him, supposing that a man should come into my office with an order, either town or school district order, and ask the privilege to file it with me, and see if the treasurer would pay the order when he drew his apportionment. He told me he was not there to give me legal advice.

Q. Is that all that was said by you and by him to you that you recollect?

A. I am not certain but I asked another question before that. I would not swear positively but I did, still it is not vivid enough in my memory so as to give it.

CROSS-EXAMINATION.

Mr. DAVIS. Mr. Ingmundson how long have you known Judge Page?

A. I got acquainted with him—

Q. State the number of years; since when?

A. I met him first about 11 years ago.

Q. Where were you living then?

A. At Leroy.

Q. How long did you live at Leroy from that time on?

A. Until March, 1874.

Q. What was your business up to March, 1874?

A. For about two years and a half I was in the hardware business, after that I was in the nursery business.

Q. All of the time?

A. Yes sir.

Q. In 1874, you took the position of treasurer of the county of Mower?

A. Yes.

Q. Commencing in March?

A. The first of March, yes sir.

Q. And moved to Austin?

A. Yes sir.

Q. Now you have said that you saw Judge Page about 11 years ago; up to the time you moved to Austin, how particular was your acquaintance with him?

A. No particular acquaintance at all; we simply knew one another, that was all.

Q. You simply knew one another, to speak to each other?

A. Yes sir.

Q. After you removed to Austin, did you become at all intimate with him?

A. Yes sir.

Q. You did; ever in his house in your life?

A. Never, sir.

Q. Was he ever in your house in his life?
A. I don't think he was, sir.
Q. Your families visited?
A. No sir.
Q. When you went to Austin, Judge Page was the judge of that district, was he not?
A. Yes sir.
Q. Attending to his duties there and in the other counties in that circuit?
A. Yes.
Q. Away from home considerable of the time, was he not?
A. Yes.
Q. You were attending to your duties as county treasurer?
A. Yes sir.
Q. Now. Mr. Ingmundson, you spoke of going a gunning with him; did you ever go gunning with him alone, in your life?
A. Yes sir; several times.
Q. Several times?
A. Yes sir.
Q. Did you ever go more than once except when you went about half a mile out of town, together, to shoot some ducks?
A. Yes sir.
Q. You did?
A. Yes sir.
Q. You are positive about that?
A. Yes sir.
Q. That you swear to?
A. Yes sir.
Q. Where did you go alone with him on any other occasion?
A. We went horseback one time, the first time, I think.
Q. Wasn't that the time to which I referred to just now?
A. I don't know what time you referred to.
Q. I refer to the time when you went hunting ducks?
A. Yes sir, hunting ducks.
Q. When else did you go hunting with him?
A I went with him in his own buggy, about a mile and a half or two miles, afterwards.
Q. Which way from Austin?
A. The first time when we went horseback?
Q. Which way did you go when you went horseback?
A. In a south-west direction.
Q. To whose place?
A. We went down to the head of Dreyson's mill-dam.
Q. Any body with you?
A. No sir.
Q. Any body else see you?
A. I don't know.
Q. When else did you go alone?
A. Well, we went out to try his gun, at one time, but that was only a short distance.
Q. When else did you go with him alone?
A. I have no recollection of any particular time.
Q. You have stated all the times you know?
A. Yes sir.

Q. And your several times resolve themselves to two?
A. I went with him at one time about nine or ten miles, I don't know but more, in a north-west corner of Lansing.
Q. Who was with you?
A. Judge Page, and he had a boy with him to take care of his horse.
Q. Go hunting that time?
A. Yes sir,—hunting ducks.
Q. When was that?
A. That I think was in the spring of 1875; I would'nt be positive.
Q. In the spring of 1875?
A. Yes sir.
Q. Is that all the occasions you went off alone with him that you remember?
A. I think that is all the times we were alone, yes sir. I am not positive.
Q. Then your several times amount to three times, do they?
A. Well, that would'nt amount to four.
Q. Would it? Well four.
A. That we were alone.
Q. Those other occasions you referred to were where parties of gentlemen went out from Austin, were they not?
A. Yes sir.
Q. Who made up the parties?
A. As a general thing I would help to make up the party myself; I was spoken to as a general thing about going.
Q. Who spoke to you?
A. Judge Page.
Q. Who used to go on those excursions? Just name the parties, some of them.
A. Joseph Swan was out, I remember, one time; Mr. Kinsman, and F. A. Engle was out on one occasion, and Frank McQuarder, O. W. Shaw, C. L. West, W. H. Merrick, and I suppose quite a number of others.
Q. Quite a common thing in the community in the hunting season for parties to go out in that way, isn't it?
A. Yes sir.
Q. Did you ever ride with Judge Page on any of these occasions?
A. Not but one time, that I remember.
Q. Who was along besides you and the judge, at that time?
A. Nobody, that I know of. That, I think, was in the spring of 1875. We went down that time to Dreysell's mill-dam.
Q. Who was along?
A. Judge Page.
Q. Who else.
A. Judge Page and myself constituted the party.
Q. Isn't that the time you have already spoken of?
A. Yes sir.
Q. I am talking about when, if ever, you rode alone with Judge Page when you were a part of the judge's party that went out in that way?
A. No sir, I don't think I ever did.
Q. Did you understand my question that I asked you a few moments ago?

A. You asked me if I had ever gone out with him.

Q. I asked you, if on those occasions you ever rode alone with Judge Page?

A. I didn't understand the question; I don't have any recollection of ever having gone out with Judge Page in the same conveyances.

Q. Were you in the habit, in Austin, of calling on Judge Page at his chambers?

A. No sir.

Q. Was he in the habit of calling on you at your office?

A. Yes sir.

Q. How often?

A. Quite often, sir.

Q. In any way except the way of business?

A. Yes sir.

Q. Your office has always been in the office of the clerk of the court?

A. Ever since I have been in Austin.

Q. That is since 1874?

A. Yes sir.

Q. Well, what other facts can you give, upon which you base your declaration, that you were intimate with Judge Page?

A. None other, only that he came to me to make up these hunting parties.

Q. So your entire intimacy with Judge Page is based upon the hunting parties, and the other occasions to which you have testified?

A. I have stated so, yes sir.

Q. You call that intimacy, do you?

A. Well, I should judge it was, for he was very intimate in his conversations with me.

Q. How often did these hunting parties take place?

A. As often as from once to three times a week, during the hunting season, whilst he was at home?

Q. Did the judge often go off with you?

A. I don't know whether he did or not.

Q. How many times did the judge ever go with you in parties?

A. I have no recollection, sir.

Q. Cas you state then, in bounds?

A. No sir; I could not.

Q. Did he ever go out with you four times?

A. Yes sir, more.

Q. How many times more, should you think?

A. Well, I couldn't say.

Q. When did he first go out with you in a hunting party where others were along?

A. Well, sir, I couldn't state; I have forgotten, because we were out so many times.

Q. Who went along on that occasion, in 1874, that you spoke about a few moments ago?

A. I don't think I spoke about going out in 1874.

Q. Have you any recollection of going out in 1874 with him?

A. No, sir; I have not.

Q. Have you any recollection of going out in 1875 with him?

A. Yes, sir.

Q. What was the first occasion of your going out?

A. Going out to try his gun.
Q. That is once?
A. Yes.
Q. When is the next occasion in 1875?
A. Going out on horseback, I think, sir.
Q. That is twice, that is when yon went after the ducks?
A. Yes, sir.
Q. When was the next occasion in 1875?
A. Well, I don't remember whether the next was when I rode out with him in his buggy or not.
Q. Was that in 1875?
A. Yes, sir.
Q. That's three times; when was the next occasion in 1875?
A. I didn't say it was the next occasion, sir.
Q. When was the next occasion in 1875 you were out together?
A. I couldn't state, sir.
Q. Were you out at all again in 1875?
A. Yes sir.
Q. How many times?
A. I couldn't say, sir.
Q. More than once?
A. Yes sir.
Q. Who was along?
A. There was quite a number.
Q. Give the names?
A. C. L. West.
Q. You swear that was in 1875?
A. I am pretty positive it was in 1875, yes sir.
Q. Well go on if you are positive; who else was along besides C. L. West in 1875?
A. Joseph Swan.
Q. Who else?
A. F. A. Elder, Mr. Kinsman and Frank McQuarder.
Q. Where did you go on that occasion in 1875.
A. I went several places.
Q. Specify the places?
A. Once we went——
Q. Where did you go on that particular excursion in 1875?
A. I wasn't naming all these gentlemen as going out on our party.
Q. Who went along on that particular excursion in 1875?
A. C. L. West, Judge Page and myself, we three; that one time I am pretty positive there was no more; still I wouldn't say for certain.
Q. Where did you three go to at that time?
A. Up to Turtle Creek; we went as far up as a place called Mont's Ford, above Moscow in Freebern county.
Q. Give us the next occasion when you went with Judge Page in 1875, or in his company.
A. I don't know as I could give you the next occasion.
Q. Did you go on any other occasion in 1875?
A. Yes sir.
Q. Where did you go on the next occasion?
A. The next was, I think, a trip to Pica Lake.
Q. Who was along?

Mr. McQuarder, Mr. Kinsman, F. A. Engle, C. L. West, Judge Page and myself.

Q. Was that in 1875?

A. I am pretty sure it was in 1875; yes sir.

Q. When did you next go in 1875 with him or in company with him?

A. I think the next trip was into the State of Iowa.

Q. Was that in 1875?

A. Yes sir.

Q. Who was along?

A. O. W. Shaw, Wm. Kinsman, W. H. Merrick and C. L. West.

Q. Where did you next go in 1875?

A. Went on Rice Lake, I think. I am not sure that that was the next time.

Q. Well, who was along on Rice Lake?

A. Joseph Swan, C. L. West and I am not sure that there was anybody else along.

Q. Did you go again in 1875 anywhere?

A. I don't remember.

Q. Where did you first go with him in 1876?

A. In 1876? I don think I went with him in 1876.

Q. You don't think you went with him at all in 1876?

A. No sir.

Q. Where did you go with him in 1877?

A. Well, I didn't go with him in 1877.

Q. During the year 1875, had you had any particular trouble with Judge Page?

A. No sir.

Q. This republican convention from which you date the trouble was in what year?

A. In the fall of 1875.

Q. Now, Mr. Ingmundson, you say you made a speech at that republican convention?

A. I made a few remarks; yes sir.

Q. You were a candidate for nomination?

A. Yes sir; I *had* been nominated.

Q. You had been nominated?

A. Yes sir.

Q. And your republicanism had been called in question?

A. Yes sir.

Q. Where was the convention held?

A. In the court room.

Q. In the city of Austin?

A. Yes sir.

Q. When you made that speech you say you declared against the "one man power?"

A. Yes sir.

Q. Were you quite correct in that speech?

A. I meant what I said, yes sir.

Q. Were you quite correct in that speech? I don't suppose you were concealing your meaning, but were you quite correct in your mode of expressing yourself?

A. Oh, I meant what I said, yes sir.

Q. Did you denounce anybody?

A. I don't know what you call denouncing anybody.
Q. Did you denounce those who had questioned you in your republicanism—did you speak of them in severe terms?
A. I have no recollection as to that except that part which referred—
Q. I am not asking you as to what you said, but if the terms you used were severe?
A. I think not, sir; they might have—
Q. Had there been some excitement over your candidacy?
A. Yes sir.
Q. There had been some exertions on your part and some by your opponent for that nomination?
A. There had been none by me.
Q. There had been exertions against you for that nomination?
A. I think there had.
Q. You hadn't done anything to secure it?
A. Nothing more than I might have spoken to people as they came into the office.
Q. You didn't leave the city of Austin during that canvass for that purpose?
A. No sir.
Q. You didn't write to anybody?
A. I might have written to somebody, yes sir.
Q. Didn't send out any of your friends for that purpose?
A. No sir, I did not.
Q. Didn't request them to go out?
A. No sir.
Q. Didn't any of them go out for you?
A. I don't know whether they did or not.
Q. Was Judge Page present at that conversation?
A. No sir.
Q. He wasn't?
A. I don't think he was; I wasn't in the court-room myself. He wasn't present when I was in there.
Q. You say you spoke about the "one-man-power." To whom did you refer in the use of the expression, the "one-man-power?"
A. I referred to Sherman Page.
Q. Up to that time you had been friendly, hadn't you?
A. Yes sir.
Q. Your relations were intimate, as you say, up to that time?
A. Yes sir.
Q. So it results in this: That after you had received your nomination you went in there and made a violent speech referring to the man who up to that time you had been friendly with?
A. No sir, I did not make any violent speech.
Q. You used that term, "One man-power," in regard to the man you had been friendly with?
A. Yes sir.
Q. And you were recognized in the expression, were you not?
A. Yes sir.
Q. You used that term in regard to the man you had been friendly with?
A. I was friendly with him; I meant what I said; I referred to the politics at that time.

Q. You intended to be understood as criticising and commenting upon Judge Page, did you not?

A. On his political career, yes sir.

Q. On his political career?

A. Yes.

Q. Did you say anything about his republicanism?

A. No sir.

Q. Were you dissatisfied with his republicanism?

A. No sir.

Q. Give us your expression in connection with that phrase,—one-man-power?

A. As near as I can recollect it—and I think it is almost my exact language—it was like this: I said that I had often worked with the opposition in the county, because I did not believe in the one-man-power in politics. It might not be the exact language but it was very near by so.

Q. Then it seems that there was some kind of a split in the Republican ranks—had been in that county before?

A. Yes sir.

Q. In which Judge Page and some of his friends were on one side, and some other Republican gentlemen on the other?

A. Yes sir.

Q. Now, Mr. Ingmundson, from that split in politics down there, don't most of this feeling begin that has been manifested in these proceedings?

A. I dont know, sir.

Mr. Manager CAMPBELL: Well, I object to that question.

Q. Had there not been some ill feeling engendered up to that time, in politics?

A. Yes sir, I think there had.

Q. Personal feeling, had there not?

A. I suppose so, yes sir.

Q. Was that a very large convention?

A. I think there was sixty delegates present, or thereabouts.

Q. Do you think your meaning was understood?

A. Yes sir, I think there was not a delegate that did not understand it.

Q. You meant it to be understood, didn't you?

A. Yes sir, I did.

Q. Now, where was it you saw Judge Page the next day?

A. I wouldn't swear positively it was the next day, but I think it was on Wednesday—the convention was on Tuesday—it was in my office.

Q. Well, it was in the clerk's office, wasn't it too?

A. Yes sir.

Q. Did he come into the office?

A. He came into the office to speak to the clerk of the court, yes sir.

Q. Now what did you say to him?

A. When he started to go out I asked him if he was prepared to go on the hunting excursion we had planned; he said he wasn't, he wasn't going.

Q. Were you at all surprised at that response after the attack you had made on him?

A. Yes sir, I was; I felt grieved over it.
Q. You feel grieved yet, don't you?
A. No sir, I do not; I have got over it. [Laughter.]
Q. When did you next see him?
A. I have no recollection of the exact date.
Q. Did you speak to him when you next saw him?
A. I guess I did.
Q. Well, you guess you did, do you know you did?
A. Yes, I know I recognized him on the street several times after this occurrence.
Q. Will you swear to that?
A. Yes sir.
Q. And he never spoke to you?
A. He did not recognize me after that, no sir.
Q. Do you mean to swear positively that Judge Page never spoke to you in the way of courtesy, after he declined to go out on the hunting party?
A. Yes sir, to my best recollection, he never recognized me. I spoke to him on one occasion—
Q. Isn't it a fact that you never recognized Judge Page after he spoke to you about that hunting excursion?
A. No sir.
Q. And refused to speak to him?
A. That is not the fact sir.
Q. So it's not the fact?
A. No sir.
Q. Have you had business transactions with Judge Page since?
A. In my office; yes sir, and he had business transactions with me.
Q. So you date the alleged antipathy of Judge Page toward you from the time you attacked him in a speech at the court house when he was not present, do you?
A. From the time of the convention held in the court house in 1875?
Q. Where you attacked him when he was not present?

Mr. Manager CAMPBELL. Well, he hasn't said he attacked him.

Mr. DAVIS. Well, I say he did. From that time you date your antipathy, do you?
A. Yes sir.
Q. You meant that for a comment or criticism on Judge Page, did you not?
A. No sir.
Q. Who did you mean by the one man-power?
A. I meant Judge Page; it was simply—
Q. Never mind. Mr. Ingmundson, are you a very resentful man in your disposition.
A. I am quite positive, sir.
Q. If a man denounces you, you are quite apt to show it, and hold it, are you not?
A. Yes, sir; until he makes it right; yes sir.
Q. If you think you are wronged by anybody, you resent, don't you, in your daily demeanor?
A. Yes, sir; generally.
Q. For instance, have you recognized or spoken to any of the grand jurors, who found that presentment against you?

A. I never heard of any of the grand jurors finding a presentment against me.

Q. That don't answer the question whether or not you have refused to recognize or speak to some of that grand jury since the presentment was found.

A. I don't know that there was a presentment found.

Mr. Manager CAMPBELL. Now, I object to the question.

Mr. DAVIS. Since the March term, 1877?

The PRESIDENT. You have not shown the time of the year.

Mr. DAVIS. The presentment is in testimony here.

Mr. Manager CAMPBELL. On that question I have refrained from asking him anything about the grand jury business at all. If there's anything to it, it is their defense.

Mr. DAVIS. Mr. President, we are entitled to every trait of his character, to characterize his disposition, for the purpose of testing his veracity, for the purpose of showing how far he can be trusted; and right here comes a very important point in this case; certain judicial proceedings instituted in Judge Page's court against this witness have been charged and proved, connected with a presentment found by the grand jury. It is charged that, although Judge Page's manner of proceeding under that presentment may or may not be perfectly legal, it is immaterial for the purposes of this discussion, whether those proceedings were perfectly legal or not, Judge Page was characterized by personal malice and ill-feeling toward this witness. Now, the witness has been on the stand, and he has testified to the time when he dates that ill-feeling. Now, it is very possible, I suggest, that the ill-feeling may have sprung from the other side—from Mr. Ingmundson. It is very possible that Mr. Ingmundson may have refused to recognize Judge Page. I want to get at this witness's manner of treating men whom he imagines has offended him; and hence I want to ask the question, whether there are not members of that grand jury, who found the presentment in 1877 against him, with whom he has refused to speak ever since; and I propose to follow it by other questions of the same character.

Now, I understand that the right of cross-examination is one very largely in the discretion of the court. Where the feeling on either side, or both sides is rancorous, that for the purpose of characterizing the testimony of the witness and weighing its truth, that the court will give the parties almost any latitude which is calculated to shed any light upon the subject or subject matter of this investigation. Now, if we are able to prove that Mr. Ingmundson in his demeanor towards people whom he has offended, is in the habit of dropping them forever, perhaps denouncing them in the manner in which we expect to show, it certainly bears very powerfully upon how far Mr. Ingmundson's testimony may be characterized by his disposition in that respect.

May it please the court, it is a good deal in substance, although not in effect, like a trial beforI the district judges, where parties are on the stand to testify. An interested party is subjected to a much more strict cross-examination than some outside parties who have no interest in the proceedings.

Now, Mr. Ingmundson, as I shall hereafter show, is placed in the light of a prosecutor. He is a person who claims to have been offended; he claims to have been proceeded against in such a manner as to war-

rant the exercise by the State of this great and high power of impeachment. It is for that that this solemn convocation has been assembled, and I think we ought to have the fullest latitude on cross-examination.

Mr. Manager CAMPBELL. My objection to this is that it is not cross-examination at all. I did not examine this witness anything about a grand jury. There was never any presentment; never any presentment found by any grand jury. Now, if the counsel wishes to show what this man's feelings are, I have no objection to his question on that. I have not objected to it, nor to show that he *has* any hard feelings toward Judge Page; but to travel from 1875 to March, 1877, and then presume a case that is not true. Then I say he has traveled outside of the cross-examination; he is going far beyond the limits that any cross-examination will allow.

They have set up in their answer certain things about the misconduct of this man, and that that grand jury examined him, and this Judge Page charged. We have not questioned him a word upon that subject. We have simply questioned him as to the ill feeling Judge Page had toward him, and when it commenced; there we have rested. Now, if he wishes to show that this witness has ill feeling towards Judge Page, it is all right; that he has a right to show, but that is the limit of it; he can't go into those other matters.

"Did you have ill feeling towards a certain grand juror?" Why, you see, the door is opened. He may have had ill feeling, and rightfully he may have had cause for it It is the feeling between him and Judge Page, and what occasioned that feeling, is the only thing which he can go into. He can't travel from 1875 to 1877, when this ill feeling, as we have shown, and they have shown, commenced in 1875.

We charge that because Judge Page did have an ill feeling towards him he tried to follow him by the grand jury of 1876 and 1877. I think the counsel is traveling beyond the limits of cross-examination, and far outside of whas we examine him in chief.

Mr. DAVIS. I would like to be heard a moment, and counsel can reply if he desires. Now, the counsel proves a state of feeling, as he will allege, which commenced in 1875. This witness testifies to a state of facts on the part of Judge Page which has continued ever since. Now, surely we are entitled to go into it on the cross-examination for the purpose of showing by this witness what has transpired in that period of time during which he has testified this ill feeling continued. We are not bound to stop at 1875, when the witness has stated positively that it has continued ever since. Nothing has been developed in this case on the direct examination of this witness, to show that from the inception of this alleged ill feeling between him and Judge Page, down to the time that that examination was held and Mr. Ingmundson was committed for a misdemeanor by the respondent, that not only that what took place in 1875, according to their own theory, but what took place since, is linked into this business. Otherwise, for what purpose do they undertake to connect the respondent with the state of that ill feeling which was generated, as they claim, in 1875?

This court is not going to shut its eyes to the fact that the real substance of this charge, and the real substance of the feeling between these parties consists in what took place before that grand jury, and in not what followed it on the part of the respondent, and I care not how skillfully and artfully it may have been put in—and their reserve, and

almost insufficiency was perfectly apparent to my mind in their examination. The real substance of this business is what was generated in the mind of the respondent, by the action of that grand jury, and under what impulses did he act at that time. They skipped from 1875, studiously omitted to ask anything about the indictment or report, and then proceeded to interrogate this witness about his examination before Judge Page, as if no grand jury had ever intervened. Now it is an elementary principle, that if a party does not bring out upon the direct examination, the whole facts, all of the *res gestae* which accompany a transaction, I care not whether the transaction is instantaneous or covers years in its duration, that on the cross examination, for the purposes of ascertaining the truth, the cross examiner is entitled to go into all the events, and to show all the *res gestae* of the transactions.

Mr. Manager CAMPBELL. It seems to me that the counsel dodges the point at issue here. He wants to know what feeling this man has towards these grand jurors. That has nothing to do with this case. Suppose he travels all over the town of Austin and picks up a man here and there all over the State, and inquires what is your feeling toward him. That has nothing to do with this case at all. The question is what is the feeling between Judge Page and this man Ingmundson, the witness; that they have a right to go into anything that has occurred between those two; any expressions or feelings that this witness has made against Judge Page we do not object to. We admit here right on the start, that this man don't like Judge Page; we admit that this man believes that Judge Page has tried to ruin him, and he has a bitter feeling against Judge Page, whether rightfully or wrongfully he has it, and we are willing to admit that; but to go on and prove by this witness how he feels toward this man or that man is entirely outside of this case. I say, has nothing to to with it.

It is not cross-examination. It is not gone into on the part of the counsel for the purpose of showing his feeling towards Judge Page; he has gone just as far on that as any court of law could or would allow. What is your character—are you a positive man or not? Are you a resentful man or not—and that, I think, is as far as this court will allow him to go. Not to pick for this grand jury or that grand jury, when we certainly have not gone into that matter. I think I am clearly right upon this subject.

The PRESIDENT. I will submit the question to the Senate.

The Secretary will call the roll

The roll being called, there were yeas 9, and nays 10, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Bailey, Donnelly, Doran, Langdon, McClure, McHench, McNelly and Pillsbury.

Those who voted in the negative were—

Messrs. Ahrens, Drew, Gilfillan John B., Goodrich, Henry, Hersey, Nelson, Rice, Smith and Waite.

There being no quorum present, Mr. Pillsbury moved a call of the Senate.

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

Messrs. Ahrens, Armstrong, Bailey, Deuel, Donnelly, Doran, Drew, Gilfillan C. D., Gilfillan John B., Goodrich, Henry, Hersey, Langdon,

McClure, McHench, McNelly, Nelson, Pillsbury, Rice, Smith and Waite.

A quorum appearing,

And the roll being again called, there were yeas 10, and nays 11, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Bailey, Deuel, Donnelly, Doran, Langdon, McClure, McHench, McNelly and Pillsbury.

Those who voted in the negative were—

Messrs. Ahrens, Drew, Gilfillan C. D., Gilfillan John B., Goodrich, Henry, Hersey, Nelson, Rice, Smith and Waite.

So the question was rejected.

Q. Have you recognized, or attempted to recognize or speak to Judge Page since the March term of 1877?

A. No sir.

Q. Or since the September term of the court?

A. Yes sir.

Q. Except in the instances you have stated?

A. Yes sir.

Q. Or since the September term of 1876?

A. Yes sir.

Q. Have you recognized him since the September term, 1876?

A. No sir.

Q. Have you since the September term of 1876, been very violent in your denunciations of Judge Page?

A. Not right following the September term; no sir.

[Question repeated.]

A. Sometimes, yes sir.

Q. Have you not been especially violent, since the March term of 1877?

A. No sir, not specially violent; I have denounced him.

Q. Did you during the March term of 1877?

A. Not during the term; no sir.

Q. Have you, since the March term of 1877, denounced Judge Page to the grand jury, or the members thereof, together or separately?

Mr. Manager CAMPBELL. I object.

Senator NELSON. That has been ruled on already.

The question was not pressed.

Q. It was during that term, then, that you did not denounce Judge Page?

A. I did not say I did not; I have no recollection of it.

Q. It was during that term of court, that you did not denounce the action?

A. I have no recollection.

Q. Did you speak about the action of the court to anybody?

A. Not during the term, as I remember.

Q. Did you know that during the term, that your official conduct was under investigation?

A. Yes sir.

Q. Did you not know before the court began, that your conduct would be investigated during that term?

A. No sir.

Q. When was it that you sent for Mr. Jones, of Rochester?

A. I did not send for him.

Q. Was not Jones present during the March term of 1877?
A. Yes sir.
Q. Was he not your counsel?
A. No sir.
Q. That is as true as any thing you have testified to?
A. He never was my counsel. I never spoke to him about being my counsel.
Q. You say positively that you did not know in advance of that term, that you were to be investigated by the grand jury?
A. No sir.
Q. Were you there while your case was under discussion?

Mr. Manager CAMPBELL. I object to this question. My objection is, that is a part of their case. I have refrained from examining the witness with regard to anything about the grand jury. It is not legitimate cross-examination, and is precisely on the same footing as the other question, only worse.

Mr. DAVIS. The question that I asked a few moments ago may have been objectionable. I have no fault to find with the ruling, or at least if I had it would do no good. but let us see whether the ground on which my learned friend bases his objection is tenable or fair. It amounts to this: That when a witness is put upon the stand, if there is an infirmity in his story or record, as connected with the case, the elucidating powers of cross-examination can be baffled for the simple reason that, although they might be asked upon the general question under discussion, they might, out of their very fear, have refrained from questioning him topically and specially upon the point they feared.

Now, to objections of that character, there are two answers. The first is that which I elaborated a few moments ago in regard to the hostility of a witness, who confessedly by himself, and the asseverations of counsel, is prejudiced; in such a case the latitude of cross-examination is much more extended than in other cases. The next answer is this: That where the witness testifies to a history extending over a tract of time, as this extends over, that we are entitled to go into the whole subject matter of this investigation, and the mere fact that the parties who produced him omitted to put him under inquiry as to that, furnishes not only no excuse for not cross-examining him, but furnishes every reason why he should be cross-examined fully on that subject.

Mr. Manager CAMPBELL. I do not wish to be technical on that matter at all, and I withdraw the objection.

Mr. DAVIS (to witness.) Were you there while your case was under discussion?
A. Yes, sir; I supposed it was under discussion, because they spoke of it.
Q. You knew it was under discussion; it was talked about?
A. Yes, sir.
Q. Who requested you to go there; who came for you?
A. The foreman of the grand jury, Andrew Knox.
Q. He sent after you?
A. The deputy sheriff came after me, Mr. E. J. Phillips. I am not positive, but I think it was E. J. Phillips.
Q. You went into the grand jury room, did you?
A. Yes, sir.
Q. How many days while the matter was under investigation?

A. Only once.
Q. How long did you stay?
A. I have no recollection; not a great while.
Q. Did you indulge in any conversation while you were in there?
A. I asked questions, and gave answers.
Q. Did you occupy the witness stand?
A. I think I did.
Q. Were you sworn?

Mr. Manager CAMPBELL. I must object. What took place in the grand jury room, is a question that this Senate has left to be decided when you come to make your case.

Mr. DAVIS. I withdraw the question.

Q. During the March term of 1877, did you not, in the presence of Mr. F. A. Elder and W. B. Swanson, one of the county commissioners, say that Judge Page was a damned old "bulldozer."

A. I might, though I could not say it was during the session of the court.

Q. Will you swear you did not use those words during the session of the court.

A. No sir, I will not swear I did not.

Q. Were you not around town during that session of the court, abusing Judge Page in the presence of the grand jury?

A. Not that I know of. No sir.

Q. Were you around town at all, during that session, abusing him?

A. No sir.

Q. Were you immediately after?

A. No sir.

Q. Immediately before?

A. No sir.

Q. Did not you take occasion during the term of court, during recesses and adjournments, to abuse the court—the judge—in the presence of persons whom you knew to be members of the grand jury?

A. If you will allow me—

Mr DAVIS. Your counsel will see that you can explain.

Q. Did not you state in Fleck's hotel, in the city of Austin, during the term of court held in September, 1876, in the presence of R. A. Murray and two of the grand jurors, that Judge Page was only fit to be cut in two and made two piss pots of.

A. I don't recollect of having said so, but if anybody insists that I said it, I shall not deny it.

Q. Is that remark the style in which you comment upon your enemies?

A. Well, I comment upon them as it happens to get into my head at the time.

Q. That peculiarly classical expression was in your head at the time?

A. I don't know, because I don't remember that I said it.

Q. You don't consider it impossible, that you could have said it?

A. No sir.

Q. And if a reputable man says that he heard you say so, you will not say that you did not?

A. No sir.

Q. Coming down to the term of 1877, you don't think that under the feeling that you were then under, that you indulged in any such kind of a remark at that time?

A. I will state ——

Q. Did you indulge in any such remarks, in connection with the action of the court towards you in 1877?

A. I think not sir.

Q. Were you somewhat excited during that term?

A. I was somewhat, sir.

Q. You knew that the judge had charged the grand jury in regard to your alleged official delinquencies, did you not?

A. Yes sir: I heard of it.

Q. Did you hear of it immediately?

A. I heard of the charge, but that was not commented on.

Q. Did you hear of the charges as they occurred from time to time.

A. Yes sir.

Q. Were you in communication with any members of the grand jury during the recesses, as to what was taking place respecting your case?

A. No sir.

Q. In no instance?

A. No sir.

Q. Did you attempt to get any such communication?

A. No sir.

Q. Did you converse with any grand juror in regard to what was taking place during the term?

A. No sir.

Q. You wholly refrained?

A. I will state here, that Andrew Knox was the the only grand juror that I have any recollection of speaking to. He spoke to me of the case, and he asked me if I would come before the grand jury.

Q. He is the only grand juror that spoke to you; is he the only grand juror that you spoke to?

A. Yes sir.

Q. Will you swear that that is so?

A. To the best of my recollection.

Q. Did not you approach grand jurors wherever you could find them, in the streets and other places, during that term, to influence them and lobby with them in regard to your case?

Mr. Manager CAMPBELL. We object. My objection is that it don't matter what he did with these grand jurors.

The PRESIDENT. The chair understands the question to be withdrawn.

Q. Did you take a certain order for one hundred and fourteen dollars and odd cents, of Sever O. Quam.

Mr. Manager CAMPBELL. Now I object.

Mr. DAVIS. I thought you would. If the court please, the articles of impeachment which Mr. Ingmundson has been produced to sustain, are two in number, and under the plan of the prosecution adopted by the learned managers, are under proof together. It is part of the philosophy of those charges, from their stand point, that an investigation was had of Ingmundson's offense in September, 1876, and that notwithstanding that, the respondent, without probable cause, and maliciously, directed the grand jury at the March term of 1877, to again investigate the manner in which that office was conducted.

Now, it cannot but have struck the attention of Senators, that my learned friend, in putting in his testimony of this witness made an extraordinary bound from 1875, over those two grand juries, down to the time when the respondent, as it is said, directed the county attorney to make a complaint, and issue a warrant against the witness on the stand. The moment I saw that little flying trapeze performance, I anticipated that it was done precisely for the purpose of protecting this witness and that case, from the handling to which he would be subjected to on a cross examination, if it were conceived proper that we should go into the causes which induced the respondent to bring the judicial power of the State, to bear upon the witness, Mr. Ingmundson, in the exercise of that wise discretion with which courts are endowed in regard to cross examination.

Is it fair that a witness should be brought in and covered so artfully, and while he is allowed to testify to a period of time, which begins in 1875, and closes in 1877, that the most important segment of that time —some six months, shall be taken out bodily, because the counsel sits there and watches for chances to cover that period, and set it forward in silence?

Again, gentlemen, we are entitled to impeach the veracity and character of this witness. For all time, it has been proper matter of cross-examination, to ask a witness if he has not been accused of certain criminal offenses. This witness is put upon the stand, with other testimony, to substantiate the allegations that the respondent has proceeded against him without probable cause, and you will be asked to infer malice from the want of probable cause. That will be the argument which we shall have to meet, when this case comes to be summed up.

Now, was it ever heard that, when a witness on the stand is asked: "Have you not been accused of such and such offenses?" the counsel, who have undertaken to protect him, can obviate a cross-examination by saying, "we have not asked him anything about that, that it is a part of your case."

I would like to ask Senators, if the rule which my learned friend, the Manager, interposes here is sustained, and we are not allowed a liberty on cross-examination, where he has had a full liberty on direct examination to go as far as he pleases; what light can this Senate draw from these important facts as to the relations subsisting between these parties? It is not entirely true that the element which enters into the legality of the question which is propounded exists alone in the answer. It exists also in the articles which are propounded here. Those articles are that the respondent maliciously, and without probable cause, has brought the power of the grand jury to bear upon an innocent man; and that man is produced here in court, and it is conceived that because they have not asked him upon that point where they feared attack upon cross-examination, therefore he is not to be interrogated and searched, to find out what the animus is, what his feelings were, what the surrounding circumstances were during all this period of time when malice is claimed to have existed.

It seems to me, gentlemen of the Senate, that this is a question that ought in all fairness to be put. I don't want any technical advantage in this case, but I don't want to be harrassed or embarrassed by any technical objections. They have put this witness on the stand, and have tendered him here in substantiation of those articles whereby

it is alleged that he, an innocent man, guiltless of any offense, has been prosecuted by this respondent, maliciously and unlawfully.

Mr. Manager CAMPBELL. It is impossible for me to see what this question has to do with the matter in issue now. As the counsel says, we have brought this witness on the stand, and we have bounded from 1875 over to 1877. It is true that we allege that this respondent had malice against the witness. We go on to prove that in 1875 he first exhibited a feeling of ill will towards the respondent. That is part of our case, and that is all there is of that branch. We show when he first exhibited ill will towards the witness. Then we go further, to the time when he was arrested. Why? Because we allege that at the time he was arrested in 1877, by this respondent, because he had an ill will towards him,—misused him when he was brought before him on a warrant, for examination. Now, that is all there is in our complaint, and that is all there is to this matter of examination, as far as this witness is concerned. The counsel has no right to examine this witness upon any other subject than that upon which we have examined him, and those are the only points that we have examined him on.

As to the feeling of this witness toward the respondent, we don't object to their going into that, but when they come to ask as to whether this man had purchased an order, whether he had gotten an order in his possession, they are entirely outside of the record. If it has anything to do with the case, it is in the defence, and I say here, as I said before, that when they come to their side of the question, if this Senate has a mind to let in all that evidence that took place before the grand jury, we shall not object; I wish to say now, and I shall say so when they come to ask the question, that I shall raise the objection simply and solely that the Senate may use its discretion, whether they can go into that grand jury room on that matter or not. We care not a straw; it is a mere matter of time. If this senate wishes to go into that grand jury room, and say that they have a right to do so, we shall not raise an objection any more than to say that it has nothing to do with the case. If you go into it, you will take up the time of the court upon matters that have already been decided. But on this examination, what these matters here can have to do with the feelings of this witness towards Judge Page, what it can have to do with the real examination in chief, is more than I can imagine. He says it is a right always to ask a witness if he has been accused of crime, and that accusation of crime is what this man or that man may have said on the streets.

But has he been accused of crime in a court of justice? If he asks that, we will not object, and that is as far as counsel is allowed to go. If they ask this question, "have you ever been indicted,"—"have you ever been araigned for a criminal?" or any thing of that kind, we do not object. It goes to show the character of the witness, and only that.

He says he asks this question for the purpose of impeaching the witness.

How do you impeach a witness? You impeach a witness by showing that he is not a truthful man, or by contradicting him. Certainly you cannot contradict him on an immaterial question. He asks him the question, "have you purchased at such a time, a town order?" What odds does it make whether he has or has not? It is not a question that he can answer, and we object to it upon that. I do not wish to be technical. The counsel has asked question after question here, that I believe is not legitimate cross-examination, and we have raised no ob-

jection. The last objection I raised, I withdrew, not because I believed it legitimate cross-examination, but I did not wish to appear technical in this matter. They are going now into a matter that is entirely foreign, and can have no bearing upon the subject in any way. If it has any possible bearing, it can only have point as matter for defence.

Mr. DAVIS. I ought to have stated, Mr. President, in regard to taking the order of Seaver O. Quam, that that question will be followed up by other questions, if this is allowed, touching these very proceedings before Judge Page on that examination. We cannot put in everything at once.

The PRESIDENT. The question will be submitted to the Senate.

And the roll being called there were yeas 11, and nays 10 as follows:

Those who voted in the affirmative were—

Messrs. Armstrong, Bailey, Deuel, Gilfillan C. D., Goodrich, Langdon, McClure, McHench, McNelly, Pillsbury and Rice.

These who voted in the negative were—

Messrs Ahrens, Donnelly, Doran, Drew, Gilfillan John B., Henry, Hersey, Nelson, Smith and Waite.

So the question was admitted.

Question repeated. Did you take a certain order for 114 dollars and odd cents of Seaver O. Quam?

A. $114.52; yes sir.

Q. Was he the town treasurer of the town of Clayton?

A. Yes sir.

Q. Did you pay him the money on that order?

A. I paid him a check; just the same as money.

Q. Your check as county treasurer?

A. Yes sir.

Q. Upon the bank of Leroy?

A. Yes sir.

Q. Did you keep the county funds deposited in the bank at Leroy?

A. I kept some public funds deposited there, yes sir.

Q. Did you pay that money to the treasurer upon the warrant of any county auditor?

No sir.

Q. Quam was a defaulter and ran away, didn't he?

A. Not until long after this.

Q. He ran away and left that order in your hands, did he not?

A. Quam hadn't run away when that order was presented.

Q. How long after this?

A. I don't remember.

Q. Did Quam's successor appear to you with a warrant of the auditor for the funds of that town?

A. Yes sir.

Q. Did you pay the full amount of that order?

Q. Of what order?

Q. The warrant of the auditor.

A. Yes sir.

Q. How did you pay it?

A. In cash and in town orders.

Q. Did you not insist on his taking up all of this $114 order?

A. Yes sir.

Q. You did not take this $114 for taxes, did you?
A. No sir.
Q. You had it from the town treasurer?
A. Yes sir.
Q. Who was it payable to?
A. D. B. Coleman.
Q. Was this the circumstances for which you were examined in a criminal proceeding before Judge Page?
A. Yes sir.
Q. Did you understand that to be the offnnse to which Judge Page called the attention of the grand jury?
A. Yes sir.
Q. That one offense?
A. The offense, yes sir.
Q. You paid Quamm for that order, a check of $100.
A. No sir.
Q. How much?
A. I paid him in two checks; one for $44.52, and one for $70.
Q. Both checks on the same bank?
A. Yes sir.
Q. Did not you keep funds in the bank at Austin?
A. Yes sir.
Q. In the bank at Great Meadow?
A. Not at that time.
Q. In the bank at Spring Valley?
A. Yes sir.
Q. In two banks at Austin?
A. Yes sir.
Q. How many of those banks were national banks?
A. One.
Q. The rest were private banks, were they not?
A. Yes sir.
Q. Had you deposited funds there under the provisions of the law of 1873.
A. No sir.
Q. Those banks gave no bonds for these deposits, did they?
A. No sir.
Q. Did you understand that to be one of the matters which the grand jury were charged to consider?
A. No sir.
Q. Did you understand it to be one of the matters which the grand jury were to consider, under the general charge of malfeasance in office?
A. No sir.
Q. Were you allowed interest on those funds?
A. Part of the time, yes sir.
Q. How much?
A. They added three per cent. on monthly balances.
Q. Were you present in court when that grand jury came in?
A. No sir.
Q. When you were brought before Judge Page was the county attorney present?
A. Yes sir.
Q. The case was not ready for trial, was it?

A. Ready for an examination?
Q. Yes.
A. No sir.
Q. The reason was that no witnesses had been subpœnaed?
A. Yes sir.
Q. Did the judge call the case?
A. I have no recollection how it was done, sir.
Q. But it was continued because the judge required witnesses to be subpœnaed?
A. Yes sir, I think that was it.
Q. There were no witnesses there for the prosecution?
A. There was no witnesses for the prosecution.
Q. Well, the second hearing came on, and no witnesses were yet present?
A. No, I think not.
Q. And it was adjourned again for that cause?
A. I think that was the reason, sir.
Q. And on the third hearing the witnesses were present?
A. Yes sir.
Q. Who were those witnesses?
A. D. B. Coleman and Soren Haralson.
Q. Did they remain during the examination?
A. Yes sir.
Q. Did they hear you held to bail?
A. That I am not certain; I think they did.
Q. You think they were there?
A. Yes sir.
Q. Now you say that Mr. Cameron made a short plea, and claimed in regard to this Quam order, that you had committed no crime, because you had no intention to defraud the public?
A. He said it showed no irregularity, or words to that effect, and if it did, that it showed no intention to do wrong, or words to that effect.
Q. When the judge held you to bail, he gave his reasons for so doing, did he not?
A. Yes sir.
Q. Among others did he not say that the question of intent—of actual intent was not material when the plain provision of the statute had been violated by a public officer?
A. He stated that to Mr. Cameron when he had stated all his plea.
Q. After Mr. Cameron had been heard?
A. Yes sir.
Q. As a reason for holding you to bail he said that he had been informed that there were graver crimes against you?
A. I think he used it as a reason.
Q. And what else?
A. That I had talked scandalously about him.
Q. Now, how long was the judge occupied in making those remarks?
A. I could not say the length of time; probably fifteen or twenty minutes.
Q. Mr. Cameron had made some remarks?
A. Yes sir.
Q. Had Mr. French, the county attorney, said anything?
A. No sir: he said that he would submit the case.

Q. He said he would submit the case; then the judge went on to give his reasons?

A. Yes sir.

Q. For holding you to bail, did he?

A. Yes sir.

Q. Now, when was it you asked leave to ask the judge a question; was it before Mr. Cameron spoke?

A. I am not certain; I think not, sir; I think it was after Mr. Cameron had spoken.

Q. Was it before the judge had given his reasons?

A. I think it was during the time he was speaking.

Q. Did you interrupt the court to ask him a question?

A. No; he had stopped, and I asked the privilege to ask a question.

Q. Had he announced what the amount of your bail would be, at that time?

A. No sir, not at that time.

Q. At what point of his remarks did he stop?

A. I have no recollection.

Q. So you say that after your counsel had ceased speaking, and while the judge was speaking at some pause in his remarks, you asked leave to ask this question?

A. Yes sir.

Q. Now, was it before, or after you asked this leave, that Judge Page said he had heard that you had been talking about him?

A. That I could not say positively.

Q. What is your impression?

A. Well sir, I have no impression on it?

Q. You have no impression on it?

A. No, I haven't; I will tell you what I think—

Q. What was the last word that Judge Page used in giving his reasons for holding you to bail?

A. I am not positive on that.

Q. Are you positive on anything that he said, more than you have testified to here?

A. More than I have testified to?

Q. Yes.

A. I'm not.

Q. Now, can you tell us in what words Judge Page concluded his remarks, or the substance of them?

A. Well, I think he called my attention to the fact of the two defaulting treasurers having absconded and immediately after that fixed the amount of bail. I am not positive; I won't say that positively.

Q. How much did he fix this bail at?

A. A thousand dollars.

Q. And after that did you leave the room immediately after he had fixed the bail or did you remain in there some time?

A. No, we went right out.

Q. Did you ask your question of him before he spoke of the defaulting treasurers or afterwards?

A. Before, I think.

Q. Before?

A. Yes sir.

Q. Your question was whether you had not a right to pay an order out of the funds that it did not belong to?

A. No.

Q. That was the substance of it was it not?

A. No sir, it was not.

Q. What was it?

A. It was this, "If a man came into the office with an order either on the town or a school district if I had not the right to file it away to ask for pay from the—"

Q. Now you say that you asked him that question before he made the remark about O. Quam?

A. I don't say positively when it was.

Q. What you said a few moments ago, was that you thought you made that remark before he spoke about the transaction with O. Quam?

A. No, afterwards, I think, I am not positive, but think it was afterwards.

Q. You wish to qualify your statement if you made such a statement, and say now that it was afterwards?

A. Well, no; I have no recollection exactly.

Q. Then you wish to qualify your two statements, and say you do not recollect when it was.

A. It was during the conversation.

Q. But I am speaking in reference to what he said about O. Quam; was it before or after or at that time?

A. Will you give a little time to think?

Q. No sir.

A. You won't?

Mr. Manager CAMPBELL. Well, you will have to, I guess.

Mr. DAVIS. You say he concluded his remarks with reference to this O. Quam business?

A. No; I said he concluded his remarks with reference to the two defaulting treasurers.

Q. Well, O. Quam was one of them, wasn't he?

A. Yes sir.

Q. And these remarks were right close together?

A. No, sir.

Q. Now, did you hear that remark about that town order before O. Quamm or Huntington was spoken about, or afterwards?

A. Before.

Q. You are positive of that?

A. Yes, sir; because the O. Quamm order was spoken of before. When he spoke about O. Quamm he didnot speak about the O. Quamm order.

Q. Did you ask that question before or after Judge Page spoke about the O. Quamm order?

Mr. Manager CAMPBELL Well, he didn't say anything about an O. Quamm order?

Mr. DAVIS. Did you ask the question before or after Judge Page spoke of O. Quann?

A. Before.

Q. Before?

A. Yes, sir.

Q. You are positive of that?

A. Yes, sir.
Q. You wish to remain in that assertion, do you?
A. Yes, sir.
Q. Did Judge Page speak of those other orders, of paying orders out of other funds.
A. Yes, sir.
Q. At what stage in his remarks did he speak of that?
A. Well, that was in the first part of his remarks.
Q. In the first part of his remarks?
A. Yes.
Q. Before or after he had got to O. Quamm and Huntington?
A. Before.
Q. Before he got to O. Quamm and Huntington?
A. As near as I remember Huntington and O. Quamm, the defaulting treasurer, he spoke of them the last thing.
Q. Did you attempt to explain this matter about the O. Quamm order?
A. Before Judge Page?
Q. Yes.
A. No sir.
Q. Did you claim before Judge Page that you had taken this O Quamm order to lay away?
A. Lay away how?
Q. In connection with that question, was that question made to excuse yourself after what you did in regard to this O. Quamm order?
A. No sir, I wished to get information on whether I had the right to pay an order or file an order and ask the judge.
Q. Did you put this O. Quamm order on file?
A. No sir.
Q. How did you hold it?
A. I held it as a part of the funds of the township of Clayton; I paid it out of the funds of the township of Clayton.
Q. Without any warrant from the auditor?
A. Yes sir.
Q. You took an order in the hands of Ole O. Quamm which had been drawn on him, in favor of Mr. Coleman?
A. Yes sir.
Q. And you paid it out of the funds of the town?
A. Yes sir.
Q. Did you make an inquiry as to whether that town order, being in the town treasurer's hands, had not been, in fact, paid.
A. No sir, I did not.
Q. And whether this did not constitute a re-issue?
A. No sir.
Q. Did you make inquiry as to how Mr. O. Quamm came by it?
A. He told me himself.
Q. Didn't you make an inquiry?
A. Why he made the remark himself, told me that Coleman gave it to him to get the cash on?
Q. Did you take O. Quamm's word for it?
A. Yes sir.
Q. Didn't you make an inquiry outside?
A. No sir.
Q. What did O. Quamm tell you about the order.

A. He said that he had no funds in his hands belonging to the town, and if I had collected money for the town of Clayton, if I could pay an order to D. B. Coleman for road work he had done during the summer.

Q. Did he give you any reason why he didn't get the auditor's warrant for it?

A. No sir, he couldn't have got it at that time.

Q. Then what business had you to pay it if you knew he couldn't get it?

A. I had the right to pay it.

Q. You know now that the town has lost the money, don't you?

A. No sir, I don't.

Q. Didn't you insist on turning that in to Coleman's successor.

A. Certainly.

Q. As town money?

A. Certainly. Certainly it was town money.

Q. How long did you hold it?

A. I held it until in March.

Q. When did you get it?

A. In October.

Q. Did you ever pay over to the public the interest which you received on your deposits?

A. Yes sir.

Q. How did you pay it?

A. I covered it into the county funds.

Q. Did you not pay it by virtue of some interest you claimed?

A. Part of it, yes sir.

Q. What kind of an interest was that?

A. Interest on money which I borrowed to keep county orders at par.

Q. Was that amount you borrowed, that $7,000 that didn't come out straight in the settlement of last year?

A. It did come out straight last year.

Q. Didn't the books in the treasury show a deficit of seven thousand dollars?

A. Yes sir, that I overpaid.

Q. Now you have wiped out some of that interest you received by the interest you have had to pay for that money to advance that seven thousand dollars, havn't you?

A. Yes sir.

Q. You call that covering it into the treasury?

[No answer.]

Q. Or do you call it a loan?

A. Well, that was a loan; I borrowed the money for the purpose of keeping the orders at par, with an understanding with the county commissioners.

Q. Were you ever deputy clerk of court of the county of Mower?

A. Yes sir.

Q. When did your duties end?

A. I was notified last fall ———

Q. When did your term begin?

A. It began in March, 1874.

Q. Under whom?

A. F. A. Elder.

Q. And when did the term expire?
A. His term expired the first of January last.
Q. How long were you appointed for?
A. For his term, I think.
Q. Are you positive?
A. No sir; I am not. He told me afterwards that it had not been but he sanctioned ———
Q. Never mind that. Did you travel round the county of Mower with A. A. Harwood, securing grand jurors' affidavits?
A. I went to two places, yes sir.
Q. On one trip, or two?
A. One trip.
Q. How far from Austin?
A. I should say about seven or eight miles.
Q. You were engaged with Mr. Harwood in getting up affidavits of grand jurors, bearing on Judge Page, were you not?
A. Those two I was.
Q. That was your business, was it not?
A. It was that day, yes.
Q. Is that one of the affidavits [handing witness paper]?
A. That is my signature, sir.
Q. Is that your signature [handing witness another paper]?
A. Yes sir.
Q. Are each of these papers one of those affidavits?
A. [Looking at paper.] This is one, [looking at another paper] and so is that one.
Q. Did you find these men in the wheatfield?
A. Yes sir.
Q. Did you take a bottle of ink along with you?
A. Yes sir.
Q. Went loaded?
A. Went loaded.
Q. You went hunting that day, didn't you?
A. No sir, I think not; I left my gun at home that day.
Q. I see by these affidavits you swore these men as deputy clerk of the district court of Mower county?
A. Yes sir.
Q. On the 13th day of last August?
A. Well, whatever date is down there.
Q. You gave the true date there, did you not?
A. Yes sir; yes sir.
Q. Mr. Ingmundson, you have felt a good deal of interest in these proceedings, have you not?
A. Yes sir, quite interested.
Q. You are one of the persons who have promoted this prosecution of Judge Page from its inception in the other house down to this time, are you not?
A. Yes sir.
Q. Have you attended meetings which had for their object the impeachment of Judge Page?
A. I have been to one or two meetings where the question came up.
Q. Where the question came up?
A. Yes sir.
Q. Was that the object of those meetings?

A. I think it was.
Q. Where were they held?
A. One I attended in D. H. Stimpson's house.
Q. Private house?
A. Yes sir.
Q. At night?
A. In the evening, after dark.
Q. By appointment?
A. Yes, I was asked to come there.
Q. Many there?
A. I don't remember, yes there was quite a number there.
Q. When was this?
A. Well, I have no recollection; it was last fall, sometime.
Q. Wasn't it before election?
A. No sir.
Q. Where else did you attend a meeting that had this for its object?
A. Well, I don't think I attended any other meeting that had this for its object; we used to talk of it most anywhere we met on the streets.
Q. Have you contributed funds for this business?
A. Yes sir.
Q. How much money have you contributed to this business?
A. I have paid $50.
Q. For what purpose?
A. For attorney's fees.
Q. When did you pay that?
A. I paid it at two or three different times.
Q. Didn't you pay some of it while the matter was before the House of Representatives?
A. Yes sir.
Q. Have you paid any since the matter came from the House of Representatives?
A. Yes sir, I think so; I am not sure.
Q. Were you up here last winter while this matter was under consideration by the House?
A. Yes sir.
Q. How long did you stay?
A. I stayed here eight or nine days.
Q. Did you lobby among the members for the passage of these articles?
A. No sir, I did not.
Q. Did you speak to any member about it?
A. I might have spoken in the hearing of a member, but not—
Q. Did you speak to one member, on this matter?
A. I might have talked of it to a member, yes; but not as you call lobbying, for I never asked one member to vote one way or the other.
Q. Did you state the things down there in Mower county as you viewed them?
A. I don't doubt but that they heard me talk, because I talk about it quite freely sometimes.
Q. You denounced Judge Page here, last winter, while the matter was under consideration in the House of Representatives, did you not?
A. I don't remember; I used to talk about it; there was quite a number of witnesses here.

Q. Didn't you stay here after you had been examined as a witness?

A. No sir, I went home just as soon as they let me.

Q. Was you here while the report was in the House, after the committee had reported?

A. No sir. I was not.

Q. When did you go home?

A. I went home several days before that was voted on. I remember that distinctly, because I watched the papers.

Q. Did you hear about the committee report?

A. No sir.

Q. Have you sent any of A. A. Harwood's papers out throughout the State, lately?

A. Not lately, no sir.

Q. When did you send them?

A. Oh, I don't remember; I have sent out papers; I'm sending out papers now.

Q. I mean Mr. Harwood's papers, which contain articles relating to this prosecution.

A. Within what length of time?

Q. I mean any paper of Mr. Harwood's which contained any article relating to this impeachment?

A. I guess not. I might have sent some papers to my friends in Iowa.

Q. Do you know of any such papers being sent to any persons throughout this State?

A. No sir, I do not.

RE-DIRECT EXAMINATION.

Mr. Manager CAMPBELL.

Q. You state that Judge Page came into your office frequently; state whether you were deputy clerk at any time, and if so, when you were appointed and how long you served.

A. I was appointed March, 1874, and I performed the duties of the office of deputy clerk up to September or October, I think it was some time in October, 1877.

Q. Now, you have spoken about a speech that referred to Judge Page. Did you intend it to refer to Judge Page?

A. Yes sir.

Q. Did you mention Judge Page's name in the speech?

A. I did not.

Q. Was your speech published?

A. Yes sir; it was no speech though, it was only a few remarks.

Q. Counsel asked you about having denounced him; state whether, to the best of your recollection, you denounced Judge Page before the grand jury were dismissed.

A. I don't think I did sir.

Q. At the March term, 1877?

A. I don't think I did, sir.

Q. Well, sir, you denounced him afterwards, did you?

A. Yes sir.

Q. Can you tell what you said about him?

A. No sir; I have said so much that it would be almost impossible to remember what I said.

Q. Can you tell why you denounced him?
A. Yes, sir.

Mr. LOSEY. We object to that. The objection is, that it is immaterial and improper. The facts are the only evidence that can be offered here. What the witness's intentions and objects were have nothing to do with this case.

Mr. Manager CAMPBELL. He certainly has a right to explain his conduct.

The PRESIDENT. The chair does not see very much materiality in it, and will rule it out. If the counsel desire it, we will submit it.

Mr. Manager CAMPBELL. I don't think I would like to take an appeal from the decision of the chair.

The PRESIDENT. I hope the managers will not have any delicacy about that.

Mr. Manager CAMPBELL. No, but I judge it is material for this reason. This man has denounced Judge Page; they bring it out that he has denounced Judge Page. Now a man that denounces another without any cause or provocation, of course is inexcusable, but if he gives his reasons why he denounces him, the Senate can judge whether he was malicious about it, or whether he had reasonable grounds to denounce him, and it is always allowable for a witness to explain why he does certain acts, especially when they bring it out on the cross examination.

The PRESIDENT. The chair had supposed that the manager had already shown or attempted to show the reason of this denouncement, therefore the question would be immaterial.

Mr. LOSEY. We brought it out on the cross examination of the witnesss on a fact that they had proven here by him; what the witness's motives were, the Senate must judge of by what he said and did, that is the only way to get at a motive.

Mr. Manager CAMPBELL. The witness has a right to explain why he did thus and so, that is my view.

The PRESIDENT. The chair will submit the question to the court. Shall the question be now put?

The question being taken on admitting the question in evidence.

And the roll being called, there were yeas 11, and nays 10, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Bailey, Deuel, Doran, Goodrich, Langdon, McHench, Nelson, Rice, and Smith.

Those who voted in the negative were—

Messrs. Donnelly, Drew, Gilfillan C. D., Gilfillan John B., Henry, Hersey, McClure, McNelly, Pillsbury and Waldron.

So the question was admitted as evidence.

Q. State why you denounced Judge Page?
A. Because of his prosecutions of me.
Q. Counsel has asked you if you made certain remarks there, one was that Judge Page was only fit to be cut in two and used as a couple of piss-pots? If you made such remarks was it before or after the grand jury were dismissed; to the best of your recollection?

A. I have no recollection of making the remark at all, but I remember the occasion spoken of, we were at the Fleck House saloon one evening, and if it was there it was after the grand jury was discharged, to the best of my knowledge and belief.

Q. Now they have asked you about taking a town order of the town of Clayton, will you state to the Senate fully how you came to do that, and all the circumstances connected with it. Give us a clear statement of all the facts connected with it.

A. Mr. O. Quamm, the treasurer of the township of Clayton, came to me and asked me if I had any fund collected for the town, that they had none at home, and he wished to pay a town order to D. B. Coleman, for road work he had performed during the summer. The order was $114.52; I told him I would go into the auditor's office and see what there was; I went in there and found that there was several hundred dollars collected for the township, and I told him there was plenty of money there, and he could have the money to pay his order; he told me that he would take part of the money with him, and give his receipt for it, and when he came up again in two or three days, he would bring the order, and leave it as a voucher and take the balance of the money.

I asked him if he would take a check on the Bank of Leroy for the money, as I had more money then deposited there than I wished in that bank, and wanted to draw out some. He said he would. I gave him a check for $44.52. Four days afterward he came up, brought with him the order, and I gave him a check for $70, and he left the order with me as a voucher, and took up this receipt.

Q. And you received that order simply as a voucher?

A. Just as a voucher for the money I paid out.

Q. The money that you paid to the town?

A? Yes, sir.

Q. State whether you have ever taken town orders, unless you have taken them with town money.

A. I never have, sir.

Q. As town treasurer, I mean, did you ever buy them?

A. I never bought an order while I have been in office as county treasurer.

Q. Now you stated in answer to counsel that you did not deposit money under the law of 1873 and take bonds; state why you did not?

Mr. LOSEY. That we object to.

Mr. Manager CAMPBELL. I state that he stated to respondent that he did not deposit money and take bonds under the law of 1873. Now I ask him to explain why he did not do it. The witness has a right to explain himself, to show why he did not do it.

The PRESIDENT. I think the court has already decided that he has, and I shall so rule. The court has decided that a witness may go into an explanation, and I think the same rule will govern here

Mr. LOSEY. I can't see how the respondent is to be bound by that. The question is as to what facts appear to the respondent in court, and I do not understand that the Managers connect the respondent with this in any manner whatever. The fact was just this: That he did violate the law of 1873, by depositing the money in banks that gave no security.

Now, how the respondent can be bound by the acts of the treasurer, done officially, which were not brought to his knowledge, we

cannot see here; and what his reasons were for violating the law, certainly had nothing to do with his guilt or innocence. The question before the court, and before the grand jury at that time, was, whether he had violated the provisions of the statute then in force. Now, a court, if a man has committed larceny and is brought before him (the court) for trial, does not inquire as to what his motives were in the commission of the larceny. If he has committed a murder, they do not go into an inquiry as to what the man's motives were so far as the prosecution itself is concerned; to say the least, they simply prove the facts, and the motive is left to be inferred from the act itself.

Now, he may have had some excuse which to him seemed valid, but he could not have an excuse which, in the eye of the law, was a legal one, for violating a number of provisions of the statute.

Mr. Manager CAMPBELL. The counsel has begged the question when he has argued this matter, by saying that this man was under trial, under examination; when the facts are, that there was not a word said; and it was not known by this respondent whether he had or had not deposited it, nor is it claimed in their answer, that he knew anything about this. Certainly not in that charge to the grand jury, where we accuse him of malice. His only charge there was, that he had heard the rumor that he, (Ingmundson), bought town orders; that is all the charge is; it is all they allege. Now, when they come to cross-examine this witness, they not only examine him upon this point, but they go to try this man before this court, and say, you did not deposit your money according to the law of 1873, and now object to his giving an explanation, because we do not connect the respondent with it.

He don't connect himself with it, either in his charge to the jury, nor in his answer, nor at all. It don't show nor appear that this respondent knew anything about it. We don't connect him with it, because it was none of his business, but we say here, when they attempt to put this witness in a false position, they ask him the question, did you deposit under the law of 1873? He says no. Now the question comes, why didn't you deposit? Shan't they let this witness explain himself to this court, to excuse his conduct. You are not trying this witness here, but they try to put the witness in a false position. We have a right to show that he could not deposit under the laws of 1873, if he cared to do so, and give his reasons why he did not do it.

Mr. LOSEY. What we allege by way of answer is that there was reason for the court to think that this man had violated the law, and we have shown out of his own mouth that he violated the law, and the reason the court gave at that time was a valid reason, and this is one of the facts that we have shown. Now what his motives were for violating the law has nothing to do with this case, and nothing to do with the case that was before the respondent at the time of that examination had of Mr. Ingmundson. The question was what had he done that was brought to the knowledge of the respondent in which he had violated the law under the statutes as they then existed, that was the question. Now what his motives were—what his reasons were—has nothing to do with the trial of this case. It is just a simple question as to what was brought to the notice of the respondent on that day and at that time.

The PRESIDENT. The chair thinks he has substantially ruled on this question, and will decide to admit it.

Mr. Manager CAMPBELL. The question is, why you didn't deposit money under the laws of 1873, and take bonds from the depositors?

A. The reason was that a provision in the statute is such that it requires the board of county commissioners to advertise for bids, and the bank that bids the highest for the use of the money so deposited gives bonds and takes the money. The board of county commissioners did advertise for bids and received none, and I deposited in the different banks for the safe keeping of the funds, because I have not a safe in my office that I would trust a five dollar bill in over night. I am responsible for the money myself. I have given bonds in the sum of $75,000 for its safe keeping.

Q. Now you have told us about receiving interest on some of the deposits that ———. Did you receive interest, explain that?

A. I had nothing to do with the receiving of interest; I made no bargain with any banker for any interest; the commissioners and the bankers had a talk between themselves and in my hearing, before I took possession of the office, immediately before I took possession, and it was agreed between them that they would pay three per cent. on monthly balances, stated no time when, and I covered the money into the treasury, from time to time, till the county fund began to run short, and I had a talk with the commissioners, and they asked me what means I could pursue so as to keep orders at par, and I told them I had no way of doing it without borrowing the money, and if they would leave it with me I thought I could do it; it would not be a regular transaction, and hence they could take no action on it, and in that way I used part of this interest money, to pay interest for money that I used to keep orders at par, from time to time, as the fund went down.

Q. You borrowed money there?

A. Yes sir.

Q. For the county?

A. Yes; well I borrowed it on my own responsibility, to keep the orders at par.

Q. State how much you borrowed on your own responsibility?

A. The highest sum I ever borrowed was $7,500 dollars, and smaller sums from time to time; from one to three and four thousand dollars at a time.

Q. What did you do with this interest that you received from the banks?

A. In the neighborhood of $1,000 I had covered into the treasury and afterwards I used it to pay the interest on these loans.

Q. State whether you received personally any benefit from this whatever?

A. No sir, I did not.

Q. Have you ever received a dime interst, personal benefit?

A. No sir, I did not.

Q. Whatever interest you received, then, went right to the benefit of the county?

A. Yes sir.

Senator NELSON. Mr. President, I wish the managers would ask him whether he made these loans at the suggestion of the county commissioners.

Mr. Manager CAMPBELL. He has already stated that.

Q. State whether these loans were made at the suggestion of the county commissioners, or otherwise?

A. They were. The chairman of the board of commissioners, and one or two others, were present when it was talked of first, as I think. It was talked of several times afterwards between myself and the chairman; had a perfect understanding in the matter, and he made the remark that it was saving the county thousands of dollars to keep the orders at par, which would get down about seventy-five cents less on the dollar if Idid not keep them up.

Q. Your acts then, in these transactions, have been open and above board, and with the knowledge of the county commissioners?

A. Yes sir.

Q. What obligations did you give the county of your own?

A. My own?

Q. Your own personal obligation?

A. My own personal note.

Q. Mr. Ingmundson, you were here last winter; how came you to come here?

A. I was subponaed here.

Q. While you were here did you talk on the matter of impeachment with any of that investigating committee?

A. Never, sir.

Q. Did you use any means in any way, shape or manner, or authorize any one to use any means to influence the vote of the House?

A. I did not.

RE-CROSS EXAMINATION.

Mr. LOSEY:

Q. Did you sign these notes as treasurer?

A. No sir.

Q. You signed them as treasurer of Mower county?

A. Well, I did not sign them as treasurer, at all.

Q. Was it understood between you and the banks that Mower county was to be responsible for money you borrowed?

A. No sir.

Q. Did you have any understanding of that character at all?

A. No sir.

Q. Did you tell them for what purpose you borrowed the money?

A. Yes sir.

Q. Did you tell them you were borrowing it for the county?

A. Yes sir.

Q. Did you think your bondsmen would be held for any loss that might accrue by reason of the borrowing of the money that way?

Q. No sir, I did not.

Q. Who did you borrow it of?

A. I borrowed it of W. T. Wilkin, the banker at Austin.

Q. All of it?

A. Yes sir.

Q. About how long did Wilkin carry your seven thousand dollar deposit?

A. I don't know; wasn't a great while; it may not have been two months.

Q. Did the commissioners pass a resolution requiring you to borrow it?

A. No sir, they did not.
Q. Did they offer any resolution authorizing you to do it?
A. No sir, they did not.
Q. This action was not a formal action, was it?
A. Yes it was.
Q. Was there money in this bank belonging to the county at the time you borrowed money from it?
Q. There was a part of the public funds deposited there; yes sir.
Q. How much public funds were on deposit at that time.
A. I have no recollection; there must have been ten or twelve, and may be fifteen thousand dollars.
Q. Were you not drawing interest on one fund and paying interest on another fund?
A. I was drawing interest on none of that bank at that time.
Q. But you paid them interest?
A. I paid them interest on this money that I received.
Q. Was there any bank which had an agreement in force at that time with you, by which you were to receive from them three per cent. on your monthly balances?
A. I had no agreement with any bank.
Q. There was a bank there that did pay three per cent.?
A. Yes sir.
Q. That agreement was still in force with that bank?
A. Well, I never made the agreement.
You never made the agreement?
A. No sir, I did not; I had nothing to do with it.
Q. I think you stated you did make such an agreement.
A. No sir, I did not.
Q. Did you never make any such an agreement?
A. No sir.
Q. Was it made by your predecessor?
A. No sir.
Q. Who had it been made by?
A. It had been made by the county commissioners, as I understand it, and the banks.
Q. They paid you to deposit there, did they?
A. No sir, they did not.
Q. Did they ever take any action, as appears on the record?
A. I think they did not.
Q. So you was not drawing from Wilkin's bank any interest on this $10,000 or $12,000 you had on deposit there?
A. Not at that time, no sir.
Q. But you went and borrowed seven thousand dollars?
A. Yes sir.
Q. Under the direction of the county board?
A. No sir, it was an understanding between us.
Q. Well, under their informal direction?
A. No, they did not direct me to get it from Mr. Wilkin.
Q. Well, they directed you to get it somewhere?
A. No sir, they did not.
Q. Then you went on your own authority?
A. Yes sir, but I had an understanding with them.
Q. And you paid Mr. Wilkin how much interest on this money you obtained from him?

A. I was paying him at the rate of twelve per cent. interest.
Q. And he allowed you nothing on the general fund deposit?
A. Not at that time, no sir.
Q. Did that general fund remain in their hands as long as you had this seven thousand dollars?
A. I guess not.
Q. Now I want you to be accurate about that, I don't want any guesses.
A. Well, I can't tell you accurately.
Q. How long had it been due, if had been due at all?
A. I don't remember; I was drawing during the month of March on the apportionment.
Q. Did you draw that seven thousand dollars at once when you gave your note?
A. No sir, I did not.
Q. Did you give your note for the seven thousand dollars at once?
A. Yes sir.
Q. And left the money in the bank?
A. Yes sir, left it to draw on from day to day as I needed it.
Q. How long did it take to pay it out?
A. Oh, I paid it out right away.
Q. Did you pay it out in a month?
A. Yes sir, in less time.
Q. Did you pay it out in two weeks?
A. Well, I don't remember how long.
Q. That was the same money that was in there belonging to the county?
A. Why, how could I tell.
Q. You don't know?
A. No, how could I tell. I knew the fact that I had public money there on deposit; the county had none.
Q. Now, wasn't these funds that Wilkin had then on deposit used as a common banking fund?
A. I don't know anything about it.
Q. Was it agreed that it should be kept as a special deposit?
A. No sir.
Q. You had no knowledge whether it was to be a special fund or be used for the county?
A. No sir.
Q. And know nothing about it?
A. My best impression is that he used it in his banking business—loaned it out to whom he pleased.
Q. You made a careful examination, I suppose, of the safes of these different banks with whom you deposited money, so as to ascertain that the money would be safe with them?
A. Oh, I have sense enough to know that it would be safe with them.
Q. What was the condition of the bank down at Grand Meadow—what kind of a building is that?
A. It was a wooden building.
Q. Dry goods store, isn't it?
A. Yes sir.
Q. Used as such?
A. Dry goods store kept in the same room.

Q. And the funds are kept in the safe in the dry goods store?
A. I don't know where he keeps the funds; I suppose that's so; he has got a fine large safe there.
Q, It is nothing more or less than an ordinary safe, no vault?
A. No sir; it has not a vault.

RE-DIRECT EXAMINATION.

Mr. Manager CAMPBELL:
Q. State whether this fund which was on deposit in Wilkins' bank, was the same fund that you were borrowing to pay from?
A. Why, I don't suppose it was. I borrowed money from Wilkins. I couldn't borrow money from the fund.
Q. The funds you had on deposit there—what kind of a fund was that?
A. All kinds that I handled.
Q. You borrowed money to pay for a different thing?
A. Yes sir; there was none of that there at the time I borrowed; there was no county funds there, for the very reason that we had none.
Q. I understood you to say that you had funds there. Then you mean to say you had no funds there? the county had no funds there?
A. I had the public funds deposited in there, a part of the public funds, but the county had no funds; for the reason that the county had no funds at that time, of their own, that is what I borrowed the money for to supply the county funds. I would state that I have the State funds, the general school funds, the road and bridge fund, the town fund, the special school fund, and other funds that there may be a tax levied for, the county fund, if there is any, but on this occasion there wasn't any, or I wouldn't have had to borrow for it.

Mr. Manager CAMPBELL: I would say right here that we are through with article six and seven, and it seems to me, your Honor, before we take up the other branch of the case, that there ought to be a full Senate. The Senate, however, can act its own pleasure.

Mr. CLOUGH: Allow me to say a word. I see that the witnesses on the 8th and 9th charges, with a single exception, have failed to come. I expect them here in the morning. That one exception informs me that he is sick, and it would be with very great pain and difficulty for him to proceed to-night.

On motion the court adjourned.

Attest:

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

EIGHTEENTH DAY

ST. PAUL, TUESDAY, June 4, 1878.

The Senate was called to order by the President.

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

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Houlton, Langdon, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morton, Nelson, Rice, Shaleen, Smith, Swanstrom, Waite, Waldron and Wheat.

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

The sergeant-at-arms having made proclamation,

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

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

F. W. KIMBALL BEING RECALLED

On the part of the prosecution, testified.

Mr. CLOUGH. I will ask you if you have with you the files in the matter of the proceeding against David H. Stimpson for contempt?

A. I have.

Mr. CLOUGH. I offer in evidence the warrant.

To the WITNESS. You have it there.

A. Yes sir.

Mr. CLOUGH. Is there any objection?

Mr. DAVIS. I have never seen it.

The paper in question was handed the counsel for the respondent.

Mr. DAVIS. There is no objection.

Mr. CLOUGH. Before we finally rest the whole document will be put in evidence. I will ask the witness to read that warrant. (Witness reads.)

State of Minnesota, County of Mower—ss.

The State of Minnesota, to the Sheriff of said County:

Whereas, information has been given to the undersigned, judge of the tenth judicial district of the State of Minnesota, that one David Stimpson, a deputy sheriff of said county, recently, and more particularly during the months of March, April and May, A. D. 1877, while such deputy, and while engaged in the discharge of his official duties, and while a general term of a district court was in session in said county, and while he was in attendance at said court as such officer, and and at divers other times and places during said months, did write, print, circulate and publish of and concerning the judge of said court concerning his official acts, certain false and malicious statements, to the effect and in substance that the said judge was, and is corrupt in his said office and has, by his misconduct, disgraced the judiciary of the State.

Now, therefore, you are hereby commanded forthwith to apprehend the said Stimpson and bring him before me at my chambers in the city of Austin, in said county, to show cause, if any ye have, why he should not be punished for contempt, and why he should not be held to answer for his said offence, and you will detain the said Stimpson in custody until the time of hearing.

Given under my hand this 31st day of May, A. D. 1877.

SHERMAN PAGE,
Judge District Court, 10th Dist., Minn.

Mr. CLOUGH, to witness:—

Is there a return of that warrant? If so, read it.

Mr. CLOUGH. Gov. Davis, we offer in evidence the return of the warrant.

[The witness read as follows]:

State of Minnesota, County of Mower.—ss

I hereby certify that I did arrest the within named defendant, David Stimpson, and have him in custody before the court.

R. O. HALL, Sheriff.

June 1st, 1877.

Q. What papers in these proceedings have you in your custody there; just name the different papers?

A. I have two subpœnas and a warrant.

Q. The complaint or warrant; which do you mean?

A. The complaint, it seems.

Q. Isn't that the same document you just read?

A. No sir, it is the proceedings; I think, however, that it is. It is a record of the proceedings, simply; I thought it was the complaint. The testimony and the bond, and that was all.

Q. I will ask you if those papers that you have there, are the only papers in the proceeding that you have on file in your office?

A. They are.

Q. I will ask you if you have ever seen on file in your office, or elsewhere, any complaint or affidavit upon which this complaint purports to have been issued?

A. I have not.

No cross-examination.

Mr. DAVIS. You offer the whole record, Mr. Clough?

Mr. CLOUGH. Not at present.

Mr. DAVIS. Leave it on the Secretary's desk.

Mr. CLOUGH. Yes sir.

DAVID H. STIMPSON, BEING RECALLED

On behalf of the prosecution, testified:

Q. Are you the person against whom, and under whose name of David H. Stimpson, proceedings in contempt were prosecuted in the district court of Mower county, in 1877?

A. Yes sir.

Q. I will ask you if you were arrested on that occasion by the sheriff and taken before the court?

A. I was.

Q. At about what time of day were you taken in custody by the sheriff?

A. Between four and five in the afternoon; I guess about five o'clock.

Q. Where were you taken?

A. In the city of Austin.

Q. I say, where did the sheriff take you? to what place?

A. When he at first arrested me, he told me he wanted I should appear at about nine o'clock, in the Judge's chambers.

Q. In Austin?

A. Yes sir.

Q. He took you there?

A. Yes sir.

Q. About 7 o'clock, was it?

A. Yes, sir; about 7 o'clock in the evening.

Q. Can you remember who were present on that evening?

A. I don't know as I can remember all that were there. I can remember some that were there.

Q. State some that you can remember.

A. I think Judge Cameron, my attorney, Mr. Morgan, a short-hand reporter, and Judge Page. That is all I can remember now.

Q. You had counsel with you?

A. Yes, sir; Mr. Cameron.

Q. Was he your counsel afterward during that proceeding?

A. Yes, sir.

Q. He attended for you from time to time?

A. Yes, sir.

Q. Do you remember what proceedings were had in the matter that evening?

A. I think there was only one witness examined that evening.

Q. Who was he?

A. L. W. Chapman, a painter.

Q. He lives at Austin?

A. He did then.

Q. Is he in the State now?

A. No, sir; he is in Wisconsin some where.

Q. Was Chapman a witness on behalf of State or defendant?

A. On behalf of the State.

Q. Was the county attorney present?

A. I don't think he was.

Q. Who managed the prosecution?

A. Judge Page.

Q, Himself?

A. Yes sir.

Q. Can you remember what testimony Chapman gave; what testimony was propounded by Judge Page, and what his answers were?

A. I cannot all; I can one or two questions.

Q. State all you can remember of the testimony of Chapman.

A. I remember of the judge asking him where he got the copy of this petition.

Mr. LOSEY. We object to that. They have set up in the article, that the said Page as such judge, on behalf of the prosecution, then and there asked of one Chapman, a witness in such proceedings, "Now, sir," (the question following), and then follows the question and the statement that the witness makes, "Don't you know that A. A. Harwood wrote that petition and handed it to you to print?" What may have been said at the time we object; that is the complaint they are making.

Mr. CLOUGH. If the court please, at the commencement of article 9, on the bottom of page 23, commencing at paragraph one, is the following averment:

"The said Page, during the progress of such proceedings, required a large number of persons to attend before himself, at his chambers in said Mower county, as witnesses in said proceedings, on behalf of said prosecution, on pretense that he desired to examine said witnesses as to the charges against said Stimpson, in the said warrant set forth, whereas, in truth, he, the said Page, as such judge, maliciously and unlawfully required the attendance of such persons, in order that he might, then and there, compel them to testify as to matters wholly irrelevant to said charges, and concerning what persons, other than the said Stimpson had done, said, written and published, concerning himself, the said Page."

Now that is the general averment, and any proceeding that might have taken place there would be entirely admissible. The averment to which the learned counsel has alluded on page 25, relates to another matter than what evidence the witness gave. That relates to the manner in which he demeaned himself towards persons and counsel. I will read the allegation, in order to show that the statement I now make has a proper bearing on the point.

"The said Page, during the progress before him of said proceedings, as such judge, wrongfully and maliciously and in a loud and angry tone of voice, publicly, and in the hearing of all persons in attendance upon the said proceedings, declared of and concerning certain inhabitants of the said county of Mower, and in particular of and concerning A. A. Harwood and said I. Ingmundson, both of whom were then and always well reputed among the inhabitants of said county as good and law-abiding citizens; that they, the said Harwood and Ingmundson were worse than the Younger brothers (thereby meaning certain prisoners by the name of Younger, then and now in prison in the penitentiary of this State for having been guilty of murder and other heinous crimes, as was then publicly known throughout this State), and that they, the said Ingmundson and Harwood deserved to be in the penitentiary, and that he, the said judge, could put them there if he saw fit, or words to that effect."

Now comes the allegation to which the counsel refers, and it is not introduced, in regard to the allegation of any witness, but in regard to the insulting and brow beating manner in which Judge Page conducted himself towards the witness and counsel. "The said Page, as such Judge, then and there, asked one Chapman, a witness in such proceedings, on behalf of the prosecution, the question following: "Now sir,

don't you know that A. A. Harwood wrote that petition and handed it to you, to print," or words to that effect. Whereupon the said Cameron, as counsel for the said Stimpson, in said proceedings, objected to such question, on the ground that the same was wholly irrelevant to the matter under investigation, and that the whole of said proceedings were unauthorized by law, and without precedent.

"But the said Page, as such judge, then and there maliciously and unlawfully overruled such objection, saying: 'I can't listen to objections, I am running this thing;' or words to that effect.

Now that is the question. It is addressed to Judge Page's conduct towards the parties. The statements which I have just read are those which were addressed to the matter about which I am now examining the witness, to-wit: that a large number of persons were called on matters and interrogated as to matters that were wholly irrelevant to the questions that were then under consideration before the judge.

Mr. LOSEY. The fact is, that the counsel is seeking to prove what is not alleged. Now, what is this allegation that was first read by the counsel? It is, that during the progress of the proceeding he required a large number of witnesses to attend before him, in Mower county, under the pretense that he desired to examine such witnesses as to charges against Stimpson, that he maliciously and unlawfully required them to attend in order that he might then and there compel them to testify as to a matter wholly irrelevant to said charges.

But there is no allegation that he did compel them to testify, or that they did testify.

Now, it seems to me, Mr. President, that the point is well taken; it seems to me that they ought to be held down to the allegations that they have made in this article. It is claimed here that this is not introduced, for any other purpose except for the purpose of making up the case that the respondents have here, as against the case on this ninth article.

Now, what is this allegation? Why, that he caused a large number of witnesses to be subpœnaed, required their attendance in order that he might cause them to testify as to matters wholly irrelevant to that issue—to the inquiry under this article—is there any claim that he did require them to so testify, except as to this one specification, contained at the foot of page 24, and at the top of page 25, that has been read by the counsel.

There was one question that they complain of put to these several witnesses that were subpœnaed. Now, if they desired to prove the fact that a large number of witnesses were in fact subpœnaed there, we have no objection, but when they come down to the fact as to what those witnesses swore to, that, we do object to. It seems to me, Senators, that there ought to be a limit to this rule as applied here, that the counsel on these several articles ought not to be permitted to go into these matters entirely outside and foreign to the specification in hand.

Webster, in a speech made in defense of Judge Prescott, who was impeached before a court in Massachusetts, treats of this subject of permitting managers to go into allegations that are not made in a specification, and requiring them to be made by the respondent, and there are portions of his argument that are directly in point here, it seems to me.

I quote from page 513 of volume 5, of the works of Daniel Webster: "I take it to be clear that an impeachment is a prosecution for the

violation of existing laws, and that the offense, in cases of impeachment, must be set forth substantially in the same manner as an indictment. I say *substantially*, for there may be, in indictments, certain technical requisitions which are not necessary to be regarded in impeachments. The constitution has given this body the power of trying impeachments without defining what an impeachment is, and therefore necessarily introducing, with the term itself, its usual and received definition, and the character and incidents which belong to it. An impeachment, it is well known, is a judicial proceeding, it is a trial, and conviction in that trial is to be followed by forfeiture and punishment. Hence the authorities instruct us that the rules of proceeding are substantially the same as prevail in other criminal proceedings.

"There is, on this occasion, no manner of discretion in this court, any more than there is in other cases in a judge or a juror. It is all a question of law and evidence. Nor is there, in regard to the evidence, any more latitude than on trials for murder or any other crime, in the courts of law. Rules of evidence are rules of law, and their absence on this occasion can no more be dispensed with, than any other rule of law. Whatever may be imagined to the contrary, it will commonly be found that a disregard of the ordinary rules of evidence is but the harbinger of injustice. Tribunals that do not regard those rules, seldom regard any other; and those who think they make free with what the law ordained respecting evidence, generally find an apology for making free, also, with what it has ordained respecting other things.

"They who admit or reject evidence according to no other rule than their own good pleasure, generally decide everything else by the same rule.

"This being, then a judicial proceeding, the first requisite is that the respondent's offense should be fully and plainly, and formally described to him. This is the express requisition of the constitution. Whatever is necessary to be proved must be alleged; and it must be alleged with ordinary and reasonable certainty. I have already said that there may be necessary, in indictments, certain technical niceties, which are not necessary in cases of impeachments. There are, for example, certain things necessary to be stated in strictness in indictments, which, nevertheless, it is not necessary to prove precisely as stated.

For instance, an indictment must set forth, among other things, the particular day when the offense is alleged to have been committed, but it need not be proved to have been committed on that particular day. It has been holden in the case of an impeachment that it is sufficient to state the commission of an offense to have been on or about a particular day. Such was the decision in Lord Winton's case, as may be seen in 4 Hatsell's Precedents, 297, in that case, the respondent being convicted, made a motion to arrest the judgment on the ground that the impeachment was insufficient for that the time of committing the high treason is not therein laid with sufficient certainty.

The principal facts charged in that case were laid to be committed on or about the months of September, October or November last; and the taking of Preston, and the battle there which are among the acts of treason, were laid to be done about the 9th, 10th, 11th, or 13th, of November last."

"A question was put to the judges, 'whether in indictments for treason or felony, it be necessary to allege some certain day upon which the fact is supposed to be committed; or if it be only alleged in

an indictment that the crime was committed on or about a certain day whether that would be sufficient,' and the Judge answered that it is necessary that there be a certain day laid in the indictment and that to allege that the fact was committed on or about a certain day would not be sufficient.

"The judges were next asked whether if a certain day be alleged in an indictment, it be necessary on the trial to prove the fact to be committed on that day, and they answered that it is not necessary, and thereupon, the Lords resolved that the impeachment was sufficiently certain in point of time. This case furnishes a good illustration of the rule which I think is reasonable and well founded, that whatever is to be proved must be stated, and that no more need be stated.

"In the next place the matter of the charge must be the breach of some known and standing law, the violation of some positive duty.

"If our constitutions of government have not secured this they have done very little indeed for the security of civil liberty. 'There are two points,' said a distinguished statesman, 'on which the whole of the liberty of every individual depends; one the trial by jury, the other, a maxim arising out of the elements of justice itself; that no man shall, under any pretense whatever, be tried upon anything but a known law.

"These two great points our constitutions have endeavored to establish, and the constitution of this commonwealth in particular, has provisions on this subject as full and ample as can be expressed in the language in which that constitution is written.

"Allow me then, sir, on these rules and principles, to inquire into the legal sufficiency of the charges contained in the first article.

"And first, as to the illegality of the time or place of holding the court, I beg to know what there is stated in the article to show that illegality.

"What fact is alleged on which the managers now rely? Not one. Illegality itself is not a fact but an inference of law, drawn by the managers on facts known or supposed by them, but not stated in the charge, nor until the present moment made known to any body else. We hear them now contending that these counts were illegal, for the following reasons, which they say are true as facts, viz.:

"1 That the register was absent.

"2. That the register had no notice to be present.

"3. That parties had not notice to be present.

"Now, not one of these is stated in the article. No one fact or circumstance now relied on as making a case against the defendant, is stated in the charge. Was he not entitled to know, I beg to ask, what was to be proved against him? If it was to be contended that persons were absent from those courts who ought to have been present, or that parties had no notice, who were entitled to receive notice, ought not the respondent to be informed, that he might encounter evedence by evidence, and be prepared to disprove what would be attempted to be proved? This charge, sir, I maintain, as wholly and entirely insufficient. It is a mere nullity. If it were an indictment in the courts of law it would be quashed; not for want of formality or technical accuracy, but for want of substance in the charge. I venture to say, there is not a court in the country, from the highest to the lowest, in which such a charge would be thought sufficient to warrant a judgment.

"The next charge in this article is for receiving illegal fees for services

performed. I contend that this, also, is substantially defective in not setting out what sum, in certain, the defendant has received as illegal fees. It is material to his defense, that he should be informed more particularly than he here is, of the charge against him. If it be merely stated that for divers services respecting one administration, he received a certain sum, and for divers other respecting another, another certain sum and that these sums were too large (which is the form of accusation adopted in this case,) he cannot know for what service, what particular item he is charged with having received illegal fees. The legal and illegal are mixed up together, and he is only told that in the aggregate he has in some of these cases received too much; in some of these cases there is a number of items or particulars in which fees are charged or received; but in the article these items or particulars are not stated, and he is left to conjecture out of ten, or it may be twenty particular cases, which one it is, that the proof is expected to reply to.

"My colleague has referred to the cases in which it has been adjudged that in prosecutions against officers for the alleged taking of illegal fees, this general manner of statement is insufficient. It is somewhat remarkable that ancient acts of parliament should have been passed expressly for the purpose of protecting officers exercising jurisdiction over wills and administration against prosecutions in this form; which were justly deemed oppressive. The Statute—twenty fifth edition III, chapter nine after reciting 'that the king's justices do take indictments of ordinaries, and of their officers, of extortions or oppressions, and impeach them without putting in certain wherein, whereof or in what manner, they have done extortion,' proceeds to enact that his justices shall not from henceforth impeach the ordinaries nor their officers, because of such indictments of general extortions or oppressions, unless they say and put in certain, in what thing and of what, and in what manner, the said ordinaries or their officers have done extortion or oppressions.

"The charge in this case ought to have stated the precise act for which the fee was taken, and the amount of the fee received. The court could then see whether it were illegal; whereas, the article, after reciting certain services performed by the respondent, some of which are mentioned in the fee bill, and others are not, alleges that for the business aforesaid the respondent demanded and received other and greater fees, than are by law allowed. Does this mean that he received excessive fees, or was the whole excess charged on one service? Was the excess taken on those particular services for which a specific fee is given by the statutes, or was it taken for those services not mentioned in the fee bill, at all? But further, the article proceeds to state that afterwards, during and upon the settlement of said estate, the respondent did demand and receive divers sums as fees of office other and greater than are by law allowed, without stating at all what services were rendered, for which these fees were taken. It is simply a general allegation that the respondent received from one administrator, in the settlement of an estate, excessive fees, without stating in any manner whatever what the excess was, or even what services were performed.

"I beg leave to ask, sir, of the learned managers, whether they will as lawyers, express an opinion before this court that this mode of accusation is sufficient? Do they find any precedent for it, or any principle to warrant it? If they mean to say that proceedings in cases of im-

peachment are not subject to rule; that the general principles applicable to other criminal proceedings do not apply, this is an intelligible, though it may be an alarming course of argument. If, on the other hand, they admit that a prosecution by impeachment is to be governed by the general rules applicable to other criminal prosecutions, that the constitution is to control it, and that it is a judicial proceeding, and if they recur, as they have already frequently done, to the law relative to indictments for doctrines and maxims applicable to this proceeding, I again ask them, and I hope, in their reply, they will not evade an answer. Will they, as lawyers, before a tribunal constituted as this, say that in their opinion this mode of charging the respondent is constitutional and legal? Standing in the situation they do, and before such a court, will they say, that in their opinion, the respondent is not constitutionally and legally entitled to require a more particular statement of his supposed offenses?

"I think sir, that candor and justice to the respondent, require that the learned managers should express, on this occasion, such opinions on matters of law, as they would be willing, as lawyers here and elsewhere, to avow and defend; I must, therefore, even yet again, instruct them to say in the course of their reply, whether they maintain that this mode of allegation would be sufficient in an indictment, and if not, whether they maintain that in an impeachment it is less necessary that the defendant be informed of the facts intended to be proved against him than it is in an indictment. The learned managers may possibly answer me that it is their business only to argue these questions and the business of the court to decide them. I cannot think, however, that they will be satisfied with such a reply. Under the circumstances in which he is placed, the respondent thinks that the very respectable gentlemen who prosecute him, in behalf of the House of Representatives, owe a sort of duty even to him. It is far from his wish, however, to interfere with their own sense of their duty; they must judge for themselves on what grounds they ask this correction; yet he has a right to ask, and he does, most earnestly, ask, and would repeatedly and again, and again, ask that they will state those grounds plainly and distinctly, for he trusts that if there be a responsibility even beyond the immediate occason, for opinions and sentiments here advanced, they will be entirely willing, as professional men, to meet it."

Now, there's no charge here that these witnesses were brought into court, except in one specific instance; and that is in relation to the witness Chapman. There is no charge that these witnesses were examined by the court *at all*. The charge is, that a large number of witnesses were compelled to appear before Judge Page, and did appear; that they were maliciously and unlawfully required to attend in person, that he might then and there compel them to testify as to matters wholly irrelevant to the charge; but there is not one word said here as to the fact that he did compel them to testify, or that they did testify.

Now, Senators, it seems to me there ought to be a limit placed upon this matter somewhere; that an end ought to be reached, and that this respondent ought not to be called upon, in fairness or in justice, to come in here, and go through this large mass of evidence which they seek to introduce here, as to what came from the mouths of these witnesses on that occasion: because they have not alleged in this article that anything, whatever, did come from their mouths.

Mr. CLOUGH. Mr. President: In order to bring this matter up in

form, which will be entirely unobjectionable, I want to have the proper foundation laid for the evidence I desire to introduce. I will withdraw this question and lay it aside for the present, and ask one or two preliminary questions.

Q. Mr. Stimpson, will you state who conducted the examination on the part of the State, of Mr. Chapman, that evening?

A. Judge Page.

Q. Himself?

A. Yes sir.

Q. I will ask you if you remember any matters about which Judge Page that evening required Mr. Chapman to testify; and if so, to state them. I put the question in that form.

Mr. DAVIS. Any matters?

Mr. CLOUGH. Yes sir.

Mr. DAVIS. Did you intend to limit the witness to that one question, or is your question one that calls for a general answer?

Mr. CLOUGH. I suppose he will answer probably that he does remember, or does not remember.

Mr. DAVIS. You asked him if he did remember, to go on and state what.

Mr. CLOUGH. If he does remember I presume he will go on and state.

Mr. DAVIS. For the purpose of founding an objection, Mr. Clough, I wish to ask you whether you expect this answer will cover simply the question which you set up in your specification, or whether you expect the witness will go on and answer as to what that question was, and other questions besides?

Mr. CLOUGH. I expect he will go on and state what Judge Page, so far as he can remember, required these witnesses to testify to.

Mr. DAVIS. This witness or Mr. Chapman.

Mr. CLOUGH. I mean, not the witness on the stand, but the witness, —Chapman—all he was required to testify to by Judge Page, if Mr. Stimpson can remember.

Mr. DAVIS. Then, may it please the Senate, we object for the reasons just now stated.

Mr. CLOUGH. Now, I wish to say one word more in addition to what I have said. Now, I may say right here, in reference to the extract from the argument of Mr. Webster, which has just been read by the learned counsel that, unfortunately, the court of impeachment, before which that case was tried, took an entirely different view of that case, and convicted Mr. Webster's client. The arguments of counsel on criminal cases, or any other cases, on questions which are brought before courts of justices, are not entitled to very much weight if, indeed, to any weight at all, as of authority. Now, I have no doubt, that in some future time, when some future official offender shall be arraigned before the high court of impeachment of this State; that the argument of the the learned counsel, Mr. Losey, which he has made here on this occasion, will be cited to establish a proposition which, undoubtedly, the defendant will try to make in that case.

Now, I apprehend, that the arguments of counsel are not to be taken,

or not to be regarded as authority, and especially when the court to whom the argument has been addressed, has taken an opposite view, and has ruled the other way.

Now, let us look for a moment at the allegation which was made here, and see if the evidence which we seek to bring out is not directly addressed to the proving of these allegations. Permit me to read again, three or four sentences:

"The said Page during the progress ot said proceedings, required a large number of persons to attend before himself."

Now, how do we prove that? We can prove that these witnesses were required to attend, who did attend there, by Mr. Stimpson, but we shall prove that they were required to attend before we finish our evidence in this case. Then we go further, and we allege the purposes with which these witnesses were required to attend, [reading] "on pretense that he desired to examine said witnesses as to the charges against said Stimpson, in the said warrant set forth, whereas, in truth, said Page, as such judge, maliciously and unlawfully required the attendance of such persons in order that he might then and there compel them to testify as to matters wholly irrelevant to said charges, and concerning what persons, other than the said Stimpson had done, said, written and published concerning himself, the said Page."

Now, that charge is as to the intent with which he required certain persons to attend before him at his chambers as witnesses. Now, we having alleged that these persons were required to attend with that intent, we have a right, I think, to prove the fact.

Now, how do we prove the intent with which these witnesses were brought there. I apprehend that if we could do so, if Judge Page had made any admissions or statements as to the purpose, that would be one way.

But there is still a better way to prove that intent, and that is, what Judge Page did with those witnesses, when he got them there. Now I apprehend that if we prove that Judge Page, when he got those witnesses there, compelled them to testify as to particular matters, that this Senate will be justified in inferring, and will be compelled to infer, that that was the purpose for which Judge Page brought them there.

Now, this evidence goes entirely to the matter of intent. What was the intent with which Judge Page brought these witnesses there. Why, manifestly, the intent was, to do with them what he did with them, and we are seeking to prove what he did do with them, when he got them there. Now, it was not necessary to set forth in particular and detail what each of these witnesses testified to, according to the well-known rules of pleading in impeachment cases, and I apprehend this would be sufficient, even in case of indictment. An allegation of this character is entirely certain and specific. It appears, the defendant was notified that certain matters, occurring at a certain time and place, at which he was present, will be inquired into. What more specific or direct notice can be required. Now, we were not compelled to allege any particular questions that he put to the witnesses under this allegation, but the managers have gone further, and have alleged certain questions, which he put, not as being all those which he put, but as being merely some of them.

Now, on page 24 I think the general allegation is entirely sufficient to admit this question. "Among the persons so required to attend befor, the said Page, as such Judge, for the purpose aforesaid, were Lafayette French and R. I. Smith." Now, it is not stated that Lafayette

French and R. I. Smith were the only persons who were examined down there for the purposes which are mentioned in the prior general allegation. On the contrary, that theory is entirely excluded, by the statement that they were merely among the persons who were required to attend for that purpose. Now, we claim that this evidence is entirely legitimate. And it is the only way of proving the intent with which Judge Page brought these witnesses there. I don't see how we can prove it otherwise. If we could prove it otherwise, we are not required to do it, because we can do it in this way. Now we can't get every thing out by one witness, we have got to establish our case step by step, and this is one of our steps to be taken.

Mr. LOSEY. One word if you please. Mr. President, the complaint we make is that an overt act is not charged in this specification. It don't make any difference what the intent of the respondent was, unless an overt act is charged. Now the fact that these witnesses were summoned, or that they testified to anything, is not set up in this specification. The law, as is suggested by Mr. Davis, don't punish an intent. Now, so far as the argument of Mr. Webster is concerned, it seems to me that it will be no disgrace to the senate of Minnesota to follow that argument, for the Supreme Court of the United States have followed the arguments of Daniel Webster almost universally, and taken them to be law on legal questions raised and argued by him; and certainly that argument, made by Webster on that occasion, is founded in common sense and in justice.

The PRESIDENT. The chair will submit the question to the Senate.

The clerk will call the roll.

Upon the calling of Senator Edgerton's name that gentleman arose and said :

I wish, Mr. President, to state the reason of my vote. I suppose I have a right here. I don't agree with the counsel, the managers, in saying that this law, read by Mr. Losey, is not good law; I believe it is, but I don't believe it applicable to this question as propounded here; it would be, so far as article ten is concerned.

As I understand this proposition, Judge Page was charged, in this indictment, with requiring certain witnesses to appear there for a specific purpose ; that they did appear there, and they were required by him to answer those questions ; to my mind that is evidence of the intent for which he brought them there. I vote yea.

The question being taken upon admitting the question in evidence.

The roll being called, there were yeas 34, and nays 1, as follows :

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clough, Deuel, Donnelly, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hersey, Houlton, Langdon, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morton, Nelson, Pillsbury, Rice, Shaleen, Smith, Swanstrom, White, Waldron and Wheat.

Mr. Clement voted in the negative.

So the question was admitted.

Mr. CLOUGH. Q. Now, Mr. Stimpson, you may answer the question so far as you remember it ?

A. I would like to hear the question again.

Q. What was it so far as you can remember that Judge Page required Chapman, on that occasion, to testify to?

A. I think he asked him where he got this petition.

Q. Now right here, in order to make this thing clear, I will ask you one or two other questions; speaking about this petition, (it is not identified) I will ask the witness in the first place to examine what purports to be a copy.

Mr. DAVIS. Can't we admit that that is correct?

Mr. CLOUGH. I will ask you to look at it and see (it is on page 67) if that is a correct copy of the petition about which he asked Mr. Chapman?

A. I think it is.

Mr. CLOUGH. If the senators wish to have that document read it can be read, it can be found on pages 67 and 68.

Mr. LOSEY. You had better read it.

Mr. CLOUGH (reading) "To S. Page, judge of the district court, tenth judicial district, Minnesota: Sir, knowing you, and believing that your prejudices are stronger than your sense of honor, that your determination to rule is more ardent than your desire to do right; that you will sacrifice private character, individual interest, and the public good to gratify your malice; that you are influenced by your ungovernable passions to abuse the power with which your position invests you, to make it a means of oppression rather than of administering justice; that you have disgraced the judiciary of the State and the voters by whose suffrages you were elected; therefore, we the undersigned citizens of Mower county, hereby request you to resign the office of judge of the district court, one which you hold in violation of the spirit of the constitution, if not of its express terms."

Q. I will ask you if that was the petition which Judge Page inquired of the witness, Chapman, on that occasion?

A. I believe it was.

Q Now you can go on and state what Judge Page said to the witness, what he required him to testify to, as far as you can remember?

A. I don't know as I can remember all that he said, I remember some of it.

Q. State as far as you do remember.

A. I remember of his asking Chapman if A. A. Harwood did not hand him that petition to print, to copy.

Q. Well, what else do you remember of his asking?

A. I remember something said about one of the boys, in the post office, taking it to him, something of that kind: I don't remember—I am not entirely clear on that matter.

Q. That is, Mr. Page asked this witness if one of the boys in the post office took it to this office?

A. Yes sir; to L. W. Chapman.

Q. Well, do you remember any other things that Judge Page inquired about, of Mr. Chapman?

A. He wanted to know who he delivered them to, after he got them printed.

Q. Do you remember anything else that he asked Mr. Chapman?

A. I don't know as I do, now.

Q. Do you remember of your counsel on that occasion, making any objections to any of Judge Page's questions?

A. I don't know whether it was to Mr. Chapman—I know he did, sometime, during the proceedings, make some objections; but whether it was at that time or not, I don't remember.

Q. Can you state any particular occasion, when Mr. Cameron did make objection, and what Judge Page said in response to the objection?

A. I know, at one time, he made some objection, and the judge told him that he did not care to hear his objections; "He was running that case."

Q. Judge Page refused to entertain the objections?

A. Yes sir.

Q. Was there more than one witness examined the first night when you were brought before the court?

A. I don't think there was—there might have been.

Q. About what time, that evening, did the examination of the witness or witnesses conclude?

A. I should think, about half past nine or ten o'clock; perhaps, ten, I don't know, I am not positive.

Q. What disposition was made of you at the conclusion of the examination?

A. I was put under $500 bonds for appearance the next morning.

Q. Judge Page required you to give bonds?

A. Yes sir.

Q. In the sum of five hundred dollars?

A. Yes sir.

Q. Which you did?

A. I did.

Mr. CLOUGH. We now offer in evidence the bonds in question.

Mr. DAVIS. No objection at all.

Q. The proceedings were then adjourned until the following morning?

A. Yes sir.

Q. And you gave bonds that night to appear the next morning?

A. I did.

Q. Do you remember who were present the next morning?

A. I remember of a good many who were present the next day. I don't remember who was the first witness.

Q. Where did the proceedings take place the next day?

A. In the judge's chamber.

Q. Was any prosecuting attorney present to conduct the prosecution?

A. No sir.

Q. Who conducted the prosecution the next day?

A. Judge Page.

Q. Did he examine the witnesses on the part of the State?

A. He did.

Q. Now state, if you can remember, any persons who were present on the second day of the proceeding?

A. I don't know that I can state them all.

Q. State as far as you can remember?

A. George E. Wilbur, Joseph Swan, Doctor Dorr, A. A. Harwood, Lafayette French, R. I. Smith, Mr. Lovell—that's all I can remember now.

Q. Did Mr. Cameron attend this second day as your counsel also?

A. Yes sir.

Q. Present during the proceedings?
A. Yes sir.
Q. You may state if any of the witnesses on the part of yourself were examined the second day?
A. I think not, only myself.
Q. State if any other petition than the one which has just been read figured before the court the second day?
A. It did, sir.
Q. I will ask you to look at this paper and see if that is a copy of the other petition.
A. I think that is a copy of it.

Mr. CLOUGH. We offer it in evidence.

Mr. DAVIS: Please read it, Mr. Clough.

Mr. CLOUGH: You don't object to it, do you?

Mr. DAVIS: No.

Mr. CLOUGH: (Reads as follows:)

"To S. Page, judge of the 10th judicial district: It is the sense of the undersigned citizens of Mower county, that the public interests will be promoted in a great degree by your vacating the honorable office which you now hold, and we therefore ask you to resign the same without delay."

Q. State if Mr. R. I. Smith, of Austin, was examined as a witness?
A. He was.
Q. State, if you remember, what matters Mr. Smith was required to testify to by Judge Page, and state them as far as you can remember them.
A. I don't know as I can remember what his testimony was upon that occasion?
Q. State if Mr. Lafayette French was a witness on the part of the State.
A. He was.
Q. State, if you remember, what matters Mr. French was required to testify to, and state them as far as you can remember them?
A. I don't remember exactly what it was; something in regard to some communication he had gotten up for the Pioneer Press.
Q. At what time of the second day did these proceedings close?
A. They adjourned at six or seven o'clock for supper, and they had a session in the evening.
Q. At the same place?
A. At the same place.
Q. Any prosecuting attorney there in the evening?
A. No sir.
Q. Any witnesses examined in the evening?
A. I think not.
Q. Can you remember who was present on this occasion, the evening of the second day?
A. Yes sir.

Mr. DAVIS. Mr. Clough, I do not rise for the purpose of making objection, but I observe the recurrence of this particular question. Do you claim it is necessary for a prosecuting attorney to be present, to prosecute proceedings for a contempt against a court?

Mr. CLOUGH. I don't claim it is necessary. I think it is very decent, though.

Mr. DAVIS. Yes, if it is a mere matter of decorum, we shall not debate that question now.

Mr. CLOUGH. Go on, Mr. Stimpson.

Mr. DAVIS. Did you apply those general considerations of decency to Mr. French, in those proceedings?

Mr. CLOUGH. Well, that we will discuss afterwards.

Q. You may state who were present in the evening.

A. There was Judge Cameron, my attorney, Lyman Baird, R. O. Hall, Judge Page and myself; and about the time they closed there came in either Mr. Stevens or Mr. Lowell, I won't be positive which one of them.

Q. You are sure the persons whom you have named were the only persons present that evening?

A. It may be possible that the short-hand reporter, Mr. Morgan, was there; I don't remember of his being there; he might have been there.

Q. Now, won't you state what occurred there that evening. State it with particularity.

A. It is a hard matter to tell what occurred that evening.

Q. Well, state all that you can remember.

A. Judge Page in the evening turned to me, and he says to me: "Mr. Stimpson, I don't think you are wholly to blame in this matter; you have been led into this by designing men; such men as attended these conspiracy meetings; men of no character." And he looked at the testimony that was before him and he says, "such men as A. A. Harwood, Ingmundson, French"—said he, "men that are no better than the Younger Brothers," and said "they should be behind the prison bars." And he said, "I could or would put them there;" he says, "I do not act hastily in these matters." And then he told me in this conversation that if I did not keep out of their society, that I would land in the State's prison.

Q. Well, how late did the session hold that night?

A. Well, I don't know; nine o'clock or afterwards.

Q. What was done; was the session adjourned, or what?

A. It was adjourned for two weeks, I think.

Q. Do you know the occasion of adjournment?

A. No; I do not. I suppose there was a court to hold some where, in some other part of the distsict.

Q. Well, you may state if, at the end of two weeks, you appeared again?

A. I did.

Q. What occurred then?

A. Had another adjournment.

Q. How long did the court adjourn that time?

A. I wouldn't be positive whether he adjourned for another week, or for one day, over Sunday to Monday.

Q. When the adjourned day came around what was done?

A. I was discharged.

Q. State whether you were kept under your bond during this time?

A. I was.

Q. State whether in the course of that examination there was a particle of evidence to the effect that you had ever circulated the petition which was first read here?
A. Not to my knowledge.
Q. You did not hear any such evidence?
A. No sir; that is, the first petition.

Q. State whether at the March term of 1877, of the district court, of Mower county, you had attended the term of court as deputy sheriff?
A. I did not.

CROSS EXAMINATION.

MR. LOSEY.
Q. You state that you did not remember that there was any evidence that you had circulated this petition?
Mr. CLOUGH. This first petition?
Q. Don't you remember that you had circulated it?
A. No sir, I do not.
Q. Don't you remember that you admitted that you had had it in your possession?
A. Yes sir.
Q. Do you remember of the fact that C. C. Kinsman swore that you had presented it to him.
A. I think C. C. Kinsman swore that he saw me have it in Lafayette French's office.
Q. What was you doing in Lafayette French's office?
A. Was talking about it?
Q. Discussing the subject of its circulation, were you?
A. Yes sir.
Q. You were getting a little advice from Mr. French on that subject, and Mr. Kinsman?
A. No sir; I don't know as I was.
Q. Were you imparting any advice to them in relation to it?
A. I don't think I was.
Q. But it was a matter of discussion between you three gentlemen as to the manner in which it should be circulated, was it?
A. It was talked about I guess, I don't remember what the conversation was.
Q. When was this?
A. It was before I was arrested, sometime, I don't remember when.
Q. About how long before you was arrested?
A. I couldn't state.
Q. Did you make defense that you had been led into it by other parties, was that your defense?
A. I don't think it was, I don't know; I remember the question was asked me; if I would have gotten up the petitions if it had'n't been for other men.
Q. Didn't you so state to Judge Page that you had been led into it by other parties?
A. I don't think I did use those words.
Q. What words did you use in connection with that idea?
A. I think he asked me the question if I would have gotten up this petition if it hadn't been for these other men.
Q. What did you tell him?

A. I told him I didn't think I should.
Q. Didn't you claim that other parties were guilty and not you?
A. No, I don't think I did.
Q. Are you positive about that?
A. I think I am.
Q. You state Mr. Cameron was there as your counsel?
A. Yes sir.
Q. Was he employed by you?
A. Yes sir.
Q. Did you pay him?
A. I have not yet, sir.
Q. Has he ever presented any bill to you?

Mr. CLOUGH. Well, now, I object to that.

Mr. LOSEY. We withdraw it.

Q. Had you a talk with Mr. Cameron previously, in relation to the circulation of this petition?
A. Never.
Q. Had you shown it to him?
A. I don't think I had.
Q. Had he shown you a copy of it?
A. I don't think he had.
Q. Had you talked with him anywhere about?
A. I don't think I had.
Q. Are you sure you had not?
A. I don't think I had. I might—but I don't think I did.
Q. Who else was present at Mr. French's office, when you were laying plans for the circulation of this petition besides Mr. French, Mr. Kinsman and youself?

Mr. CLOUGH. I object to that.

Mr. LOSEY. Do you think that is dangerous?

Mr. CLOUGH. No, I don't think it is dangerous, but I think it is simply frivolous.

The PRESIDENT. I don't think the question is important.

Q. Did you ever renew your bond before Judge Page, after the first bond was given, or was it a company bond?

Mr. CLOUGH. I will produce the bond, and let you look at it if you wish. It is introduced in evidence.

Mr. LOSEY. Well, I insist on the question.

Mr. CLOUGH. I object, that because the bond itself is supposed to be in evidence, it is offered and it will show for itself.

Mr. LOSEY:
Q. Well, did you ever give more than one bond?
A. I don't think I did; I don't remember of it.
Q. Do you remember at the time the question of bail was raised in the court, if the court asked the sheriff if he would be responsible for your appearance and the sheriff refused to be responsible?
A. I think there was something of that sort, yes sir.
Q. The court then required the bail bond of five hundred dollars?
A. I think he fixed the bail first and then the sheriff, afterwards, had some conversation in regard to it.

Q. When you first came before Judge Page was there any objection made by your counsel as to the sufficiency of the warrant upon which you were arrested?

A. I don't remember whether there was or not

Q. You can't testify as to that?

A. No sir,

Q. Was there any objection made, so far as you know, to the proceeding itself?

A. I don't remember whether there was or not.

Q. Was there objection made to anything that had preceded the issuing of the warrant?

A. I don't remember; they had a conversation.

Q. Was it claimed that any act was not done that was required to be done, in order to give the court jurisdiction?

A. I don't remember.

Q. That, you can't tell anything about?

A. No sir; I remember they had a conversation, Judge Page and Mr. Cameron, among themselves.

Q. Were you at all surprised that French did not conduct this examination?

A. I don't know as I was surprised.

Q. You knew he was one of the conspirators with you, did you not?

Mr. CLOUGH. Wait a moment; I object to that.

The PRESIDENT. Do you insist?

Mr. LOSEY. Yes.

The PRESIDENT. I think the question is not proper.

Q. You knew he was one of the gentlemen engaged with you, assisting to get this libel up, did you not?

Mr. CLOUGH. I object to that.

The PRESIDENT. That is the same question.

Q. What interest did you think French had in that?

Mr. CLOUGH. I object to that.

Q. What interest did you know Mr. French had in that transaction.

Mr. LOSEY. Now, I insist on an answer, your honor.

Mr. CLOUGH. We will object to that. When the counsel asks what Mr. French did, then his question will be in proper form, and the question will then arise as to whether it is proper cross-examination and material, but it is asking for a mere conclusion; that is the ground of this objection.

Mr. LOSEY. I don't think it is asking for a conclusion; it is asking what interest French had taken in these proceedings. Now, it is asked, in connection with the fact, that the witness has sworn to what interest he had in the proceedings, and as to what part he had taken. It is sought here to prejudice the respondent by showing that Mr. French did not attend there. We propose to show the reason why Mr. French did not attend there; that he was one of the parties engaged in the production of this libel upon the court, and pushed it in the community.

The PRESIDENT. I don't think it is a proper question.

Mr. LOSEY. Q. You state the judge conducted the proceeding himself; was Mr. French there all the time?
A. No sir, I think not.
Q. Well, was he there the most of the time?
A. No sir, I think not.
Q. He came and gave testimony, did he?
A. I think he did, yes sir.
Q. How extensively had this petition been circulated; had it been circulated outside of Mower county?
A. I don't know anything about it.
Q. Had it been circulated pretty thoroughly through Mower county?
A. I don't know anything about it.
Q. What did the proof show in relation to that?
A. I don't think it showed it was circulated at all.
Q. You don't think it showed that?
A. No sir.
Q. Who delivered that petition to you?
A. I don't remember now.
Q. Well, what was your best impression as to who delivered it to you?
A. I don't understand the question.
Q. What is your best impression as to who delivered it to you?
A. I don't remember who did.
Q. I asked whether you remember positively. What is your best impression?
A. I have no impression.
Q. You have no impression?
A. No sir.
Q. Nor memory?
A. I don't remember.
Q. You have testified before in this relation to the matter, have you not?
A. Yes sir.
Q. When and where was it, and before whom?
A. Before Judge Page.
Q. Well, when else have you testified in relation to it?
A. Before the House judiciary committee.
Q. Did you not testify before J. N. Greenman, referee?
A. Yes sir.
Q. On the charges against Lafayette French?
A. Yes sir.
Q. Did you testify there in relation to this matter?
A. Think I did.
Q. Can't you state what you then stated?
A. I don't remember what I did say, the substance of what I have stated here.
Q. Whose name do you now state Judge Page used in connection with the statement concerning the Younger brothers?
A. I am positive that he used the names of A. A. Harwood and Lafayette French.
Q. Did you testify before Mr. Greenman as referee in relation to that subject?
A. I think I did.
Q. Did you there testify that he used the name of Lafayette French?

A. Yes sir, I think I did.
Q. You are positive in relation to that?
A. I think I did.
Q. Did you testify before the House committee that he used the name of Lafayette French?
A. I think I did.
Q. You have been somewhat active in promoting this impeachment, have you not?
A. Yes sir, somewhat.
Q. Was the court in session at the time this petition was being circulated?

Mr. CLOUGH: Which petition?

Mr. LOSEY. The first petition.
The Witness: It is hard to tell; the court is almost always in session down there.
Q. You can't tell?
A. March term of court had closed at the time.
Q. You think the term of court had closed at the time?
A. It had; I know it had.
Q. Well, at the time you were examined, and at the time you had the petition in your possession?
A. The March term of court was not in session.
Q. When you had the petition that was first read, in your possession, and at the time you had the meeting with Mr. French and Mr. Kinsman, was the court then in session?
A. No sir.
Q. How long had the term then gone by?
A. I think the term of court closed in March, and this must have been in the first of April, or the first of May, somewheres about that time.
Q. Some meetings have been held at your house to promote this matter of impeachment, have they not?
A. Yes sir, if you call them meetings.
Q. About how many?

A. Well, if it is what you call meetings, I don't know; if it is what you will call meetings.
Q. Well, we will call them gatherings, then.
A. I think there has been two of them there?
Q. Was there a pretty heavy attendance?
A. Not very.
Q. About what would you call "a heavy attendance?"
A. It could not be heavy, 'taint a very large house.
Q. Well, about what would you call a heavy attendance?
A. Well, I think there was six or eight present at the time, perhaps a dozen—I don't remember just how many there was.
Q. Were the same persons at your house that were at French & Crandall's office getting up this petition?

Mr. CLOUGH. I object to that.

Mr. LOSEY. Well, I will withdraw it.
Q. When was this petition gotten up?

Mr. CLOUGH. I object to that. It has not appeared, so far, that the

witness knew any thing about the getting up of the petition. I suppose you mean the first petition?

Mr. LOSEY. Of course.

Mr. CLOUGH. I didn't ask anything on the direct examination about getting up that petition, and if the gentleman wishes to inquire into it he must make the witness his own.

Mr. LOSEY. If there was a conspiracy entered into we have a right to the whole thing.

The PRESIDENT. I hardly think the counsel have laid the ground for that. I will rule that the question is not proper cross examination.

Mr. CLOUGH. We insist if that is material that they must make it a part of their case.

Mr. LOSEY. I don't think that the counsel can properly insist on that; now the rule of law applies here, it seems to me, that applies in courts. These witnesses are adverse to us; they have done certain acts down there when we were not present, not presumed to be present, and could not have been present. Now we have a right to go into those matters on the cross examination, and see what they did and were doing with reference to this matter, else we are precluded from proving it all. Courts, I claim, always permit it. We have a right to show their animus, the motives that prompted them to do what they have done. It is due to the respondent who is entitled here to a fair trial, and it is due to the Senate that all these facts connected with this matter, the motives of these parties and their acts, should be in evidence.

The PRESIDENT. I shall rule that the question is not admissible.

Q. Do you swear that you do not know who got up that petition?

A. Yes sir, I swear I don't know.

Q. Will you swear that you did not go around generally and circulate it in that community?

A. I will.

Q. Do you swear that it was not a matter treated of in your presence at this meeting?

A. I think it was talked of.

Q. Were not admissions made to you by which you could judge as to who got up that petition and who circulated it?

A. I presume I might at the time.

Q. Were not statements made in your presence from which you knew who got up those petitions, and whom you knew carried them among themselves and circulated them?

A. I don't remember now.

Q. Won't you refresh your recollection; you seem to be very well able to recollect what occurred in relation to a great many other matters?

A. I could not state.

Q. You state on your oath now, then, that you have forgotten in relation to that matter?

A. Not in particular, no. I remember some things that happened.

Q. At those meetings!

A. Yes sir.

Q. In relation to the circulation of this petition?

A. Yes sir.

Q. Tell me what they were?

Mr. CLOUGH. I object to that.

Mr. LOSEY. I think, your honor, that we are entitled to it.

Mr. CLOUGH. It is not cross-examination.

The PRESIDENT. If you will bring the same question up, I will submit it to the Senate.

Mr. LOSEY. It seems to me, Senators, that we have a right, in justice, to the conversations that occurred between these parties, for the purpose of showing the animus of the witnesses engaged in this matter. We have alleged, and part of our defense is, that there was a conspiracy among a certain class of men against this respondent. Now, are we to be cut off, after being charged with crime, from proving that such conspiracy against the respondent ex isted, what took place at their meetings, and that these men banded themselves together?

How is a conspiracy proven. You can only prove it by acts of the persons who engaged in it; that is the only way in which it can be proved. Now, the respondent can prove these facts from out of the mouths of witnesses who frequented those meetings, who were there at the time; men who were antagonistic to the respondent at that time. How are we to prove it unless we have the right to introduce our proof in relation to it, to show what those persons did—what they were banded together there for. I claim it is great injustice to the accused to shut this matter out, and I claim we are entitled to it out of the mouths of the men who were engaged in relation to this case.

Mr. CLOUGH. I will state but a word or two in this matter. There are many grounds upon which this question is utterly inadmissible. In the first place it is not cross-examination ; it relates to no matter about which we have inquired of the witness.

In the second place, it is a part of the defence, which we deny, and *will* deny when it comes to that point. However, it don't belong here. I don't understand that the respondent is putting in his case now. If it becomes material and proper for the defence of this respondent here, that he should show a certain conspiracy at a certain time and place, and that it shall be determined by this tribunal that such action is a proper one, he will have the process of this court to bring before it, not only every person who has been on the stand, but every other person within the State of Minnesota, to testify in his behalf; if the witnesses on the stand prove to be hostile. and refuse to testify, then it will be within the discretion of this court to permit the defendant, if he so pleases, to interrogate them, but the defendant has not entered upon his defence. Further, we claim that when that time comes, this testimony even will be immaterial.

It is desired by this respondent, by means of this man, to show a state of hostile feeling between the respondent and this witness. The witness admits that he is hostile to the respondent; he does not deny that fact, and in every sense of the word this question, at this time, is utterly improper.

Mr. DAVIS. Mr. President: I would like permission to be heard a moment.

The PRESIDENT. If no objection is heard, you will proceed.

Mr. DAVIS. We conceive that this line of examination is very im-

portant to us, and that it is permissible upon principle, and in the exercise of the discretion of the court. As cross-examination it ought to be allowed.

Now, let us see, apart from the ground which my learned associate advances, whether upon the strictest principles, this cross-examination is not permissible for another reason, whether it is not only permissible, but is not also our right, on the ground that it was part of the subject matter of the direct examination of the witness, taken in connection with the specification, which he is produced to sustain.

The position which the Senate has just now sustained is that this witness was produced for the purpose of answering immaterial and irrelevant questions to that controversy. This witness on the stand has testified in substance, that his defense was, that other persons, and not he, were the movers in the circulation and getting up of that petition. Now, it being his defense that other persons were the movers and instigators of that petition and not he, it surely is competent to show by cross-examination what the theory of this witness was. When he entered upon that line of defense before the respondent, it became necessary, in that examination, to test the truth of the defense which the witness presented to him upon that occasion, namely; whether these other persons had done the acts which the respondent claimed should absolve him, and for which others and not he were responsible.

I think the question is fair and competent in that view.

Mr. CLOUGH: Just one word in reply to what Governor Davis has said. In the first place, I do not understand that this witness, upon that examination before Judge Page, made any complaint, or made any defence, that any other persons had circulated this thing charged by defence, and the only question there was, whether he had circulated it himself or not. It was utterly immaterial then, as it is now, what Mr. Mr. French had done, or what Mr. Harwood had done, with reference to that petition, and the only question was, whether defendant had done so and so, not what the whole world might have done. That is not the manner in which men are tried. Now what we say here, and it was true there, that what French, or Ingmundson, or Harwood, may have done, is utterly immaterial for any purpose. This witness has stated that his own hands were clean in regard to this matter, and that is the end of it.

The question being taken upon admitting the question in evidence, and

The roll being called, there were yeas 25, and nays 8, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong Bailey, Bonniwell, Clement, Deuel, Edgerton, Edwards, Finseth. Gilfillan C. D., Goodrich, Hersey, Houlton, Langdon, Macdonald, McClure, McHench, McNelly, Mealey, Morton, Nelson, Pillsbury, Rice, Shaleen and Wheat.

Those who voted in the negative were—

Messrs. Clough, Doran, Drew, Gilfillan John B., Morehouse, Smith, Swanstrom and Waite.

So the question was admitted.

Question repeated. Tell me what happened in relation to the circulation of this petition at this meeting?

A. I remember the petition was talked about; that it was too strong; and that we ought to get one more mild.

Q. Where was that talked at?
A. I think it was in French's office.
Q. Who was present at the time?
A. I don't remember.
Q. About how many signatures did these different petitions have at that time?
A. There was only one petition at that time.
Q. Was it in writing, or had it been printed?
A. I don't remember.
Q. How many signatures had that petition?
A. Not any that I know of.
Q. Were you there discussing the question whether you should sign it or not?
A. I don't remember.
Q. Tell me who was there, your best recollection.
A. I could not state. I could state who probably was there.
Q. State who probably was there.
A. I think W. L. Crandall was there. I think George E. Wilber was there.
Q. A. W. Kimball?
A. I don't remember.
Q. R. I. Smith?
A. I don't recollect.
Q. A. A. Harwood?
A. He may have been there.
Q. Have you not heretofore sworn that they were all there?
A. I don't know.
Q. Didn't you swear so before the committee of the house?
A. I presume I did, I can't remember.
Q. How many were there at the meetings at your House.
A. I don't remember.
Q. Who were they?
A. I can't tell, it was at different times.
Q. Tell me the first meeting, can you.
A. I don't think I can state.
Q. Who generally met there; tell me that?

Mr. CLOUGH. Wait a moment. That would imply habitual meetings, and the witness is only testifying that there were two meetings.

Mr. LOSEY to witness. At the two meetings who met there.
A. Well, at one time, there was Mr. Crandall, Mr. French, Mr. Harwood, Mr. Ingmundson, and I think, Mr. Kimball.
Q. A. W.?
A. A. W.
Q. Who else?
A. I don't remember.
Q. How much money have you contributed towards this prosecution?
A. About 6 dollars; I guess 5 or or 6 dollars.
Q. How much time have you contributed?
A. I have put in considerable time.
Q. A good deal of talk?
A. No sir.
Q. A good deal last winter?

A I was here last winter as a witness.
Q. Were you not very active here last winter?
A. No, I don't think I was.
Q. Were you not lobbying members of the Legislature, in connection with this matter?
A. I don't think I was.
Q. Some friends of this impeachment proceedings, of your party, remained at home, did they not?
A. Some of them?
Q. Yes?
A. Yes, I presume so.
Q. They were quite anxious to know what the result of proceeding was?
A. Yes sir.
Q. Do you recollect sending a dispatch to Crandall & French. when the committee made their report, about that time?
A. I think I do.
Q. Immediately after the vote was taken, did not you send this dispatch:
"Crandall & French Austin.
We scoopped him, 71 to 30. All right.
D. H. STIMPSON."
A. I think that is about it.
Q. Who were the "*we*" referred to; you, or the legislature, or who?
A. You can infer what you are a mind to from it.
Q. You thought that dispatch would interest Crandall and French, did you not?
A. Yes sir.
Q. You have talked over this matter a good deal, have you not, from time to time with different persons?
A. Yes sir.
Q. You have been somewhat of an advocate have you not, of what you considered your side of the case?
A. I presume I have, yes sir.

RE-DIRECT EXAMINATION.

By Mr. CLOUGH.
Q. You say at the time the subject of the circulating of this petition was first talked over in your presence, it was determined that it should not be circulated?
A. I don't remember, I know simply that it was said that it was too strong a petition.
Q. You had nothing whatever to do though with the circulation of it?
A. No sir, I never circulated it.
Q. You did circulate this other petition though, did you not?
A. I did.
Q. And admitted it upon the investigation?
Q. Yes sir, I presented one of the petitions there?
Q. At the close of the investigation, when you were discharged by Judge Page, can you remember of any statement that Judge Page made, in regard to the prosecution, what his motives were in prosecuting the case?

A. I don't remember now.

Q. Anything said on that occasion, or at any other time during the progress of the proceedings about the parties whom Judge Page was speaking of in regard to the instigation of proceedings?

A. I don't remember.

LYMAN BAIRD, SWORN,

And examined on behalf of the prosecution, testified:

By Mr. CLOUGH:

Q. Where do you live?

A. At Austin.

Q, Did you reside there in 1877?

A. I did.

Q. What was your business at that time?

A. I had just sold out in the book business there.

Q. Did you hear the proceedings in the district court there, against Mr. Stimpson for contempt?

A. Yes sir.

Q. I will ask you if you were present during the progress of that proceeding, at any time?

A. I was present one evening.

Q. Do you remember what evening that was?

A. It was the Saturday night after he was arrested.

Q. Where was it that you were present; at what place?

A. In the Judge's office.

Q. Do you remember who were present?

A. Yes sir.

Q. Who were they?

A. There was Judge Cameron, D. H. Stimpson, R. O. Hall, Judge Page and myself.

Q. Any other persons there?

A. There was a man came in there just before the court adjourned, but I am not positive who it was.

Q. But with that exception, those persons you have named were the only persons there?

A. Yes sir.

Q. At what time in the evening did you go up? had the proceedings commenced when you got there?

A. They had not.

Q. They commenced shortly after you got there, did they?

A. Yes sir.

Q. Now you may state what occurred there, as far as you can remember, and what was said by Judge Page.

A. Judge Page turned to Mr. Stimpson—that is, he turned his chin towards him—and said: "Mr. Stimpson, I find that you are not wholly to blame in this matter. You have been led into it by designing men," he says, "men who have no principle." He says, "Just look at the men who were at those conspiracy meetings." He then put the paper, the testimony—that is, I supposed it to be; it was a little piece of foolscap paper, in front of him, and he looked it over.

He says: "just look at the men who were there." He says, "there is Harwood, French, Ingmundson and others." He says, "such men are no better than the Younger Brothers, and ought to be looking through, or behind the prison bars." He says, "I could," it was either

"could" or "will," that he could put them there or would put them there. He says, "but I do not act hastily in these matters. I will attend to their cases hereafter." He stopped a little there, and then he says, "Mr. Stimpson, this will be a good lesson to you; if you do not keep out of such company you will land yourself in States Prison." He then said that this testimony—or "that" there is some conflicting testimony, I want to examine it, I will adjourn the court, it was either a week or two, I won't be positive.

Q. Do you remember anything else that was said there that evening?

A. He dwelt some little time on these conspiracy meetings, as he called them.

Q. But you don't remember his particular language in respect to that?

A. I do not. I called the attention of some names that he some way found out was there.

Q. I will ask you if you were present at any other sessions in these proceedings of the court, except that one evening?

A. No sir.

CROSS-EXAMINATION BY MR. LOSEY.

Q. Do you recollect where the court stated he expected to go, during the interval of adjournment?

A. I don't know whether he said something about court sitting somewhere or not. He may have; I got the impression any way that I knew of the court sitting somewhere.

Q. Had you ceased paying attention before he finished up his remarks?

A. I paid strict attention during his remarks.

Q. Can't you remember whether he stated he was going off to hold court?

A. I got that idea; I can't state how I got it; I knew there was a court.

Q. You have a very accurate memory, have you?

A. I have a very fair memory.

Q. How did you know there was a court?

A. Somewhere else?

Q. Yes.

A. I don't remember how I knew it.

Q. Did you know it as a fact at all?

A. I heard so some way; I don't remember now how.

Q. You can't remember whether the court so stated, in giving his decision at that time?

A. I cannot state.

Q. Where was the court then being held?

A. That evening?

Q. Yes.

A. In his office.

Q. Where was the court to be held, to which the judge was to go?

A. I would not be positive. Either in Fillmore or Freeborn counties.

Q. Then you cannot remember that part of the talk that was made by Judge Page there?

A. I can't remember, no sir, whether he said anything about it or not.
Q. Are you at work for Mr. Hall, the sheriff, at the present time?
A. I am.
Q. In what capacity are you laboring for him?
A. As jailor of the county.
Q. How long have you been engaged in that business?
A. Some months; a few months.
Q. How many months?
A. About two.
Q. Who was your predecessor in office?
A. F. W. Allen.
Q. This matter that took place there that night has been a matter of considerable talk in Austin, has it not?
A. Yes sir, it has.
Q. About how frequently has it been talked about, to your knowledge.
A. I couldn't say.
Q. So often you can't remember. This contempt case has been spoken of very often, and what occurred there that night while you were present?
A. Quite often.
Q. You have talked of it quite often.
A. I have talked of it some.
Q. You have talked of it quite extensively with the men that were there?
A. No sir.
Q. Do you swear that you have not talked with men who were there; men whom you have stated were there,—Cameron, Stimpson, Hall and others, whom you say were there on that night?
A. Not extensively; I have talked with them some.
Q. You have talked of it with others?
A. Yes sir; some.
Q. You have talked with Lafayette French quite considerably?
A. I stated it to Lafayette French, in five minutes after I went out, what occurred.
Q. You have talked with him quite frequently since?
A. I don't think I have, with him.
Q. To any one?
A. No, I didn't swear that.
Q. Did you not tell Mr. French what you would testify to, here?
A. No sir.
Q. Did you not tell French what you had testified to before Greenman, referee?
A. No sir.
Q. Did you tell him what you testified to?
A. He was there.
Q. You have refreshed your memory considerably, in relation to this matter.
A. I think not.
Q. You don't think you have refreshed your memory at all?
A. My memory on that subject is very clear.
Q. Your memory on all subjects is just as clear, I suppose?
A. It is very fair.

Q. Can you remember the exact language used by the judge at that time?
A. Some parts of it I do remember exactly.
Q. Some parts you remember word for word, do you?
A. Yes sir.
Q. Who was this man that came in there?
A. I am not positive at all.
Q. Was it not Mr. Stevens?
A. I think it was.
Q. Have you not so sworn?
A. I swore that I thought it was.
Q. Who did you say were present?
A. I said that Mr. Cameron, Mr. Hall, Mr. Stimpson, Judge Page and myself, and this man came in, and remained when we went out.
Q. How often have you, and Hall, and Stimpson talked this thing over?
A. I don't think I have talked it over with Hall.
Q. Have you not made a considerable effort to make your evidence agree?
A. No sir.
Q. Have you not talked with one another, so as you could be agreed as to what was said at that time?
A. I think not.
Q. Are you positive whether you did or not?
A. I am not positive.
Q. About how often have you talked with Hall about it?
A. I may have mentioned it to him.
Q. Have you not had a square talk with him about it?
A. No sir.
Q. Do you swear to that?
A. No sir.
Q. Do you swear to that?
A. I do.
Q. That you did not tell Hall what you would swear to?
A. I have talked with people.
Q. You have been in the habit of talking with people about this matter?
A. Some.
Q. About how many times have you repeated it?
A. I could not say.
Q. So often that you have no memory concerning it?
A. Not very many times.
Q. Don't you think that a frequent repetition of it has confirmed you in your knowledge of what did occur.
A. No sir.
Q. You are a son of ex-Sheriff Baird, are you not?
A. Yes, sir.
Q. How many times were you present during that examination of Stimpson?
A. Just that one time that I spoke of.
Q. Did you not make a memorandum of what was said?
A. I did.
Q. At whose request did you make that memorandum?
A. At no one's.

Q. Where is that memorandum?
A. I don't know now.
Q. What did you make it for?
A. I made it for the purpose of reporting it to a newspaper.
Q. To what newspaper?
A. If I had reported it, I should have reported it for the Pioneer Press.
Q. You did not report it, as a matter of fact?
A. I did not.
Q. What was your object in going in there?
A. I expected to be called as a witness.
Q. You were disappointed in that expectation?
A. Not very much.
Q. Were you at all?
A. Not a bit.
Q. How did you expect to be called as a witness there?
A. Mr. Stimpson said they might want to see me as a witness.
Q. Did you know anything about the circumstances of this petition?
A. I did not.
Q. Did you take any hand in it?
A. Well, no sir.
Q. You did not know then on what point they were going to use you?
A. Yes sir.
Q. You cannot tell where that memorandum is?
A. It is in an old memorandum book at home, I think.
Q. How long since you have looked at it?
A. I looked at it last winter.
Q. You posted up on the memorandum when you went to St. Paul?
A. I think I looked at it, yes sir.
Q. You testified before the committee in relation to this matter?
A. I was before the committee.
Q. Have you talked to your father, George Baird, as to what you would swear to here?
A. I think I have.
Q. About how frequently?
A. I don't know as I have any more than once.
Q. When did you give him the substance of what you would swear to, if at all?
A. I can't state when, but I think I have given it.
Q Do you pretend to give the exact language the Judge used there, on that occasion?
A. I do the most of it.
Q. Do you pretend to give the exact language and its connections used there by Judge Page, on that occasion?
A. I think I have it very nearly correct.
Q. Do you swear that you give the exact sense of the language used by Judge Page?
A. Yes, sir; I do.
Q. As you understood it?
A. Yes, sir.
R. And you swear positively that your statement is correct in that regard?
A. I do.

Q. When you told me what completed the remark of Judge Page after he stated what you have said, in relation to Harwood, Ingmundson, and those other men, comparing them to the Younger brothers, what was the next thing that he said, after he had used the name of the Younger brothers?

H. He says: "I don't act hatisly in these matters."

Q. What next.

A. Well, right there, whether it was the next sentence or not, I am not positive; he says: "I will attend to their cases hereafter." That was referring to—

Q. What else do you remember?

A. Then he said something to Mr. Stimpson about this being a good lesson to him.

Q. What did he say?

A. I think he addressed him as "young man, this will be a good lesson to you."

Q. Are you positive about that?

A. I am not positive whether he said "young man" or Mr. Stimpson.

Q. Go on.

A. He says, "If you do not keep out of such company, you will land yourself in States prison; either "also" or "to"—

Q. What preceded this remark in relation to the Younger brothers?

A. What? before that do you mean?

Q. Yes.

A. He says "just look at the men that were at those conspiracy meetings."

Q. Was Judge Page talking when you went in there?

A. No sir.

Q. Who was talking?

A. No one.

Q. How long did you remain there before any one commenced to talk?

A. Some little time.

Q. Was any thing being said?

A. Not a word.

Q. What was the judge doing?

A. I don't remember what he was doing, but there was nothing said.

Q. Can you tell what any person in the room was doing?

A. They all went in and sat down.

Q. What did Judge Page say at the time he adjourned the hearing?

A. He said the testimony conflicted, or there was some conflict of testimony; he wanted to examine the testimony.

Q. Is that the reason why he adjourned?

A. He said he would adjourn it.

Q. That was the reason, and the only reason that he gave?

A. I would not swear positive whether he gave any other reason or not.

R. I. SMITH, BEING SWORN

And examined on behalf of the prosecution, testified:

By Mr. CLOUGH.

Q. Were do you live, Mr. Smith?

A. Austin, Minnesota.

Q. Were yolu iving there in the yrar 1877.
A. I was.
Q. State whether you were a witness for the State, in the matter of the proceeding against David H. Stimpson, for contempt, in 1877.
A. I was.
Q. State whether you attended under subpœna.
A. I did.
Q. Who examined you on behalf of the State?
A. Judge Page.
Q. State if you remember what matter Judge Page examined you about?
A. I think the first question was in regard to his official conduct?
Q. State the words as near as you remember it?
A. "What, if any, knowledge did I know of any acts of his, as Judge, that was improper?" That was the substance of the question.
Q. That was the first question he asked you?
A. I am not positive whether that was the first, or the question with regard to a peitition.
Q. It was among the first questions?
A. Yes sir.
Q. Do you remember of any thing else he asked you?
A. I do.
Q. Well, state what it was.
A. He asked me what my business was, how long I had lived there. He then presented or held up two blank petitions, and asked me if I had ever seen those. I think I replied that I did not believe that I ever had; he then asked me if I had a petition similar to those with names, and handed me the two. I answered that I had seen one of them; he then asked me in whose possession it was, and how many names were attached to it. That was all the questions that I remember he asked me.

CROSS-EXAMINED BY MR. LOSEY.

Q. You were somewhat technical in your answer to the question as to whether you had seen those petitions before, were you not?
A. I don't know whether I was technical or not. I answered the question.
Q. You answered that you had not seen those petitions?
A. That is my answer.
Q. And subsequently stated that you had seen petitions of like purport?
A. That was the substance of my reply.
Q. In other words, you had not seen that piece of printed paper, but had seen other printed paper just like it.
A. He asked me——
Q. Well, answer my question?
A. I am trying to.
[Question repeated.]
A. That was not the substance of my reply.
Q. What was the substance of your reply?
A. That I did not think I had seen those pieces of paper that he had held up to me.
Q. That was your reply to the judge's question whether you had seen those petitions?

A. It was.
Q. You have been somewhat interested in these proceedings, have you not?
A. Yes sir.
Q. What is your busines?
A. I am a photographer.
Q. Where do you reside?
A. At Austin.
Q. About how much money have you contributed?
A. Not any.
Q. About how much time have you contributed?
A. Not very much.
Q. Did you not contribute considerable money last winter, in the way of expenses, up here?
A. I paid some of my expenses up here.
Q. You came here in connection with this matter, did you not? You came here to legislate last winter, to push the matter of the impeachment of Judge Page?
A. I felt interested in the matter.
Q. You came here for that purpose?
A. No sir, I did not come here for that purpose.
Q. You brought the petition up here, did you not?
A. I did.
Q. You came here for that purpose, did you not?
A. When I brought the petition, I came for the purpose of presenting the petition to our representatives.
Q. You had not been subpœnaed, had you?
A. I had not.
Q. Who paid your expenses?
A. I did myself.
Q. Then you did contribute some money?
A. If that is contribution, I did.
Q. Did anybody insist upon you paying your expenses?
Mr. CLOUGH. I object to that as being immaterial.
Q. About how long did you remain in the legislature—around here?
A. Possibly three or four weeks. Three weeks, I guess.
Q. Engaged in the business of pushing this matter?
A. I felt interested.
Q. So much interested that it kept you here?
A. Part of the time.
Q. Did it not occupy you here all of the time?
A. No sir.
Q. What other business?
A. Business of my own.
Q. About how long did you stay on this other business?
A. Possibly a week.
Q. You were here three weeks only, were you?
A. I was here as long as three weeks.
Q. Well, how long were you here?
A. I have answered that. I was here about three weeks, possibly a little more.
Q. Did you attend this meeting in Austin?
A. What meeting do you refer to?

Q. This meeting that had for its object the impeachment of Sherman Page?
A. I did.
Q. About how many of those meetings did you attend.
A. I attended two or three meetings wherein the petition was discussed.
Q. About how many persons were present at those meetings?
A. Six or eight; a dozen perhaps, or more.
Q. Any of them held at your house?
A. None.
Q. At your place of business?
A. No sir.
Q. Where were they held?
A. The one I attended was held at Stimpson's house, and one at Crandall and French's office.
Q. Was Riley there?
A. I think not.
Q. Was Mandeville there?
A. No, I don't remember of seeing him there.

LAFAYETTE FRENCH RECALLED

On behalf of the prosecution, testified:
By Mr. CLOUGH. Q. Do you remember the proceedings in the district court against Stimpson for contempt, in the year 1877?
A. Yes sir, I do.
Q. I will ask you if you attended that examination in the capacity of a witness?
A. I did.
Q. Did Judge Page ever notify you to act as prosecuting attorney in the proceeding?
A. He did not.
Q. Did he ever give you any notice that those proceedings were to take place?
A. He did not.
Q. Nor of your assistance as county attorney in any way connected with it?
A. No sir.
Q. Who were present at the time you testified?
A. Judge Page, G. M. Cameron, David Stimpson, and Mr. Morgan, Mr. Page's shorthand reporter.
Q. State, if you remember, and the extent of them that you do remember, of the matters that Judge Page required you to testify to, on that occasion?
A. I think I was the first witness Saturday morning. After being sworn, I commenced to give my testimony, and Judge Page told me to sit up nearer to the reporter, so that he could take my statements. I did so. Judge Page asked me if I was an attorney at law, and I told him that I was; he wanted to know if I had been engaged in the practice of my profession for the last three years; I told him I had; he asked me if I was county attorney of that county, and I told him that I was. He asked me if I had written any communications to the Saint Paul Pioneer Press company; I told him I had. He wanted to know

what the subject of those communications were, and I told him they were on matters of business. He asked me what they were, and I told him they related to his libel suit—Page's libel suit. He wanted to know if I was acting as counsel for the Pioneer Press Co., and wanted to know if I had prepared a collection of facts; I told him no; I told him I had been very busy; he says, "Yes: I *understand* you have been very busy."

Then the Judge asked me if I had written and sent a communication to the St. Paul Pioneer Press Co., or to any person connected with that company, in which I stated that money would be raised to defray the expenses of defending their suits, and that there was sufficient evidence in the hands of the attorneys, to impeach Judge Page. I told him, I had not. He asked me if I had circulated, for the purpose of obtaining signatures, any such paper writing. I told him that I had taken this—that at one time, while I was in the postoffice, A. A. Harwood had handed me a letter, and requested me to get the signatures of some parties to that letter; that I put it in my pocket, and that one morning while I was in the auditor's office, I happened to think of it, and I took the paper out, and asked R. O. Hall, the sheriff, and P. T. McIntyre, the county auditor, to sign it. Hall said that he could not sign anything of that kind; that I then read it, and tore it up while on the sidewalk. He said, "you tore it up, did you," and I told him I did.

He then asked me if I had attended any meetings in my office—if there had been any meetings in my office—or the office of Crandall & French, with reference to getting up a petition asking him to resign. I told him there had been some meetings there; he wanted to know what the substance of the conversation was at those meetings. I told him I did not recollect all that was said; that the bond question had been discussed, and as it was a place for political headquarters, that political matters were discussed, and that this matter was discussed. He then asked me if I had taken an active part in getting up that petition, asking him to resign—this petition here that he sets up in his answer—I told him I had not; he asked me if I had seen it; I told him I had not. I told him I had refused to sign it; he asked me where; I told him it was in my office, and that C. E. Kinsman was in there, and that he said to me, "Freneh, stop and listen to this," and that he told me that the petition was ready, and that I stated at that time that I would not sign any such petition as that; that I did not think that that was true.

He says "you said it wasn't true." I says yes. He says "in what particular is it not true." I says "in that last clause there that you were ineligible to office, that I did not believe any such thing; I said you were eligible to office. He says, "is that all that you believe is false." I told him no sir; he says, "is that the only reason you had for refusing to sign it;" I told him no, it was not, that I did not think that a petition of that kind was the proper thing, or words to that effect. Then Judge Page says, "That is all for the present, Mr. French, and I left the office. Along about five or half past five in the afternoon he sent F. W. Allen for me; I went up, and when I went in he says, "now, Mr. French, a number of persons have testified of meetings having been held at your office, and that you were present at those meetings, and participated in those proceedings." Well, that made me angry to think that after I had testified to what I had, that he should

be saying any such thing as that; I spoke up very stern; I said, "Judge Page, I know what I have done, and I know what part I took; I know I don't approve of any such petition as that."

"Well," he says, "the defendant so testifies." Says I, "I don't care what the defendant testifies, but I know what I done." "Yes," he says; then he asked Mr. Kinsman if Mr. Harwood did not testify that it was so stated; Kinsman said he did not think he did. He says, "he also testifies that Judge Cameron says so." I looked at Cameron, and Cameron did not say anything. "He says that you said so, Mr. French." I told him that I did not recollect whether I had ever told him so or not. He then said: "I will adjourn these proceedings until 7 or half-past 7 that evening, at which time, I will give my decision." I did not go up that evening.

Q. This paper that you state you presented to Sheriff Hall, and asked him to sign, and tore up, I will ask you if it is the first of these petitions that was presented in evidence?

A. No sir, it was a letter sent to the Pioneer-Press company.

Q. Whether during the Judge's examination of you, he spoke with reference to your being paid by the Pioneer-Press?

A. Yes, when he asked me if I was making a collection of facts, and he asked me if they had paid me any money, I told him that they had not.

Q. That is all that you recollect of the proceedings when you were present?

A. That is about all he said; that is about all I said.

Q. While you were being examined, did Mr. Cameron make any objection?

A. He did, yes sir.

Q. You may state what occurred on those occasions.

A. At the time he was inquiring about my writing communications to the Pioneer-Press company, Mr. Cameron interposed an objection as to its being irrelevant and immaterial. Judge Page told him that he wanted to get at the facts in the matter.

Q. He overruled the objection?

A. He did not say anything about it; he went right on asking questions. There is one other matter that I testified to there, when he spoke about those meetings, I told Judge Page that some one had notified me along the latter part of April or May, that there was going to be a meeting at the city council rooms, to take into consideration, his conduct at the last March term of court, and they requested me to be present at the city council room; I was busy with Wheeler and Batchelder in the Smith case and could not go, and after I got through with them late in the evening, quite a few citizens came in and talked with me in reference to that matter, and there was something said about a committee being appointed to present a petition, asking Judge Page to resign. I think that was the mayor and somebody else.

CROSS-EXAMINATION BY MR. LOSEY.

Q. Where were you at the time you tore up this paper that you have spoken of?

A. I think it was right after I came out of doors, out of the office.

Q. Who had drawn that paper?

A. Mr. Harwood, I think.

Q. Mr. Harwood did a good deal of drafting of papers, did he not?
A. I don't know; I only know that he drafted that from his handwriting.
Q. Did you not engage very extensively in that business?
A. No sir, not extensively.
Q. How many affidavits did you draw?
A. At the time I was examined in the Stimpson matter?
Q. Before the bar meeting was held, about how many affidavits have you drawn?
A. I can't tell you how many I have drawn from that day to this!
Q. How many had you drawn up to that time?
A. I had not drawn any to the time I was examined before Judge Page on this Stimpson charge.
Q. That examination preceded the time of the holding of the bar meeting?
A. Yes, some time.
Q. Did you engage quite extensively in drawing affidavits after that?
A. After Judge Page suspended me, I think I drew six or seven affidavits.
Q. Did you not draw a dozen?
A. I don't think I did, still, I may possibly; I can tell you the affidavits that I drew.
Q. Who's affidavits did you draw?
A. One for I. Ingmundson; I drew one for D. H. Stimpson.
Q. [Approaching witness with a bundle of papers, and handing him the affidavits singly as the examination proceeded] Is that an affidavit drawn by you?
A. That is C. H. Davidson.
Q. When was it sworn to, and before whom?
A. In all probability, by myself, on the 11th day of August, 1877.
Q. Did you draw it on that day?
A. I think I did, yes sir.
Q. And that one?
A. That is one I drew.
Q. Did not you draw that?
A. That was drawn about the time—the jurat states the 8th day of August.
Q. Who's is that?
A. Thomas Riley's.
Q. Who is it sworn before?
A. Crandall.
Q. Did you draw that affidavit?
A. I did, yes sir.
Q. Who is that signed by?
A. W. T. Mandeville.
Q. Who sworn to before?
A. E. H. Davidson, notary public.
Q. When did you draw it?
A. I don't remember.
Q. Look at the date.
A. It purports to have been sworn on the 13th day of August.
Q. What year?
A. 1877.

Q. Did you draw that affidavit?
A. That affidavit of D. B. Johnson, yes sir.
Q. Sworn to before you?
A. Yes, sir.
Q. When did you draw it, and when was it sworn to?
A. The 10th day of August, 1877.
Q. Whose affidavit is that?
A. That is the affidavit of D. H. Stimpson, about the 9th day of August, 1877.
Q. Sworn to before whom?
A. I think myself.
Q. Drawn by you?
A. Yes sir.
Q. Here is another one of D. H. Stimpson's; whom is that sworn to before?
A. Before me, but it is not in my hand writing; I did not draw it.
Q. When?
A. It is on the 10th day of August, 1877.
Q. Did you know the contents of it at the time it was made?
A. I did sir, and knew the facts.
Q. And this?
A. This is an affidavit of George Baird; that is in my hand writing, but it is not sworn to before me.
Q. Whom is it sworn to before?
A. Before W. H. Crandall, on the 1st day of August, 1877.
Q. By whom is it signed?
A. George Baird.
Q. Who drew it?
A. That is in my handwriting; I drew the affidavit.
Q. Whose is this?
A. The affidavit of Mr. McIntyre; that was drawn by me on the 8th day of August, 1877, sworn to before W. H. Crandall, notary public.
Q. Whose affidavit is that?
A. That is the affidavit of Mr. McIntyre; that was sworn by me, my handwriting, I think.
Q. Sworn to by who?
A. Myself; yes sir, I presume so.
Q. Don't you know your own handwriting?
A. Yes sir.
Q. You write different handwritings sometimes, for a purpose?
A. No sir; I am not afraid of showing my handwriting, Mr. Losey.
Q. That is R. I. Smith?
A. Sworn to before myself, on the 10th day of August, 1877.
Q. Whose affidavit is that?
A. That is the affidavit of T. W. Woodard, justice of the peace at Austin.
Q. Has he been sworn as a witness.
A. No sir, that was on a different charge. That was sworn to. I don't know. It purports to have been sworn on the 13th of August, 1877.
Q. Who drew it?
A. I drew it.

Q. Do you recollect drawing it about that time?
A. I do, yes sir.
Q. Here is another?
A. That is the affidavit of I. Ingmundson; that was drawn by me and sworn to before me about the 9th day of August, 1877.
Q. You were somewhat busy along the middle of August in the affidavit making?
A. Part of the time, not very long.
Q. You have refreshed your memory from those affidavits; don't you know you were somewhat busy drawing these affidavits?
A. About all the time I did draw them was about half a day.
Q. It kept you somewhat busy?
A. It did not consume over a half a day.
Q. Did you draw them without conversing with the persons and seeing them?
A. No sir.
Q. Did you go and consult with each person before you drew his affidavit and about the time you drew it?
A. I asked them about the facts.
Q. Within that half a day?
A. Yes sir, I talked with them before I drew the affidavit.
Q. Were they present at the time you drew each of their affidavits?
A. Some of them were and some of them were not.
Q. Then those who were not you had to go and see.
A. No sir, they came to my office.
Q. Did it take you some little time to ascertain the facts?
A. No sir, not very long.
Q. Did they make their statement in writing?
A. No sir, they told it to me, and I drew the affidavit from my recollection.
Q. You drew 12 affidavits in half a day?
A. I say, perhaps, it took half a day, perhaps a little longer.
Q. They are dated from the 9th to the 13th.
A. Well, that don't make any difference.
Q. Did you draw each of them in the several days they were signed?
A. I don't think I did, I think I drew them all at once, or nearly all of them. I drew them as parties came into the office and signed them.
Q. Then you drew them before the first of them were signed?
A. I think I did, or a large proportion of them. I have a distinct recollection of how I done it, and where I was.
Q. Were the persons in your office on more than one occasion?
A. When they came to give me the facts, and when they came to sign the affidavits.
Q. Did they come there together or separately?
A. No sir, separately.
Q. Each one by himself?
A. Yes sir, most generally.
Q. What did you do with these affidavits?
A. I presented them to the bar committee; they met there to investigate Judge Page's conduct.
Q. Did you make any memorandum of what was said by Judge Page at that time? you have stated he said certain things you have testified to.

A. No sir; I have testified from my recollection; his reporter was there, and you can see how near I got it.

Q. *His* reporter, or the reporter of the court?

A. The reporter said that Judge Page had paid him; he was not acting for the court.

Q. He is the official reporter for that district?

A. He is; but he says that Judge Page paid him personally.

Q. You have stated that you had no notice that these proceedings were to take place?

A. No sir—do you mean Mr. Stimpson's proceedings?

Q. Yes?

A. Yes.

Q. You mean you had no official notice?

A. I never knew that he was going to arrest Stimpson until he was arrested.

Q. When these questions were asked by Judge Page, did he ask in connection with them, whether you had these conversations when Stimpson was present?

A. At the time of this conversation in the office with Kinsman, he asked if Stimpson was there.

Q. Was not Stimpson present at that time?

A. He was, I think.

Q. You so stated in the examination, did you not?

A. Yes sir; I said this——

Q. Wait a moment. You have said yes, and that is enough.

A. I want to state——

Q. I will ask for no explanation. Was Stimpson present at the time you had these other conversations?

A. What other conversations?

Q. In your office?

A. He was sometimes, and sometimes he wern't.

RE-DIRECT EXAMINATION.

By Mr. CLOUGH. Any explanation you wish to make now, Mr. French.

A. He asked me if Mr. Stimpson was there, and I told him that I thought he was; I did not see Mr. Stimpson; my back was turned to Stimpson and Kinsman both; I so told him; I heard him talking there; I knew Stimpson was there, because I knew his voice. I told him I did not see him.

By Mr. LOSEY. Why did not you narrate that fact, when you were asked to tell all about it?

A. I thought I did state it.

Q. Why did you not state the fact that Stimpson was present, when Judge Page asked you if he was present?

A. Because I did not think of it.

Q. Did not you know it was the most material fact in the evidence?

A. I thought you would find it out and ask me about it.

JOSEPH SCHWAN SWORN,

and examined on behalf of the prosecution, testified:

Mr. CLOUGH. Q. Where do you live?

A. In Austin, Minnesota.

Q. Live there in the year 1877?
A. Yes sir.
Q. Do you know Judge Page?
A. I do.
Q. Do you remember some proceedings that were instituted by Judge Page, against Mr. Stimpson, for alleged contempt of court?
A. I do.
Q. I will ask you if you had any conversation with Judge Page about that matter, before those proceedings commenced.
A. I had.
Q. Where was that?
A. At his office.
Q. State what occurred there?
A. He called me up stairs, and I went up; he gave me a seat and asked me if I ever seen a petition circulated asking him to resign his office.

Mr. LOSEY. We object to this conversation; what is his object?

Mr. CLOUGH. You will see.

Mr. LOSEY. I object to it; it is no part of proceedings that is charged to have occurred in relation to this contempt matter; it is something prior to the proceeding to it, and can have no connection with it.

Mr. CLOUGH. I think we expect to prove by this witness that he, on that occasion, threatened Mr. Stimpson with punishment.

The objection was not pressed.

The Witness. He asked me if I had seen a petition circulated asking him to resign; he also asked me how many names there were on it, and who signed it; also, asked me if I signed it. He also made remarks to me, motioning with his hands; "Schwan, I have paid you a good deal of money the last five years, and how *dare* you sign a petition of that kind?" I picked up my hat and walked out. [Laughter.] And as I had my hat in my hands and walked through the door, he made the remark, "You will hear from me sir!"
Q. Any thing said about Mr. Stimpson then?
A. No sir.
Q. But you were subpœnaed as a witness afterwards?
A. I was.
Q. Who examined you, when you appeared before Judge Page, as a witness.

Mr. DAVIS. Now, if the court please, under the form of the question I must object; I saw that the counsel conferred with Mr. French abont this particular question. I move to strike out this testimony in regard to this particular matter.

Mr. CLOUGH. We claim that it is entirely material, as showing the answer of the Judge.

THE WITNESS. A. Judge Page himself.
Q. Do you remember what Judge Page required you to testify on that occasion?
A. I do.
Q. State what it was?
A. He asked me if I signed this petition for him to resign. I told him I did. He, also, asked me where I signed the petition. I told him

I thought it was at Crandall & French's office. He asked me, also, about the meetings, don't know what he meant by that, and he put the question in a different light; he wanted to know what the sense of the parties present were; and I told him as I took it. I told him that I understood that the public at large were dissatisfied at his doings.

Q. These were Page's doings?

A. Yes, as a judge, or something to that effect; but that was the sense of—

Q. You spoke about Judge Page as asking you what the sense of the parties were at certain meetings. Do you mean what they said about him there?

A. He asked me what the object was, or the doings, and I told him Ididn't know exactly; as I understand him I told him that it seemed to be the feeling of the public; that they were not satisfied with his doings as a judge; that is the answer I gave him.

Q. That is what you remember of the examination that took place there?

A. Yes, sir.

CROSS-EXAMINED BY MR. LOSEY.

Q. When the judge asked you if you had signed the petition did you state you had or had not signed the first time?

A. I believe I didn't tell him.

Q. In your shop?

A. He didn't ask me in my shop.

Q. Well, in the judge's office, are you sure you didn't tell him that you signed it?

A. He asked me—

Q. Answer my question—are you sure?

A. I am sure I didn't tell him.

Q. Then he didn't ask you if you had signed?

A. I didn't tell him I had signed it.

Q. Was it then that he told you that you would hear from him again?

A. At the time when I went—

Q. Answer my question; was it then that he told you you would hear from him again at the interview?

A. No sir.

Q. Was it immediately after the interview stopped, and as you were going away, that he told you that you would hear from him again?

A. As I went through his room going out, the last word he spoke.

Q. Did you hear from him again?

A. I believe I did.

Q. When?

A. The time I was called up as a witness against Mr. Stimpson.

Q. You didn't look upon his remark as a threat?

A. I did, some.

Q. You did'nt tell him you had'nt signed it?

A. I did'nt tell him.

Q. On the contrary you had told him that you had not signed it, and you pretend to say that he then and there made this threat against you, if you had told him you had not signed it?

A. I did not tell him I had signed it.

Q. Then what did you tell him, at the time he asked you whether you had signed that petition or not?

A. I told him I did'nt recollect whether I did or not, that is what I had told him.

Q. Did he ask you whether Mr. Stimpson was present at the time you testified when you signed the petition?

A. No sir, he did not.

Q. I mean the time when you appeared before Judge Page and swore, did he not ask you if Mr. Stimpson had told you to sign?

A. He did not.

Q. Did he connect Mr. Stimpson's name with the petition at all when he questioned you as a witness?

A. He did not.

Q. In no manner?

A. No sir.

Q. You didn't hear the name of Stimpson mentioned at all?

A. He never asked me in regard to Mr. Stimpson at all, anything about him at the time he examined me.

Q. What did he ask you at the presentation of this petition as to its circulation?

A. He asked me if I signed a certain petition asking him to resign, and I told him that I did; that is the first thing he asked me, then he went on and asked me whereabouts I signed that petition, and I told him that I thought it was at Crandall & French's office.

Q. Did he ask you who was present?

A. He asked me what that writing was for; he spoke something about the meeting.

Q. Didn't he ask you who was present at that meeting?

A. I don't recollect.

Q. Didn't he ask you who handed you that petition to sign?

A. I don't think he did.

Q. Didn't he ask you who was there when you signed the petition?

A. I don't think he did.

Q. Didn't he ask you if Mr. Stimpson was there?

A. I don't think he mentioned Stimpson's name.

Q. Will you swear to it?

A. I will not directly swear that he did, but I don't think he mentioned Mr. Stimpson's name.

Q. Did he speak of the meeting in Crandall and French's office?

A. He did.

Q. Did he ask you if Mr. Stimpson was present?

A. I don't think he did.

Q. Nothing was said in relation to Mr. Stimpson to you, on that examination?

A. No sir; he never mentioned Stimpson's name when he examined me.

Q. Did he ask yo whou was present at that meeting?

A. I don't think he did.

Q. Have you contributed any money towards this impeachment matter?

A. That I subscribed any money?

Q. Yes?

A. I did not.

Q. Have you contributed any money?

A. I paid five dollars.

Q. When did you pay the five dollars?

A. I paid the five dollars, I think it was shortly after the impeachment in the House.
Q. Who did you pay that to?
A. To Dave Stimpson.
Q. Was he collecting the money at the time?
A. He came into me and told me—
Q. No matter what he told you. Was he collecting the money at that time for that purpose?
A. I don't know what you call it.
Q. Was he raising money; getting money?
A. I could't tell.
Q. Did you appear here last winter?
A. I did not.
Q. Was you here at all?
A. No sir.

F. W. KIMBALL BEING RECALLED

On the part of the prosecution, testified:
By Mr. CLOUGH.
Q. State if you was a witness subpœnaed on the part of the State in these contempt proceedings.
A. I was.
Q. Who conducted your examination on the part of the State?
A. Judge Page.
Q. State if you remember what he required you to testify to there.
A. I remember part of it.
Q. State all you remember.
A. That is, in substance, I remember it. I don't know as I can give the exact words that he used, but only in some parts. I remember some parts distinctly and I can state those. Judge Page, after I was sworn, asked me my residence, and so forth. He asked me, holding up a petition, I don't know but he did two, before him, if I had ever seen them; I told him I had seen petitions similar to those, and he asked me, I think, in the first place, where I had seen them; I told him in regard to the petition, the one that I had seen, the one that had the most printing, that I saw it in Crandall & French's office. I think that was the statement I made. He asked me in whose hands it was— and I told him it was in no one's hands, that it was laying on their desks. He said to me, "did you sign that petition?" and before I had a chance to answer, he said, "you need not answer that, you are not bound to criminate yourself;" then I refused to answer. Then he says, "If you signed this petition, when did you sign it?" I told him I could not answer that question. He then asked me if I had been present at any meetiug when this petition had been talked of, and I told him; and he asked me where it was, and I told him it was in Crandall & French's.

He asked me if it had been discussed, and I told him I had heard the petition read over. He asked me who read it, and I told him I could not state positively; that there were several parties between me and the party that was reading it, and I could not see the man. He asked me if it was not Judge Harwood who read it, and I told him I could not say whether it was or not. He asked me who were present at that meeting, and I told him as near as I could. I think there was some 12 or 15 people there

that evening. He then asked me a question that I can't just tell in what manner he put it. I remember the answers and what it brought out, but it was something in regard to the people of the city of Austin, discussing his acts, and I remember I told him. He asked me why people wanted him to resign; he put that question to me. I told him that they thought he was too prejudiced to sit on the bench. I remember this part distinctly. He says to me, "you have no reason to be prejudiced against me, you never had any suit before me." Says I, "no sir, I never have, never wanted to." He says, "If you do, sir, you will get justice." Those were about his closing remarks. I remember that distinctly.

CROSS-EXAMINED BY MR. DAVIS.

Q. This examination was at judge's chambers?
A. Yes sir.
Q. Are they in the court house?
A. No sir, they are not.
Q. Were you there when this examination began?
A. No sir, I was not; this was the second day.
Q. Had Mr. Stimpson been sworn before you were?
A. I presume so, sir.
Q. That is your impression?
A. I presume so, that is my impression.
Q. Do you know that Mr. Stimpson's defence to that charge was that others, and not he, were guilty of the matter under investigation, if any one?
A. I do not.
Q. Did you know at the time you were examined what Mr. Stimpson's defence was, that he and not others were the persons who had got up this petition?
A. I don't remember that I did know; I don't think I did.
Q. Was the proceeding pretty extensively talked of around town?
A. After the proceedings had commenced?
Q. While it was pending?
A. I dont remember; I think it had been talked of considerably.
Q. Had you heard it talked about?
A. Yes sir, some.
Q. Had you talked with Stimpson about it?
A. I think I didn't speak of that, I told him I would go on his bond, the night before, if he wanted me to.
Q. Had you talked with Mr. Cameron?
A. No sir, I hadn't seen Judge Cameron at all.
Q. Did Judge Page mention Mr. Stimpson's name to you, in the course of your examination?
A. I am not positive as to that, I think I stated that Mr. Stimpson was present at Crandall & French's office.
Q. Did you state that in response to a question asked you?
A. Yes sir.
Q. Didn't Mr. Cameron object to any of these questions?
A. It is not clear in my memory, I am not positive.
Q. You told him that you had seen that petition in Crandall & French's office?
A. I did.

Q. You told him what was being done with that petition, that you saw it?
A. I told him it was being read.
Q. You told him it was being discussed?
A. Yes sir, I think I did.
Q. Your impression is that he asked you if Mr. Stimpson was present?
A. I think he did.
Q. Now to that line of examination connected as it was with the presence of Mr. Stimpson, Mr. Cameron made no objection to its incompetency or irrelevancy for the purpose of elucidating the truth?
A. He may have, but I don't recollect.
Q. I believe you have stated how far you are clear on that point?
A. Yes sir.
Q. Have you taken some interest in this prosecution against Judge Page?
A. I presume I have, yes sir.
Q. You have been anxious for his impeachment, have you not?
A. I felt that he should be impeached, if his acts warranted it.
Q. You think his acts warranted it, do you not?
A. I do, yes sir.
Q. You have thought so, for some time, have you not?
A. Well, for some time.
Q. Answer the question, yes or no?
A. I have, yes sir, for some time.
Q. Your demeanor and actions in regard to this impeachment, what you have done to promote this impeachment, have been inspired by that conviction?
A. Yes sir.
Q. Under that, have you contributed money?
A. I have, sir.
Q. To what extent?
A. I think about $50.00.
Q. How many occasions?
A. Two; it may be three.
Q. When last?
A. I have not since, I think it was before the judiciary committee of the House made their report.
Q. Who did you hand it to?
A. My impression is, W. H. Crandall.
Q. He is the disbursing agent of that fund?
A. I have no knowledge.
Q. Into whose hands did it eventually come?
Mr. CLOUGH. Call me on that point, Mr. Davis.
Mr. DAVIS. Not for the purpose of disbursement, for I know you would never disburse it.
Q. You gave some to Mr. Crandall, on one or both occasions?
A. I rather think I gave it to him on both occasions.
Mr. Nelson moved that the Senate retire to consult in reference to the communication of the Governor, invitting the Senate to participate in the commencement exercises of the State University.
The question being taken on the motion,
And the roll being called there were yeas 26, and nays 4, as follows:
Those who voted in the affirmative were—
Messrs. Ahrens, Bonniwell, Clement, Clough, Donnelly, Doran,

Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hersey, Houlton, Langdon, Macdonald, McHench, McNelly, Mealey, Morton, Nelson, Pillsbury, Smith, Waite and Wheat.

Those who voted in the negative were—

Messrs Bailey, Deuel, McClure and Rice.

So the motion prevailed.

Mr. Nelson moved that the Senate accept the invitation of the Governor, and that the Secretary communicate the acceptance of the invitation to the Governor.

Mr. C. D. Gilfillan moved to amend that we accept the invitation to attend the commencement exercises and have an afternoon session on Thursday, which was lost.

The question recurring upon the motion of Mr. Nelson,

And the roll being called, there were yeas 17, and nays 15, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Bonniwell, Clough, Donnelly, Edwards, Finseth, Gilfillan John B., Goodrich, Hersey, Langdon, Macdonald, McHench, Morton, Nelson, Pillsbury, Smith and Swanstrom.

Those who voted in the negative were—

Messrs. Bailey, Clement, Deuel, Doran, Drew, Gilfillan C. D., Houlton, McClure, McNelly, Mealey, Morehouse, Rice, Shaleen, Waite and Wheat.

So the motion prevailed.

Mr. Edgerton offered the following:

Ordered, That the Senate hold a session on Wednesday evening, commencing at 7:30 o'clock P. M., and that when the Senate adjourn on Wednesday evening, it adjourn to meet on Thursday evening at 7:30 o'clock P. M.

The question being taken on Mr. Edgerton's resolution, and—

The roll being called, there were yeas 30, and nays 1, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Bailey, Bonniwell, Clement. Clough, Deuel, Donnelly, Doran, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Hersey, Houlton, Langdon, Macdonald, McHench, McNelly, Mealey, Morehouse, Morton, Nelson, Pillsbury, Shaleen, Smith, Waite and Wheat.

Mr. Rice voted in the negative.

So the resolution was adopted.

Mr. McClure offered the following:

Ordered, that no evidence be received as to what any witness testified to upon the proceedings for contempt against D. H. Stimpson, except those named in article nine.

Which was adopted.

On motion the Senate took a recess until 3 o'clock p. m.

AFTERNOON SESSION.

The journal of proceedings of Wednesday, May 29, Thursday, May 30, and Friday, May 31, were read and approved.

The PRESIDENT. Are the honorable managers ready to go on with the case?

Mr. CLOUGH. Yes sir.

R. O. HALL, RECALLED

On behalf of the prosecution, testified:

Mr. CLOUGH:

Q. Mr. Hall, you were sheriff of Mower county at the time of the proceeding against Mr. David H. Stimpson for contempt?

A. I was, yes sir.

Q. As sheriff you made the arrest, as appears by your return?

A. I did.

Q. Do you remember what witnesses were sworn, before you?

A. Mr. Chapman, the printer in the Transcript office.

Q. Do you remember what matter Mr. Chapman was required to testify to by Judge Page—if so, state as far as you can remember.

A. I can't detail the whole conversation, but the subject matter was how he came by the matter that was set up in that paper that was served upon him.

Q. That is, how who came by it; Mr. Chapman?

A. Mr. Chapman.

Q. Mr. Chapman was the printer who set it up, was he?

A. Yes sir.

Q. That appeared from his examination, and you say that the principal subject of his examination was how he came by the copy from which he set it up?

A. Yes sir.

Q. State whether you were also subpœnaed as a witness, and required to testify during a portion of the proceedings?

A. I was; I testified.

Q. What day was that?

A. I think it was the next day.

Q. Not that evening?

A. No sir.

Q. What time was it, that first evening, when the proceedings terminated by adjournment?

A. I think it was somewhere from nine o'clock, or perhaps later.

Q. After the usual bedtime of people about Austin?

A. O! I couldn't say that it was after the usual hours of closing the stores.

Q. After the usual hours of closing business?

A. Yes.

Q. What order or direction, if any, was given by Judge Page about the custody of Mr. Stimpson's person, after that adjournment. What did he say about keeping him under arrest, or his giving bonds?

A. I think he was required to give a certain bond, or be put into the custody of an officer.

Q. To be kept in custody, or give a certain bond?

A. Yes.

Q. And he gave that bond that night, did he?

A. Yes sir.

Q. Now, you say you were called as a witness the following day?

A. Yes sir.

Q. State, as far as you can remember, the matters about which you were required by Judge Page to testify?

A. With reference to a paper in the auditor's office?

Q. What kind of a paper in the auditor's office—explain it?

A. There was a paper handed me in the auditor's office, and I was asked to sign it.

Q. Well, was it one of the petitions in controversy in that roceed-p ing?

A. No sir.

Q. Well, what was that he inquired about?

A. Well, I took it to be a letter.

Q. To whom?

A. I think it was to the Pioneer Press.

Q. That is what Judge Page interrogated you about?

A. Yes sir.

Q. What did he ask you about it?

A. He wanted to know what name was on it and the substance.

Q. Was that after he had been informed that it was a letter addressed to the Pioneer Press that he made these inquiries of you?

A. I don't know as I understand your question.

Q, Did he know that it was neither of those copies that were up there when he inquired of you whose names were signed to that paper?

Mr. LOSEY. Well, I object to the counsel leading the witness.

Mr. CLOUGH. It is simply saving me the trouble of going through the whole examination.

Mr. LOSEY. He is asking the witness as to what knowledge the judge possessed then and there.

Mr. CLOUGH. I will change the form of the question; I will ask the witness in different form, so you need not be troubled about it.

Q. Did you testify before or after Mr. French testified?

A. I think after.

Q. Did you hear Mr. French's testimony?

A. Yes sir.

Q. On that occasion.

A. Yes sir.

Q. State if this paper about which Judge Page interrogated you was the same paper about which Mr. French testified in his examination?

A. It was.

Q. Now you may go on and state what Judge Page interrogated you about at that time?

A. Well, he drawed my attention to a paper in the auditor's office, and I told him I saw a paper there; it was presented to me and I looked it over, and he wanted to know what names were on it, and I told him I could not tell. There were names in the bottom of the paper, but I did not look at them to know who they were. I read the paper down and satisfied myself that I did not want to sign it, and laid it down.

Q. Did Judge Page ask you what the contents of that paper were?

A. I think he did.

Q. Did you tell him?

A. I think I told him, as near as I remember.

Q. Now what did you tell him the contents of the paper were, as nearly as you can remember now?

A. That there would be money raised to prosecute a suit, and that there were attorneys ready to do it.

Q. Did Judge Page ask you to whom that paper was addressed?

A. I think he did.

Q. You told him, did you?

A. I think so.
Q. Who did you tell him it was addressed to?
A. The Pioneer-Press Co.
Q. I will ask you if you remained present and in attendance as sheriff in those proceedings until thus finally terminated, in the discharge of Mr. Stimpson from time to time?
A. I did not; I was not there all the time.
Q. Were you present on the evening of the second day, after the rest?
A. I was.
Q. Who were present there that evening, that is I mean the next day after the arrest?
A. Judge Page, Judge Cameron, Lyman Baird, David Stimpson and myself; I think Mr. Stevens came in.
Q. At what stange of the proceedings did Mr. Stevens come in.
A. I think he came in about the close.
Q. What were the proceedings there that evening, what business was done examining witnesses?
A. I don't think there were any witnesses examined that evening.
Q. Any remarks made by Judge Page?
A. Yes sir, he talked to Mr. Stimpson.
Q. A long talk or a brief conversation?
A. Well, there was considerable talk.
Q. Can you remember anything that Judge Page said during the course of that conversation?
A. The conversation substantially as I listened to it then was what I have listened to here this forenoon; I could not detail all that was said then, it was a good deal.
Q. Well, state as near as you can remember what was said.
A. Well, he addressed himself to Mr. Stimpson, and told him he had been drawn into this by designing men, and if he continued in the company of such men it would be the means of sending him to State's prison; or he would get behind the bars; something of that kind, and went on to name them.
Q. Well, who did he name?
A. Well, he named Mr. Harwood and Mr. French, Ingmundson —named several, I saw he had their names right there.
Q. Can you remember anything more that was said on that occasion?
A. Well, he characterized them as being worse than the Younger Brothers.
Q. Who, as being worse than the Younger Brothers?
A. Well, this Mr. Harwood and these men who he was associating with.
Q. Well, who; the men you have just mentioned?
A. Yes sir.
Q. Those names you have just mentioned?
A. Yes sir That they were holding secret sessions or secret meetings to conspire—to conspire against whom?
A. Well, against him.
Q. Do you remember anything else?
A. That is the substance.
Q. Do you remember of Mr. Cameron the counsel for Mr. Stimpson

in that proceeding, making objection from time to time to the question?

A. I never remember of his making but one objection.

Q. What was that that you heard?

A. Well, I can tell you what the objection was, but it was promptly overruled—told that he was running that.

Q. Just use the language that Judge Page used?

A. Judge Page said that he was running that.

Q. That was said in connection with overruling that objection, was it?

A. Yes sir.

CROSS EXAMINATION.

Mr. LOSEY.

Q. Did you ever confine Mr. Stimpson during the progress of these contempt proceedings?

A. Well, what do you mean by confined?

Q. Imprisonment?

A. No sir, I never imprisoned him.

Q. Did you ever take him into your actual custody?

A. I did, sir.

Q. Did you let him go immediately?

A. What time do you refer to?

Q. Well, didn't you go and say to him, "I have a warrant for your arrest, and I wan't you to appear before Judge Page at such an hour?"

A. I went and told him that I had a warrant out for him, and he was ready to go with me, but I remember that Judge Page said if he got around at a certain time it would be all right, and I told him to appear there.

Q. You told him to appear there the next day at such an hour?

A. That evening.

Q. That was the manner in which you arrested him?

A. Yes sir.

Q. You speak of having testified in relation to a certain paper that was presented to you to sign, in the auditor's office, did that paper contain a statement that the petition was being circulated asking Judge Page to resign?

A. No sir.

Q. What was the character of that paper?

A. That there would be means raised to carry on a suit.

Q. What suit?

A. Why to help the Pioneer Press, as I understood it?

Q. Well, what did the paper state; not what you understood, but what was the contents of the paper?

A. Well, that was my understanding. I want to state right here that I did not peruse that paper very thoroughly, I merely read it over, and saw what the purport of it was, and saw that it was none of my business.

Q. You did not peruse it carefully enough then, to know what its contents were?

A Yes sir.

Q. Well, what further did it state, in addition to what you have said?

A. Why, that there was evidence sufficient to impeach Judge Page, that they thought there was evidence sufficient to impeach Sherman Page.

Q. What else was said in it?

A. That is about all I remember about it.

Q. Who presented that paper to you?

A. Lafayette French.

Q. Did not Judge Page question you in connection with that paper, asking you, at the same time, whether Mr. Stimpson was present at the time you examined it?

A. I think not.

Q. Was Mr. Stimpson present in fact?

A. No sir, he was not.

Q. Were you questioned as to whether Mr. Stimpson had circulated that paper?

A. I think not, because I knew very well that I had told him before that I knew nothing about it.

Q. Are you positive that you were not so questioned?

A. I think I was not questioned on that point.

Q. You state that this paper had been printed; that this petition had been printed. You spoke of Chapman, and some questions that arose as to his having printed a petition?

A. Yes sir.

Q. Had this petition been printed in his paper—in the paper that Chapman worked on, I mean?

A. I knew nothing at all about this petition.

Q. You can't state whether it had, in fact, been printed without signatures or not in the paper that Chapman worked on; Mr. Harwood's paper.

A. What; this petition?

Q, Yes.

A. I think, as a fact, it had been printed, and not in the paper; never had gone into the paper.

Q. Are you positive that it had not gone into the paper?

A. I think I am positive that it never had gone into the paper.

Q. Well, it had been printed and quite extensively circulated, had it not?

A. Well sir; I could not state that.

Q. Well, don't you know, as matter of fact, from Mr. Harwood and others, that it had been quite extensively circulated?

A. No sir; emphatically, no sir. I never knew that that petition was ever circulated.

Q. Hadn't you seen one in your store?

A. No; never saw one of them until Judge Page showed it to me.

Q. Where first did you see it?

A. Judge Page showed it to me.

Q. When was that?

A. I think it was somewhere about the time of the trial.

Q. About the time of the trial of Stimpson for contempt?

A. Yes,

Q. Where was it?

A. In Judge Page's office.

Q. How many did you see between that time and the time that the trial took place?

A. I never saw any afterwards.
Q. You did not see any?
A. No sir.
Q. You did not know of any being circulated?
A. No sir. [Speaking with great emphasis.]
Q. Whed the question of bail came up on that evening did the court ask you if you would be responsible for the appearance of Mr. Stimpson?
A, I don't know whether he did or not.
Q. Let me refresh you. Didn't you in answer to that question asked you by the court, state that you would not be responsible for him?
A. I certainly said at some stage of the business I would not.
Q. You don't know when it was, or in answer to what question?
A. No.
Q. Isn't it your best impression that the court did ask you the question, or if he did ask you as to whether you would be responsible for Mr. Stimpson's appearance?
A. I don't think he did.
Q. You don't think he did?
A. No.
A. But you can't tell how you came to answer that you would not be responsible?
A. Well, I think the boys asked me, after I had got down to the foot of the stairs, if I wouldn't let him go. I think they came to me and wanted to know if I wouldn't let him go, and I told them I would not.

R. I. SMITH, RE-CALLED,

On behalf of the prosecution, testified:
Mr. CLOUGH. Mr. Smith, while you were present at the proceedings against Mr. Stimpson, state if you heard Mr. Kinsman, Mr. Stimpson's counsel, make any objection to any questions or conduct on the part of Judge Page in that examination?
A. I did.
Q. Well, state what occurred, as near as you can remember, in that connection?
A. My impression is, that he was examining A. A. Harwood at the time, and in regard to his (Page's) official conduct; Mr. Cameron arose, and raised objection, and objected to the examination, as being irrelevant to the cause. The judge put his hand out in this manner: [witness indicates,] and said: "I can't listen to your objections, I am running this court."

CROSS EXAMINATION.

Mr. LOSEY. Q. What followed that?
A. Mr. Cameron took his seat.
Q. What preceded it? what was the question that preceded it?
A. What was the question that preceded his sitting down?
Q. No, that preceded this question that was asked, this objection that was made?
A. He was asking Mr. Harwood something in reference to his having any personal knowledge of his official acts.
Mr. CLOUGH. Of whose official acts?
A. The judge's.
Q. You can't remember just the form of the question?

A. No sir.
Q. Or what its purport was?
A. No sir.

GEO. M. CAMERON, RECALLED,

On behalf of the prosecution, testified:

MR. CLOUGH:—

Q. Mr. Cameron, you appeared as counsel for Mr. Stimpson in the contempt proceedings, before Judge Page?
A. I did.
Q. State when you first attended.
A. I think it was on Friday afternoon; I don't recollect the day of the month.
Q. Well, was that the day he was arrested?
A. Yes.
Q. You appeared before Judge Page that evening?
A. Yes sir.
Q. State if you continued to attend there as his counsel, before Judge Page, from time to time, until the proceedings finally terminated?
A. I did.
Q. Do you remember what the proceedings were the first evening?
A. Mr. Stimson was arrested, and he came into my office and I went with him before the judge, and asked Judge Page to see the complaint that had been made against Mr. Stimson, and he said that there was not any complaint; I asked him if any affidavit or information had been filed.
Q. Judge Page said there had been no complaint made?
A. Yes sir; he said none had been filed; I asked him who made the complaint; he said there had not been any made.
Q. Judge Page said so?
A. Yes sir; and then he said that information had come to him that Mr. Stimpson had been guilty of contempt of court, or something of that kind.
Q. Did he tell you what the information was?
A. He did not state, at least I don't think he did.
Q. Go on.
A. And he thought it his duty to inquire into the matter. He had issued his warrant and had him arrested. That is the first that took place in regard to it.
Q. What succeeded that?
A. Witnesses were called and examination had.
Q. Who conducted the prosecution?
A. Judge Page
Q. Who was sworn the next night?
A. A young man by the name of Chapman.
Q. What was his occupation?
A. He was a printer.
Q. Now, won't you state, Mr. Cameron, as near as you can remember, what Chapman was required to testify to by Judge Page, on that proceeding.
A. He was required to testify—the usual question was put to him as to his occupation and business, where he lived—he was asked in regard to a certain petition that had been printed.

Mr. CLOUGH. Just wait a moment, if you please, for the purpose of

identifying the petition, I will refer the witness to the printed copy of petition on pages 67 and 68 of the paper book and ask him if that is the one the witness was about to sign that evening.

The WITNESS. One of them is on page 67.

Q. There were two petitions that were up during that examination, were there?

A. Yes sir.

Q. Just let me find you the other copy just at this point?

[Paper handed witness.]

Q. I will ask you if that was the other petition that was up?

A. Yes sir, that is it.

Q. Now, go on Mr. Cameron?

A. He was asked who furnished that matter for printing.

Q. That is for the first petition?

A. For the first petition; asked who handed it into the office; as to whether he set it up; or if he knew who set it up; asked who else worked in the office besides him, and questions of that nature; interrogated the witness at some considerable length in regard to the matter; as to what he knew in regard to that paper, as to where it came from, who wrote it, who handed it in, when he first saw it; and questions of that nature.

Q. Did he say any thing to him about Stimpson handing it in, or having anything to do with it, if so, what?

A. Stimpson's name was mentioned after a while, during his examination.

Q. In what connection?

A. In connection with this petition.

Q. Do you remember the question asked about Mr. Stimpson?

A. I don't think it came in under an answer to a direct question, but it came in incidentally, during the examination. I don't recollect the question.

Q. Did you make any objections to any of the evidence that evening, or to any of the proceedings?

A. Yes sir, I made objection two or three times to that during his examination.

Q. Well, state how these objections came in, and what occurred, as near as you remember them?

A. Well, questions were asked that I deemed impertinent, and I objected to them as being irrelevant, and there was not much notice taken of the objections. The examination proceeded just the same.

Q. Was any notice taken of the objections, did you say?

A. Nothing more than they were not listened to. The objections were not listened to by the Judge.

Q. He paid no attention to them. The next day, do you remember how many witnesses were examined?

A. I can't state how many were examined.

Q. Did you hear the examination of Mr. Lafayette French?

A. I did.

Q. Now, won't you state what Mr. French was asked to testify to?

A. He was required to testify in regard to his knowledge of this petition; asked if he knew where it originated, who wrote it and caused it to be published. He was interrogated in regard to the transactions in his office; as to the meetings being held there; who was present; what

was said; what was done; and what he knew about it; and many other things. He was inquired of in regard to a communication about the Pioneer Press, by the Judge.

Q. As to a communication sent by Mr. French, do you mean?

A. Well, as to what he knew in regard to the communication to the Pioneer Press.

Q. Now state, in detail, as near as you can, what the court required Mr. Fench to testify to, in reference to the communication to the Pioneer Press?

A. I can't state just the language that was used.

Q. Well, as far as you can?

A. I can't recollect.

Q. Well, state it in your own way, as near as you can?

A. My memory of it is that he was asked if he had written a letter to the Pioneer Press, or something to that effect.

Q. Anything enquired of by Judge Page about his being counsel for the Pioneer Press?

A. Yes sir. He was asked if he had been retained, and if he received pay?

Q. In what matter?

A. I took it in the matter of the civil actions that had been commenced against the Pioneer Press, by Judge Page, for libel.

Q. Anything about Mr. French getting up evidence in those cases, by Judge Page?

A. Something was said in regard to that, but I can't state just what was said in regard to it.

Q. Well, who else testified that day, so far as you can remember?

A. The first day, no one else testified, excepting Mr. Chapman; the next day, several witnesses were called and examined. Mr. Harwood was examined; Mr. French was examined; Mr. Ike Smith was examined; R. O. Hall, I think, was sworn, and some other witnesses.

Q. I call your attention to an enquiry of Mr. French, in respect to a paper that appeared in the auditor's office, and that Mr. Hall was asked to sign. I will ask you if anything was enquired of about that, of Mr. French?

A. I don't recollect in regard to that.

Q. Well, do you remember what was inquired of, of Mr. Hall?

A. I could not state any particular questions that was put by the Judge to Mr. Hall. The tener of the questions was simply the object to me appeared to be to ascertain from these witnesses what they had heard.

Mr. DAVIS. Never mind.

Mr. LOSEY. State what occurred in court?

Q. I will ask you if Mr. A. A. Harwood was sworn?

A. He was.

Q. I will ask you if during the progress of his examination by Judge Page you interposed any objections?

A. To some of Judge Page's questions I did interpose an objection during his examination.

Q. Well, what came of it?

A. It wasn't listened to by the Judge. The objection was made, and I could not state just what the objection was, nor just what the ruling was. I made an objection to the question as being irrelevant. The question was made to the witness Chapman.

The question was: "Now sir, don't you know that A. A. Harwood wrote that petition and handed it to you to print?"

I objected to that as being irrelevant, and as being unauthorized by law, and without precedent. At that time the judge said he could not listen to objections, that he was running this, or words to that effect. That question was put to Mr. Chapman and not to Mr. Harwood.

Q. I will ask you if you objected from time to time to his questions as being improper and immaterial, during the course of his examination?

A. I objected three or four times.

Q. Well what were the results invariably of those objections?

A. They were overruled.

Q. State whether it appeared at all during the first examination that Mr. Stimson had ever circulated this first petition—this long one?

A. To my mind it did not.

Mr. LOSEY. I ask that that be stricken out; the witness is stating merely a legal conclusion.

Mr. CLOUGH. Well, I will change the form of the question, perhaps it will obviate the objection.

Q. I will ask if any evidence was introduced to show that Mr. Stimson had ever circulated this long petition, if so, by the mouth of what witnesses, and what did such witnesses testify to on that point?

A. It did not appear from the evidence of any witness, unless it might be inferred from what Mr. Kinsman stated.

Q. Well, just state what Mr. Kinsman said on that point.

A. I could not state just what he did say, but the evidence did not go to establish that fact; that he circulated that petition, as I understood it.

Q. Did Mr. Stimson admit that any portion of the petition, either by himself or counsel, that he had ever circulated that petition?

A. He did not; he denied it.

Q. Did he admit, during any stage of the proceedings, either in person or counsel, that he had ever helped to originate that paper in any way?

A. He did not.

Q. State whether he admitted having circulated the shorter petition?

A. He did.

Q. Now, after the second day, the proceedings terminated by adjournment, did they not?

A. Yes, sir.

Q. What witnesses had been sworn, if any, on the part of the defense up to that time?

A. Not any.

Q. Do you remember how long a period of time the adjournment was for?

A. I think it was two weeks; I am not positive.

Q. When you assembled, when and where did you assemble?

A. In the judge's office.

Q. Was it day time or night time?

A. Well, at first, I think it was adjourned for a short time, perhaps for supper; there might have been a short adjournment, and we met again in the evening. I think we met again in the night.

Q. Now, state, if you please, who were present during the proceedings on that evening?

A. Judge Page was there, and Mr. Stimson, R. O. Hall, Lyman Baird and myself; some one else came into the room at the time that the judge was talking to Mr. Stimson.

Q. Won't you please state what took place there, that evening? What was said by Judge Page, if you remember?

A. Judge Page stated to Mr. Stimson, that he thought he was not the most to blame, or so very much to blame, in this matter; that he had been the tool of others; had been incited to circulate this petition by designing men; men who had the character of bad men, and went on to name some of them.

Q. Who did he name?

A. He named Ingmundson, McIntyre, Kimball, Harwood and French. I think he named all of them, and spoke of them as being very reprehensible characters, and in speaking of Harwood and French: "There's A. A. Harwood and Lafayette French, I'll tend to their cases hereafter; the proper place for them is behind the prison bars along with the Younger brothers." He made that statement at that time, and said something more in regard to something about their being put there, but just what he did say I don't recollect. He said he did not act hastily in those matters. He complained that these men had conspired against him to ruin him, and he was a good deal excited at that time?

Q. That is all you remember that occurred, is it?

A. Mr. Stimson's bail was fixed at five hundred dollars that evening, and he gave bail that evening, I think, and the case was adjourned two weeks, I think to the 16th of June.

A. Mr. LOSEY.

Q. What time did this occur? You state that the judge said they had conspired to ruin him, in connection with his other statement. When was this?

A. It was during his harangue to Stimson.

Q. Was that before or after the adjournment?

A. I think it was before the final adjournment that this conversation took place about Stimson.

Q. Was it before, or after the judge went away to hold a term of court?

A. This was before he went away to hold a term of court.

Q. Did you make any objection because of the fact that no complaint or affidavit was on file, on which the warrant was founded?

A. I did not.

Q. You did not?

A. I did not.

Q. Did you take any exception to the court on that suject at all?

A. Not directly.

Q. Well, did you indirectly?

A. No, unless you might infer it from the conversation that the Judge and I had about the matter.

Q. Did you keep a record of the evidence that was taken there at that time?

A. I kept a record of a portion of it.

Q. What became of that record?

A. I kept it. I have it now.

Q. Got it with you?

A. Yes sir.

Q. Have you refreshed your memory as to the statements that were made there, since that time?

A. I have.

Q. How lately have you refreshed your memory?

A. This morning.

Q. You state you made various objections during the progress of that trial, and you were not listened to; do you mean by that that the court overruled your objections?

A. I mean that the judge went right straight ahead with business, without paying any attention to me. The judge went right straight along with the proceedings, and did not pay any attention to the objections of any kind.

Q. Did you say that the court made you no reply?

A. No.

Q. Yo don't say that?

A. I don't say that; he replied at one time.

Q. Didn't the court state to you that the interests of your client would be fully protected, and that he desired to get at the facts?

A. He may have stated that at one time.

Q. You state that when you made your objections, the court paid no attention to your objections?

A. Some of the times he did not pay much attention at all; at one time he said he could not listen to objections, that he was running this.

Q. Did you consider that the rulings of the court prejudiced your client in any manner?

A. I consider that—yes.

Q. Will you tell me in what manner?

A. I considered it a prejudice to him to have the court inquiring in regard to everything that might pertain to the judge in the transactions occurring at that time, as well as other people.

Q. Well, did the result of that first examination, such as you seem to think took place then, show that your client was prejudiced by reason of having answered these questions?

A. No it did not.

Q. Did you, during that examination, express yourself well satisfied with the course of the judge in his conduct of it?

A. Did I express myself well satified with his course during the examination? I did not.

Q. Did you at the close of the examination so express yourself?

A. No sir.

Q. To no one?

A. No sir.

Q. Did Mr. Stimson in your presence?

A. Not to my knowledge.

Q. What was the tone of the court in finally addressing Mr. Stimson; was it not kind?

A. It was not severe, particularly.

Q. Wasn't it kind?

A. It was not very kind.

Q. Was it in the nature of advice?

A. Yes sir.

Q. You so took it at the time, did you?

A. I did—assuming his premises to be correct in regard to these

other characters, it would not be considered a hard statement. [Laughter.] I think this would be a very violent presumption.

Q. You discovered no hostility to Mr. Stimson, did you?

A. No sir. It was somebody else he was after, I thought; he did not appear to be very hostile to Mr. Stimson.

Q. Did you discover *any* hostility towards Mr. Stimson?

A. Yes, I should say he was hostile to Mr. Stimson.

Q. In what manner hostile to Mr. Stimson?

A. Well, he seemed to be angry to think Mr. Stimson would circulate that petition in regard to him.

Q. Didn't he seem to be rather indignant that he should circulate it?

A. Yes, indignant.

Q. There is a difference between indignant and angry, isn't there?

A. Well, I mix the two together; they are pretty near the same thing, in my estimation.

Q. Did the Judge state his reasons for discharging Mr. Stimson at the time he was discharged?

A. Yes, he gave an excuse.

Q. Well, state what reasons he gave.

A. He thought that the evidence wasn't sufficient quite, to hold him, but there was some doubt as to whether or no he circulated that first petition.

Q. You say there had been some evidence introduced on that point?

A. I say Mr. Kinsman had not testified that Mr. Stimson presented that petition to him.

Q. Didn't he testify to that fact?

A. Well, you state just what he testified to, and I will tell you if I recollect it.

Q. Didn't he state that it had been presented to him by Stimson in Crandall & French's office?

A. He stated that the petition had been presented to him in Crandall & French's office, and that he had seen one there in the hands of Mr. Stimson, I think, but I did not understand him to swear clearly that the petition that was presented in court, the largest one, was the one that Stimson had.

Q. Well, did he swear to it in a muddy way, then?

A. It was muddy if he swore to it at all.

Q. But he swore to it, nevertheless, did he?

A. I don't think that he did.

Q. And you won't swear that he didn't swear that the petition Judge Page had in court was the largest one?

A. I wont swear that he swore that the petition Judge Page had in court, the longest one, I won't swear that he swore Stimson handed that to him.

Q. Will you swear what he swore in relation to that matter?

A. No, not the exact words, I can't; I can swear to what my memory of it was, and what I understood of it.

Q. Did not Mr. Stimson admit that he had that first petition in his hand, in his possession at one time?

A. He might have done so; I wouldn't swear that he did or did not.

Q. Didn't he admit that he had it in his possession, and had presented it to other folks to look at?

A. I don't think he did.

Q. Did he swear to the equivalent of that?

A. I don't think he did.
Q. Did he swear to anything on that subject?
A. Yes, he was examined in regard to that?
Q. Well sir, did he admit the fact?
A. He might have admitted that he had it his hands, but I am sure, sure he—
Q. Did he admit that he showed it to others?
A. I don't think he did.
Q. Where did he say he was when he had it in his hands?
A. I cannot state that he said he was any where when he had it in his hands.
Q. You don't know where he did place himself?
A. I wouldn't undertake to state what Mr. Stimson swore to.
Q. How long have you lived in Austin, Mr. Cameron?
A. I have lived there twenty-one years, last fall.
Q. Judge Page has lived there about how long?
A. About twelve.
Q. Judge Page came there twelve years ago, to practice law, did he not?
A. Yes sir.
Q. You were practicing law at that time?
A. Yes sir.
Q. Were you allied to what is known as *the old Austin ring*?

Mr. CLOUGH. I object to that.

The WITNESS. The members of that ring were my friends.

Mr. CLOUGH. Wait a moment, I object to it.

The WITNESS. What was called that ring.

Mr. LOSEY. Well the witness insists on answering the question for you.

Q. Were you hostile to the judge's election?
A. Was I?
Q. Yes.
A. I opposed it.
Q. You opposed it quite vigorously, did'nt you?
A. I did.
Q. Your old friends opposed it, did'nt they?
A. They did.
Q. Well, you have stated that Judge Page has always treated you well in court, fairly and impartially?
A. I have stated, yes.
Q. You have always been so treated, have you not, as a matter of fact?
A. I consider it so.

Q. Well, you have stated so repeatedly, have you not?
A. I have said so frequently; I can't say how often.
. You have sworn to it once or twice, have you not?
A. Yes; I will swear to it again.
Q. You swore to it before the committee of the House?
A. I guess likely I did.

Senator NELSON. Mr. President: I would like to have counsel ask witness this question, (it would save me the trouble of writing it out):

Whether, when Page ran for the office of judge, the witness and the judge belonged to the same political parties at that time?

A. We did not. (Laughter.)

Mr. LOSEY. What party did you belong to?

A. I belonged to the Democratic party. (Laughter.)

Q. Well, were party lines drawn on the Judge question?

A. Well, not very strictly.

Q. A great many Democrats supported Judge Page, did they not?

A. More republicans voted against him.

Q. A great many democrats supported Judge Page, did they not?

A. Not but a few, and those were not acquainted with him. (Laughter.)

Q. A great many republicans supported Mr. Wells, the opposition candidate, didn't they?

A. A good msny did, in Austin. Senator Doran submitted a question in writing.

Q. Why did you oppose Judge Page's election when he was first elected?

A. On several grounds; one reason was, I did not think he was elegible to the office; another reason was, he had raised the devil there in Austin (laughter) ever since he came there, as I understood him. I didn't think he was a fit person to be judge; that's the grounds I opposed him on at the time. I hadn't any personal ill feeling against Page.

Mr. DAVIS. Have you exhausted your grounds of opposition?

A. I can tell you the particulars if you want to know them.

Mr. DAVIS. I want to ask you if you have exhausted your grounds of opposition.

A. I am satisfied.

Mr. DAVIS. We are.

RE-DIRECT EXAMINATION.

Mr. CLOUGH: Q. I will call your attention to the examination of Mr. Harwood. Do you remember what Mr. Harwood was required to testify to?

A. He was interrogated in regard to that petition, what he knew about it, who wrote it, and so on and so fourth; I can't state the exact question that was put to him.

Q. Any question put to Harwood about Stimson being connected with it in any way?

A. There might have been, I would not state whether there was or not.

Q. Now what proportion of that examination as conducted by Judge Page was addressed to the question as to whether Stimson had circulated that petition, and what proportion was addressed to outside matters?

A. About one-fifth of it was pertinent to the issue, perhaps, the other four-fifths of it related to irrelevant matter. I should say so.

RE-CROSS-EXAMINATION.

Mr. LOSEY. What rule in algebra or arithmetic did you figure it up by.

A. I did not figure it up by either rule; I only guessed at it from the best of my judgment.

Q. Your best judgment upon what was pertinent and impertinent in that examination?

A. Yes sir, according to my idea.

Q. You can't tell all that occurred there?

A. No.

Q. And you at that time formed a conclusion, as to what proportion was proper, that had been produced, and what proportion was improper?

A. I formed my conclusion on the questions that were asked.

Q. And you put your proportion at one-fifth, as against four-fifths?

A. I say I judged from the terms of the questions, and the apparent object of the investigation.

Q. Did Harwood swear on that examination, that he had given to Stimson one of the copies of this petition?

A. I won't state whether he did, or not.

Q. Didn't he swear that he had given it to Stimson, in the post office?

A. He might have stated so.

Q. You were of the opinion then, that Judge Page had raised the devil down there in Austin?

A. Yes.

Q. With your ring and your friends?

A. With good, respectable, honest men.

Q. What I ask you is, with your ring and with your friends?

A. There wasn't any ring there, at the time he came in there, as I understand.

Q. Answer my question, with your ring, and your friends?

A. No sir; we have no ring.

Q. Did you have a lot of friends that work together in certain matters?

A. They were politically opposed to me, but as neighbors and citizens, they were my friends.

Q. Some charges had been made against county officers, had there not?

A. Some had been made; some were being made; some were made.

Q. They were being made at that time, were they not?

A. When he came there, there was charges made.

Q. These gentlemen, were they friends?

A. Yes sir.

Q. And that is what you was finding fault with, wasn't it?

A. No sir; it was because they were abused, shamefully, without cause.

Q. The county auditor was removed, wasn't he?

A. No, he resigned.

Q. Wasn't he removed on charges preferred to the Governor?

A. He resigned, I think.

Q. He resigned after the charges were made?

A. I think so.

Q. He was one of your particular friends, wasn't he?

A. He was a good fellow—he drank too much whisky.

Q. Well, one of the county commissioners resigned after Judge Page came there, under the same circumstances, didn't he?

Mr. CLOUGH. I object to that.

The witness. I don't know whether he resigned, or whether——

Mr. CLOUGH. Mr. Cameron, you wait a moment.

Mr. LOSEY. You drew out the evidence yourself.

Mr. CLOUGH. I haven't said anything about any ring at Austin. I said nothing, whatever, about his feelings toward Judge Page.

Mr. LOSEY. It was shown after we left the witness to you.

Mr. CAMPBELL. It was drawn out by the Senator, I think.

Mr. CLOUGH. Well, this is not proper cross-examination.

Mr. LOSEY. Well, we will let it go, then.

RE-DIRECT EXAMINATION.

Mr. CLOUGH. We now offer in evidence, the balance of this record in this proceeding; with that our evidence upon the 8th and 9th article in chief is closed.

Mr. LOSEY. We would like to have this order spread upon the record.

Mr. CLOUGH. If there is no objection, the whole record will be placed in evidence; no objection being urged on behalf of the respondent, the entire record is considered in evidence.

EXHIBIT "H."

State of Minnesota, County of Mower—ss.—District Court, Tenth Judicial District.

To Wm. Chapman, Lafayette French, W. H. Crandall, C. C. Kinsman, A. A. Harwood, R. I. Smith, E. C. Dorr, J Schwan, A. W. Kimball, George E. Wilbur, J B. Yates and B. W. Lovell, greeting:

In the name of the State of Minnesota: You are hereby commanded, that laying aside all and singular your business and excuses, you be and appear before the judge of the District Court, for the tenth judicial district, and county of Mower, at his chambers, at the city of Austin in said county, forthwith, then and there to give evidence in a cause to be tried between the State of Minnesota, plaintiff, and David H. Stimson, defendant, on the part of the State. Hereof fail not, on pain of the penalty that will fall thereon.

Witness the Honorable SHERMAN PAGE, judge of the District Court aforesaid, at Austin, Mower county, Minnesota, this 1st day of June, A. D. 1877.

[SEAL.] F. A. ELDER,
Clerk.

State of Minnesota, County of Mower—ss.

The State of Minnesota, to the Sheriff of said County:

Whereas, information has been given to the undersigned, judge of the tenth judicial district of the State of Minnesota, that one David Stimpson, a deputy sheriff of said county, recently, and more particularly during the months of March, April and May, A. D. 1877, while such deputy, and while engaged in the discharge of his official duties, and while a general term of a district court was in session in said county, and while he was in attendance at said court as such officer, and at divers other times and places during said months, did write, print, circulate and publish of and concerning the judge of said court concerning his official acts, certain false and malicious statements, to the effect and in substance that the said judge was, and is corrupt in his said office and has, by his misconduct, disgraced the judiciary of the State.

Now, therefore, you are hereby commanded forthwith to apprehend the said Stimpson and bring him before me at my chambers in the city of Austin, in said county, to show cause, if any ye have, why he should not be punished for contempt, and why he should not be held to answer for his said offence, and you will detain the said Stimpson in custody until the time of hearing.

Given under my hand this 31st day of May, A. D. 1877.

SHERMAN PAGE,
Judge District Court, 10th Dist., Minn.

State of Minnesota, County of Mower.—ss

I hereby certify that I did arrest the within named defendant, David Stimpson, and have him in custody before the court.

R. O. HALL, Sheriff.

June 1st, 1877.

State of Minnesota, County of Mower.—ss.

PROCEEDINGS FOR CONTEMPT AGAINST DAVID STIMSON DEPUTY SHERIFF OF MOWER COUNTY.

The defendant in this proceeding is charged with contempt of court. The alleged contempt consists of the publication of a libel against the judge of the tenth judicial district, while court was in session at general term in said county, and while said Stimson was in attendance on court as an officer, he being deputy sheriff. The evidence discloses the fact that about the time stated, a malicious libel against said judge, was published, and that said Stimson was one of a number of persons who were instrumental in starting it, and at one time had it in his possession. It further appears that said libel was in the form of a petition to said judge to resign his office, and that very soon after it was put in circulation, another of a milder form and not libelous on its face, was substituted for the first, and that Stimson circulated it.

The evidence does not satisfactorily show that the libel was published by Stimson during said term of court, and there is some doubt as to the fact of his being engaged in its publication He admits that he had it in his possession, but denies that he circulated or published it, and disavows any intention to engage in an unlawful act. It appears that defendant is not now a deputy sheriff. It appears also from the testimony, that Stimson was induced to take part in the transaction by others, who were interested in bringing said judge into disrepute and contempt, and that he was not aware at the time, of the criminal nature of these acts.

It is therefore ordered, that these proceedings be and the same are hereby dismissed, and the defendant discharged.

Dated July 2nd, 1877.

SHERMAN PAGE,
Judge District Court.

Filed August 13th, 1877.

F. A. ELDER,
Clerk.

THE STATE
vs.
STIMPSON.

Saturday, June 30th, 1877, eleven o'clock A. M. case called; defendant present.

Defendant on further examination testified as follows:

I was led into the circulation of the paper by the the influence of others; there was a general understanding that the petition should be circulated; I don't recollect talking with any particular person; think I had talked with Harwood and others about circulating the petition. I should not have got up a petition to ask you to resign.

Lafayette French, Howard, Geo. E. Wilber, Schwan, Crandall.

The first talk I had was at one of the meetings in Crandall & French's office; French was present at the meeting, and think he talked; I understood that all were to circulate. It was talked often: that the attorneys did not want to circulate it; they being called up in court at term and being required to pay over money, had

something to do with it. Had never had any personal acquaintance with me before that. I did not know much about the proper course to pursue. I had no knowledge that any of the statements in the libel are true. I had one of the first petitions but think I never asked anyone to sign it. I have had talk with Harwood about the testimony, but not with French.

French said he remembered being there at one of the meetings.

The case adjourned to Monday the 2d day of July, A. D. 1877.

Know all men by these presents, that we, David H. Stimson as principal, and Herman Gunz, J. Schwan and Joseph Reinsmith, of said county, as sureties, are held and firmly bound unto the State of Minnesota in the penal sum of five hundred dollars, lawful money of the United States, which sum well and truly to be paid, we bind ourselves, our and each of our heirs, executors or administrators, jointly and severally, firmly by these presents, signed, sealed and delivered this second day of June, 1877.

The condition of the above obligation is such that, whereas, the above bounden David H. Stimson has been arrested and brought before the Hon Sherman Page, judge of the District Court, in and for the tenth judicial district of the State of Minnesota, charged with a criminal contempt of said court, and whereas, the examination of said David H. Stimson has been adjourned from the 2nd day of June, 1877, to the 16th day of June, 1877, at five o'clock P. M. of said day. Now, therefore, if the said David H. Stimson shall appear before the said judge of the said court, on said aforesaid day, and abide the order of the court therein, then this obligation to be null and void, otherwise of full force and effect.

D. H. STIMSON. [Seal.]
HERMAN GUNZ. [Seal.]
J. SCHWAN. [Seal.]
JOSEPH REINSMITH. [Seal.]

In presence of G. M. Cameron, and J. Cronan.

State of Minnesota, County of Mower,—ss.

Joseph Schwan, Herman Gunz, and Joseph Reinsmith, being each duly sworn, says, each for himself, that he is a resident freeholder of said county, and worth the sum of five hundred dollars over and above all debts and liabilities, and exclusive of all exemptions.

J. SCHWAN,
HERMAN GUNZ,
JOSEPH REINSEITH.

Subscribed and sworn to before me, this 2nd day of June, 1877.

G. M. CAMERON,
[SEAL.] Notary Public.

State of Minnesota, County of Mower—ss.

On this 2nd day of June, 1877, personally came before me, a notary public in and for said county, David H. Stimson, Joseph Schwan, Herman Gunz, and Joseph Reinsmith, to me well known, and acknowledged the foregoing bond, by them signed, to be their free act and deed.

G. M. CAMERON,
[SEAL.] Notary Public.

Endorsed: I hereby approve the within bond and the sureties thereon.
SHERMAN PAGE.

Filed August 13th, 1877. F. A. ELDER, Clerk.

LAFAYETTE FRENCH RECALLED,

On behalf of the prosecution, testified:

Mr Manager Mead: We now offer this testimony with the specifications under the tenth article.

Q. Mr. French, you were county attorney, I believe you stated, of the county of Mower, in the year 1875?

A. Yes sir.

Q. Were there any criminal cases upon the calendar for trial at the March term of court of that year?

A. There were.

Q. Who was the attorney of record upon the calendar upon the part of the State?

A. I don't know what the record shows; I appeared in all the criminal cases that were tried at that term.

Q. State whether the criminal or civil cases were tried first in order at that term of court, if you know.

A. Well, first, some of the civil cases were tried, then one or two of the criminal cases, and then some civil cases, and then some criminal cases.

Q. Do you remember of being in the court room while a civil case was pending with reference to some town or county road, and a jury impanneled?

A. I recollect of a case of Sargeant against the town of Sargeant, an appeal from an order vacating a road.

Q. State whether or not a jury was impanneled in that case?

A. A jury was impanneled in that case.

Q. What transpired in the early stages of that case while you were in the court room, with reference to your leaving the court room by direction of the judge?

A. Well, while that case was being tried—

Mr. LOSEY. What year was this?

Mr. Manager MEAD. 1875.

[The witness.] March term, 1875. While that cause was being tried I was talking with a witness up in front near where the judge sat; I was whispering to him, and expect I whispered pretty loud; and the sheriff was in the back part of the court room. Judge Page says: "Mr. Sheriff, you tell Mr. French if he wants to talk to that witness, to take him outdoors," and I took the witness and went outdoors.

Mr. LOSEY. Under what article do you introduce this evidence?

Mr. Manager MEAD. Under specification 2, article 10.

Mr. LOSEY. We ask that the portion of the evidence upon the records under the last two or three questions be stricken out as not responsive to the article. The article is this:

"At a general term of the district court, for the said county of Mower, held in March, A. D. 1875, Lafayette French, then being and then acting as county attorney of the said county of Mower and there being pending in said court and on the calendar thereof several criminal cases, wherein the said county attorney was attorney for the prosecution, as he, the respondent, well knew, the said county attorney being temporarily absent from the court room, as the respondent well knew, for the purpose of insulting and humiliating the said county attorney, the respondent suddenly and without previous notice, took up the criminal calendar and commenced the call of the criminal cases thereon, without in any manner notifying the said county attorney, and appointed another member of the bar, to-wit, J. M. Greenman, as attorney for the prosecution of the criminal cases or cases so called for trial."

Now the charge reduces itself to just simply this; that the judge witout notice to the county attorney, took up the calendar, and appointed Greenman to go on with the criminal case in the absence of the

county attorney, but what the evidence already given has to do with the case, I cannot see; the witness states that there was a conversation; he was talking with the witness in court up near where the judge was, and the judge addressed a remark to the sheriff in the rear of the court It don't have anything more to do with this article than any other foreign matter.

Mr. Manager MEAD. I don't like to take the time of the court, but I suppose, Mr. President, that it is incumbent on the part of the prosecution under this specification, to prove that Judge Page knew that the county attorney was temporarily absent, we expect to show that he called to the sheriff in the rear of the court, to direct the county attorney sitting right in front of the judge, to take the witness out of the court room if he wanted to talk to him, and as soon as the county attorney was out of the door, and had gone out by the arbitrary direction of the judge, and within 15 minutes the judge called the criminal cases, that Mr. French's absence was the direct consequence of the command of the judge, and that he knew that it was temporary, and that he took this method to get the county attorney out of the court room as we think, for the purpose alleged in this article, that the judge might humilitate and disgrace him in the presence of the attendants of court, under a pretence that Mr. French was not attending to his official duties.

The PRESIDENT. I think the witness can answer the question with that view.

Mr. Manager MEAD. I will put another question:

Q. At the time Judge Page gave Sheriff Hall that direction, what was your position and the sheriff's with respect to the judge in the court room?

A. Well, it would be the same as though Judge Page stood there where the stenographer is, and I occupied a seat there by the counsel's desk, probably twelve feet from me, and the crowd in the rear of the court room, and Sheriff Hall back by the door.

Q. State whether there were a number of persons in the court room?

A. O! yes, there were a number in the court room.

Q. What did you do on the direction being given to the sheriff by the Judge?

Why, I took the witness and went out.

Q. How long did you remain out, and where did you go?

A. I went down in the hall, out in the front part of the court house, down below; set there on the step talking. I was out probably fifteen or twenty minutes, and possibly half an hour; I wouldn't be positive as to the exact time. I paid no attention to the time, but it was comparatively a short time. Some one came to the hall—some of my friends—and says, "Judge Page is calling the criminal calendar, and you are not there, and he is making a fuss about it." And I went up in the court room and Mr. Greenman was acting as county attorney, and had empannelled the jury; the jury had been called.

As soon as Mr. Greenman saw me coming in the court room he motioned for me to step forward; I did so and he told me to take charge of the case, and I told him to continue; he said, "no, he wouldn't do it." Judge Page said to Mr. Greenman that he could act in that case and receive his pay. Mr. Greenman told me that he didn't care to do so; that he wasn't familiar with the case at all, and that I was there and could take

charge of it. Judge Page says, "Mr. French, you ought to be here;" said he, "If you are absent again I shall consider it a contempt of court." Well I apologised to him, and said he told me to go out, and I went out and talked with the witness, and I did so; well, he said I ought to be there; and I went on with the case. That is about all there was of it.

Q. Now will you state—

[The witness interrupting.]

And I stated to the judge that when I went out, that civil case was on trial, and I had no idea it would be disposed of so quick.

Q. State when this occurred, in respect to the personal difficulty you had with Judge Page, or personal interview before the county commissioners over that Riley bill which you testified to formally; was it before or after that?

A. It was after that.

Q. How long after?

A. Well, I should say two or three days

Q. State if you know whether or not the civil case on trial at the time you left the court room was suddenly disposed of, or whether it was fully tried or not?

A. I don't know only what they told me.

Q. State whether or not you left the court house building on that occasion?

A. No, I was down in the hall.

Q. State whether or not if your name had been called at the front, you could, or could not have easily heard it?

Mr. LOSEY. That we object to.

The PRESIDENT. The chair thinks it is not very material and hardly competent.

Q. State how far you were from the front door of the court room.

A. Oh, I can't give the feet. I can't describe it to the Senate.

Q. About how far?

A. I have no idea about feet. I can tell them just where I was, and just about where the court house was situated, and then they can judge. I was down stairs.

Mr. Manager MEAD. That is all on this specification, we desire to question this witness.

CROSS-EXAMINATION.

Mr. LOSEY. You were talking quite loud with the witness, were you?

A. I was whispering; I talk quite loud ordinarily, and I presume I whispered quite loud.

Q. The witness was whispering quite loud to you?

A. Yes sir.

Q. You stepped down stairs?

A. Yes sir, walked out of the court room into the hall.

Q. What was the condition of the case at the time you went out. Was the Judge charging the jury?

A. No sir; I think a motion was being made in the case, and was being argued, some question of evidence.

Q. A motion for non-suit?

A. No, I think it was a question as to the admissibility of evidence.

Q. You stated in your examination the other day, that you wrote

out the petition to the House of Representatives for respondent's impeachment?

A. I don't think I so stated, Mr. Losey.

Q. Was it Mr. Crandall who so stated?

A. It was Mr. Crandall. I didn't state any such thing.

Q. Well, did you copy it?

A. No sir.

Q. Was this article that is now under consideration, one of the articles mentioned in that petition before the House?

A. No sir.

Q. Wasn't this matter under consideration by the House committee?

A. No sir.

Q. Not at all?

A. No sir.

Q. Why didn't you make it one of the causes of complaint?

A. Because I did not feel disposed to.

Q. You didn't think it was a very serious matter?

A. Well, I did not.

Q. Now answer my question.

A. No sir, I felt humiliated, but——

Q. Answer my question with a yes or no.

A. Why, I didn't think it was a very grave matter, no; but my reason for not doing so——

Q. Wait, I don't want you to answer that.

A. The reason was I didn't want to bring in my general matters at all.

Q. Will you stop when I tell you?

A. Yes.

Q. This motion was disposed of wasn't it?

A. What motion?

Q. That was being made when you went out?

A. No sir, it had not been disposed of.

Q. It had been when you came back?

A. When I came back that case was disposed of some way; the jury was discharged.

Q. Had the examination of witnesses yet commenced?

A. In the criminal case?

Q. Yes?

A. No sir, a jury was impanneled.

Q. Had it been finally impanneled?

A. The jury? yes sir.

Q. All challenges that could be made had been made, had they not?

A. I suppose so.

Q. Do you remember what the nature of the case was?

A. I do, sir.

Q. What was it?

A. Well sir, it was for stealing a pocketbook containing $35.00 in money.

Q. It was a case of larceny, then?

A. Yes sir, it was lost and this man claimed he found it.

Q. Well, did you get a verdict in that case finally?

A. I did.

Q. Didn't the Judge tell you to take charge of the case when you came back?

A. I don't think he did.
Q. Will you swear he did not?
A. I would not be positive about that, but I am pretty sure he did not.
Q. You are pretty sure he didn't?
A. Yes sir.
Q. But you can't be positive about it?
A. I wouldn't swear positively, because he may have said it.
Q. He called your attention to the fact that you must remain on attendance in court?
A. He called my attention, as I have stated.
Q. Hadn't you frequently heard Judge Page and other judges rebuke people for whispering and talking in open court?
A. Yes sir, I have.
Q. And quite as severe a rebuke as you received?
A. Well, not in that way.
Q. Haven't you often heard attorneys rebuked?
A. Yes, I have.
Q. For whispering and talking in court?
A. Yes, I have, and I have been, but not in that way.
Q. He spoke to the sheriff and requested him to preserve order?
A. Yes sir; he told the sheriff to tell me. If *he* had told me, I should not have thought anything about it.

R. O. HALL, RECALLED

On the part of the prosecution, testified:
Mr. Manager MEAD:
Q. State whether you remember the circumstance referred to by the last witness, Mr. French?
A. I do.
Q. State whether or not Judge Page gave you any direction in regard to Mr. French?
A. He says, "Mr. Sheriff, you tell Mr French, if he wants to talk with those witnesses, to go out of court; to go out of the court room."
Q. State whether or not Mr. French went out.
A. He did.
Q. What occurred after Mr. French left the court room with respect to the calling of the criminal calendar?
A. The call was made and he was absent, and I says, "I will go and call him."
Q. To whom did you say that?
A. I addressed myself to the court, Judge Page, he says, "no," says he, "Mr Greenman you take charge of this case."
Q. How long was it before Mr. French returned to the court room?
A. I couldn't say positively; not long.
Q. Well, about how long?
A. I should say inside of half an hour.
Q. What occurred then in respect to Mr. French taking charge of the case or Mr. Greenman continuing?
A. Greenman offered to vacate and let Mr. French take the case, and Judge Page told him "no," that he should remain.
Q. Who should remain?
A. Mr. Greenman and that he should have his pay for it.
Q. What next was said by Judge Page?

A. Well, he talked to Mr French that he should be there.

Q. State what he said, if you can.

A. I don't remember all the conversation he addressed himself—that it was his business to be there.

Q. State whether or not Judge Page said anything regarding his absence as a contempt of court?

A. Well, I think he did; that if he absented himself again he should consider it.

Q. Consider it what?

A. Consider it contempt.

Q. I wish to call your attention to specification 4 under charge ten, Mr. Hall; state whether a venire was issued at the January term, 1876, an adjourned term of court?

A. There was.

Q. State how far the persons whose names are on that venire live from the city of Austin, if you know.

A. I think the furthest was 15 miles in a straight line.

Q. State what occurred with reference to the return of that venire between you and Judge Page.

A. He asked the clerk if that venire had been reurned; he told him it had not been, and he says to me, "I want that venire returned at a certain time;" (that is this evening,) and in the evening he asked the same question; and the same answer was given, that it had not been returned. Says he, "At the opening of court, if that venire is not here, I will investigate that matter."

Q. At what time of day had that venire been issued, or placed in the officer's hands for service?

A. In the afternoon of that same day.

Q. What occurred at the next opening of court?

A. He asked if that *venire* had been returned. I answered him it had not, and that I would like to explain to him; said he, "not a word," or " I don't want to hear a word."

Q. State how many miles of travel was necessary in order to serve that venire on the persons therein named.

A. I don't think it could have been served in traveling less than sixty miles.

Q. State whether you remember one Richard Huntley being indicted for crime in Mower county?

A. Yes sir.

Q. State what occurred in reference to his forfeiting his bail and disappearance from the county, and your efforts to recapture him, and what occurred between you and Judge Page?

A. He had been admitted to bail, and at the term of court he did not appear, and his bail had been forfeited and sued; I had served the summons on the bail and he came down, met me on the corner of the street.

Q. Who met you?

A. Judge Page. He says to me, "Are you after that man Huntley?" I said not particularly; I was down and sued the bail; served summons on his bail—and that I had been down to Leroy; and I notified my deputy there, that was some thirty miles away, that if he came into the State to capture him." He says, "None of your beating around the bush! You get that man now—you get him or I will punish you."

Q. Where did this conversation take place?

A. On the corner of the street, by Solomon Morgan's store.

Q. State when that was, what year?

A. I don't know as I can state exactly. The trial was running along sometime during a year and a half.

Q. What year was it, is the question I asked?

A. 1876, I think.

Q State what Judge Page's manner was, at the time he addressed you in regard to the venire and the arrest of Huntly?

A. It was in an angry tone, and angry manner, I thought.

Q. How long did you say you had been sheriff of that county?

A. Since January, 1875.

Q. Who had selected the court deputies during that time?

Mr. DAVIS. Is that under the last?

Mr. Manager MEAD. Certainly.

Mr. DAVIS. We object, may it please the court. I call the attention of the Senators to the 22d page of Thursday's proceedings, where that specification occurs, "the respondent has habitually refused to permit the sheriff of said county, to make his own selection of persons to be appointed, and to act as special deputy sheriff of said county, for attendance upon the terms of said District court, of said county. But he, the said Sherman Page, as such judge, has habitually insisted upon himself designating and nominating to be appointed, such deputies."

I do not wish to repeat any arguments which have to be adduced upon the propriety or legality of this form of accusation. Through the kindness of the Senate, our views upon that topic are already fully before it. To what has already been said upon the subject, I can only call the attention of the Senate to the argument of Mr. Webster, which was read this morning, in relation to the charges in the Prescott case, which seem to me to be absolutely conclusive and overwhelming, upon that question. It brings us back to the same view which inheres in the tenth article itself, that the respondent cannot be accused or tried for a habit or a customary course of conduct. If he has ever insisted on nominating a deputy, or insisted on refusing to allow the sheriff to select his own court deputy, surely the instance is well known, that we could have been advised that it should have been specifically stated what deputy, at what term, on what circumstances, and on what occasion. Now, I understand, although perhaps my views are not clear upon that point, that the Senate has substantially held that the tenth article, in its original deformity, was not susceptible of proof, and that it allowed the managers to amend, by putting in these specifications, and they seek to prove these specifications by a charge which is as vicious as the parent from whom it sprung.

Mr. Manager MEAD. We do not desire to make any argument on that specification; we will say, however, to the court that our proof will be very limited upon specification seven; I believe that it will go no further than two or three instances, wherein Judge Page has claimed and exercised the right, of not only determining the number, but the persons who should be court deputies—we submit the question to the court.

The PRESIDENT. The chair thinks the court, this morning, took a different view from that which was enunciated by Mr. Webster, and in this matter will hold that question may be received.

Mr. DAVIS. Mr. President, with due respect for the opinion of this court's presiding officer, I will state that we desire the sense of the Senate to be taken upon this question; I ask the sense of the Senate to be taken on the validity of article seven, page 22, of Thursday's proceedings, and the admissibility of any testimony under it.

The PRESIDENT. The question will be whether this evidence is competent under that specification.

Mr. DAVIS. Whether any evidence is competent under it.

The PRESIDENT. Whether any evidence? Yes, sir.

Mr. DAVIS. That is my point.

Mr. Manager CAMPBELL. I wish to say to the Senate it is just this: This charge is that the judge assumed to override this officer; he assumed not only to act as the judge, but to take upon himself the duty of the sheriff. Now, the Senate will recollect, when this matter was up first, that the law was read to them as to the number of court deputies, at each term, and it must be designated on or before the first day of the term, and the sheriff shall appoint the deputies. Now, our position and our allegation is, that he refused to allow the sheriff to designate the deputies, but dictated to the sheriff that he must appoint this man and that man, instead of such deputies as he, the sheriff, saw fit to select himself

Now, I think our specification is sufficiently definite to allow proof under it.

Mr. DAVIS. Mr. President, if my learned friend knew when this specification was drafted, what acts he intended to prove, to bear it out, surely he could have stated them. Now, Judge Campbell's statement of what this allegation is and what it is in fact differs. My learned friend, states what he proposes to prove. I claim that this specification is susceptible of no proof whatever, because of an inherent and incurable vice, in that it charges that the respondent had habitually refused to permit the sheriff of Mower county to make his own appointments. It is to the indefinitness of the charge in article ten that we take exception. If we have not greatly misconceived the views of the Senate upon that point it has already been ruled upon as insufficient, and now to permit them to wind up with a paraphrase of article ten, only proves that the Senate (I was about to say) committed a blunder in holding article ten insufficient, in the opinion of my learned friends, the managers.

The PRESIDENT. The clerk will call the roll upon the admissibility of the question upon the point raised.

The question being taken whether the question be admitted in evidence,

And the roll being called, there were yeas 20, and nays 13 as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Bailey, Clough, Deuel, Donnelly, Drew, Edwards, Finseth, Goodrich, Henry, Hersey, Lienau, McHench, Morton, Nelson, Remore, Shaleen, Smith and Swanstrom.

Those who voted in the negative were—

Messrs. Clement, Edgerton, Gilfillan C. D., Houlton Langdon, Macdonald, McClure, McNelly, Mealey, Pillsbury, Rice, Waite and Wheat.

So the question was admitted.

The Witness. To answer that question I must say, Judge Page and myself together, have selected them.

Q. What do you mean, that you jointly would select them, or a portion of the time he has selected them, and a portion of the time you, ind ependent of each other?

A. Whenever I have spoken to him about deputies, he would say: who are you going to have? and if I mentioned a person that he approved of, it was all right, if I mentioned one that he did not approve of, he said he would not have him; and he suggested sometimes that such a one would make a good deputy, and I invariably have taken the man that he suggested.

Q. Invariably taken the man he suggested?

A. No, I will take that back; at one term of court I refused to have him the second term, after having had him one term.

CROSS EXAMINATION.

Mr. DAVIS. Q. Mr. Hall, when Mr. French was having that conversation in the court room, was there a case pending before the judge and jury?

A. I think there was.

Q. Were counsel on their feet at the time, arguing some legal proposition and motion in the case?

A. I don't remember as to that.

Q. Had the case been summed up, or was it in course of trial?

A. I can't tell what case it was on.

Q. I didn't ask what case it was, but what the status of the case was?

A. I don't remember that.

Q. Was the judge paying attention to what was transpiring?

A. I don't know whether he was or not.

Q. How far was Mr. French from the bench, when he was holding this conversation with these witnesses?

A. Oh! I should say, 10 or 12 feet.

Q. How far were you from the bench?

A. I was considerable farther.

Q. About how far?

A. Oh! I might have been twenty or thirty feet.

Q. Were you then in charge of the court room—I mean, were you the officer on duty?

A. Yes sir: I was in the court room at the time.

Q. How long did you remain on duty as the officer in charge,on that occasion; until after Mr. French came back?

A. Yes sir.

Q. Did you hear Mr. French in conversation with these witnesses?

A. I don't think I did, till he called my attention to it.

Q. Did you see him engaged in conversation or intercourse with them?

A. When he called my attention.

Q. Not before?

A. I don't think I did.

Q. You understood that the whispering or talking, by Mr. French, was interrupting the proceedings then being had before the court, did you not?

A. I understood so by—

Q. Did Mr. French go out?
A. I think he did.
Q. How many people went out with him?
A. I don't know.
Q. How many of those witnesses?
A. I think the man he was conversing with.
Q. Was he conversing with more than one man, or several?
A. I was back in the room some ways from him, and I don't remember whether he was conversing with more than one.
Q After Mr. French went out, the trial, which Judge Page was then engaged upon, went on, did it?
A. I think it did.
Q. The witnesses were introduced and sworn?
A. I don't remember what transpired in that interval.
Q. Did counsel argue before the court?
A. I don't remember.
Q. What case was this?
A. I don't know what case it was.
Q. Was it submitted to the jury?
A. I don't remember.
Q. You don't know how it was finally disposed of?
A. No sir, I don't; I don't know what case it was.
Q. Do you recollect whether the jury retired?
A. No sir, I did not.
Q. Did you have a deputy in attendance, also?
A. Mr. Allen, yes sir
Q. Did he take the jury out?
A. I don't think he did, still he might.
Q. I am trying to get at the length of time elapsed, from the time you notified Mr. French he must go out doors, to the time the criminal case was called?
A. Well, I am not positive about the time; it was some little time.
Q. Was it a half an hour?
A. Well, I think it was, perhaps.
Q. Then I understand you to say that Mr. French went out of the court room with the witness and a half hour elapsed; he did not come back and the criminal case was called?
A. Yes, that, perhaps, is correct.
Q. Now, Mr. Hall, when the criminal cases came up, did you go after Mr. French?
A. No sir.
Q. And when he came back Mr. Greenman had proceeded to impannel the jury?
A. Well, he had commenced in the case. I don't know how far he had got.
Q. Did Mr. French sum up that case?
(No answer.)
Q. Didn't he go right in and take hold of it and go on?
A. I think so.
Q? Examine the witnesses?
A. I think so.
Q. Sum up the case?
A. I think so.
Q. Got his verdict?

A. I don't know about that. I think he went to work.
Q. And that is about all it amounts to, isn't it; you and I have got it about right, haven't we?
A. Yes, that is——
Q. Is there anything you want to state or qualify, or add, in regard to this, that has been brought out, in regard to that charge?
A. That is all as far as——
Q. Now, Mr. Hall that is a small court room, isn't it?
A. It is small.
Q. It is necessary to keep pretty good order when there is a good many people in there?
A. Yes sir.
Q. In regard to this venire that was ordered in the month of January, 1876; was that a special venire?
A. Yes sir.
A. Yes sir.
Q. For the trial of what case?
A. The Jaynes' case.
Q. A case of great importance, was it not?
A. Yes sir.
Q. Was that *venire* ordered because the regular *venire* had been exhausted?
A. There was some four venires issued, and I take it there had been one or more exhausted.
Q. I think that the Jaynes' case had been called. Was this at the special term that was held for the trial of the Jaynes case?
A. This was at the adjourned term.
Q. I understand that the Jaynes case had been called. Some jurors had been put in the box?
A. Yes sir.
Q. How many had been put in the box?
A. I dont think a great many; may be half a dozen.
Q. The witnesses for the prosecution and defense, and attorneys were all in attendance?
A. I think they were.
Q. And the court was waiting to secure an impartial jury for the trial of that case?
A. They was getting up a jury for that case.
Q. And the Jaynes case was the only business which was before that adjourned term?
A. Yes sir.
Q. Did Judge Page state to you how many special jurymen it would be necessary to summon?
[No answer.]
Q. What were the number of persons that he ordered the special venire to issue for?
A. Oh, I think it was issued for six each time.
Q. How many times?
A. O many times.
Q. Was this the last time?
A. I am not certain; I think not.
Q. Was it the second time?
A. I think it was.

Q. Now, Mr. Hall, who nominated the jury, and put their names into that special venire?

A. I did.

Q. You knew the urgency to get that venire back in short order, did you not?

A. I did, sir.

Q. What was the most remote juryman whose name you put into that venire?

A. I think some fifteen miles.

Q. On the railroad did he live, or off from it?

A. He lived off the railroad.

Q. How many of these fifteen-mile jurors did you put into that venire?

A. In that venire, all of them ranged from six to fifteen miles, perhaps.

Q. Off the railroad?

A. Well, they crossed the railroad. I had to go with the team.

Q. What was the aggregate amount of mileage, should you think, for those twenty-four jurors?

A. Well, I should think we must have traveled some sixty miles to get around.

Q. To get the twenty-four?

A. Yes sir.

Q. So it results that you put in the names of the jurors living at those distances?

A. Yes sir.

Q. How long after that special venire had been issued, was it that the court asked you as to the prospects for its return?

A. The same afternoon.

Q. When the special venire had been issued, did the court adjourn or take a recess?

A. I think it perhaps took a recess.

Q. Was it issued in the forenoon?

A. No, I think it was in the afternoon.

Q. For how long a time did the court take a recess?

A. I think the court proceeded with that case, while this venire was out.

Q. Well but the regular venire had run out, had'nt it?

A. Yes sir.

Q. This Jaynes case was the only case on hand now, did'nt the court take a recess immediately after ordering a special venire?

A. I think not, because there were four venires issued, one he says to me, "Why you can get them right around here," I issued one for the town of Austin and I think we only got one man on that venire; then of course I had to go out, to go out, and keep going out.

Q. Now you said a few moments ago that this was the second venire.

A. Well I am not positive which one it was, it might have been the second.

Q. Now I want to know on the occasion of the issuing of the second venire, how long the court took a recess to wait for you to fulfil your duty in that respect?

A. I don't think the court waited for that venire.

Q. That second venire?

A. The venire I am talking about.

Q. Well, what in Heaven's name did it find to do?

A. Well, we filled up with men that were in the court room, that panel was full before the venire was returned.

Q. If you could fill up so easily with men around the court room, why did'nt it occur to you to put in those men, and save the county the amount of mileage?

A. I put in the men that had been summoned on this very same venire; they were coming in all the time; they were summoned forthwith, and they were coming in, and they were placed in the box.

Q. Had there been some challenging done?

A. Yes sir, a good deal.

Q. If they came in and filled up the jury so readily, what was the necessity of going from six to fifteen miles out of town to get these other twenty-four jurors?

A. Let me explain and I will answer the question.

Q. Well, never mind, I don't care anything about it; if you filled up that jury so lively, what occasion had the court to find fault with you for not getting that useless venire returned?

A. I don't think he had any.

Q. Was the jury full, that he found fault with it?

A. No sir, it wasn't full.

Q. How many were lacking when he found fault with you?

A. I don't remember.

Q. Well, how many do you think?

A. Oh well, there might have been four or five.

Q. Well, that brings us back to where we were before; what was the nearest juryman on that special venire?

A. One mile; less than a mile, we got one in the town.

Q. Anybody, besides that one out of town, on that second venire?

A. You are confining me to that second venire—to that second one?

Q. I mean the one you have stated you were found fault with about; did you get more than one man out of the town of Austin on that venire?

A. I did not get any man out of the town of Austin, on that venire.

Q. What was the nearest man in the town of Austin that you put on the venire?

A. I think the nearest man would be six miles. And from that it would range to fifteen.

Q. Was the jury filled up out of that *venire* eventually?

A. Not entirely.

Q. Now I want to know what time that court adjourned after that venire in question was ordered?

A. It adjourned until evening, and from evening until morning.

Q. Was it in the evening that he found fault with you in not having that venire returned?

A. He found fault then, and found fault in the morning.

Q. Did you state to him your excuse for not having it returned earlier?

A. No sir; I wanted to but he wouldn't hear me. I wanted to tell him my excuse, but he didn't want to hear it.

Q. What excuse did you want to give him?

A. I wanted to tell him it was impossible to go in through that town the way the roads was and get around any quicker.

Q. You wanted to tell him in other words, that your venire covered a distance of sixty miles, of jurymen who lived from fifteen to sixty miles from town?
A. Yes sir.
Q. The roads were bad at that time, were they?
A. Yes sir, very bad indeed.
Q. What time of the year was it?
A. In January, I think.
Q. Did he complain or reprimand you for your action in delaying the court?
A. He said that I could get the men right around there.
Q. Now he found fault with you, didn't he, because you didn't put in the venire with men right around there?
A. No sir.
Q. Didn't he say in regard to this venire, when you had scattered the names, gone over that extent of territory, that you could have got the men nearer by?
Q. No sir.
Q. Did he not reprimand you for your interest to make mileage for long traveling and delaying the court?
A. No sir.
Q. That never entered into your mind at that time?
A. No sir, not at all, as I never received a cent for it.
Q. Now state all that the judge said to you when he reprimanded you for your action there?
A, He reprimanded me all the way along.
Q. How many times did he reprimand you?
A. Oh, several times.
Q. How long did the execution of this venire delay the business of the court?
A. Don't know as it delayed it at all.
Q. How long was the court waiting for you to execute this venire?
A. I think that the panel was filled up in three days.
Q. It took you the the greater part of three days, did it, to execute this venire?
A. Yes sir.
Q. And all along the court finding fault with you?
A. Yes sir.
Q. And told you you could have got those jurors right around there?
A. Yes sir, I tried it, too, pretty thoroughly, and got one man out of four.
Q. In town?
A. In town and around town.
Q. Mr. Hall, what was that man accused of?
A. Stealing a horse.
Q. For horse stealing?
A. Yes sir.
Q. That is a heinous offense down in that country, isn't it?
A. Yes sir.
Q. He had got bail?
A. Yes sir.
Q. What is the amount of the bail?
A. I think it was $1,000.

Q. That bail fixed by Judge Page?
A. I couldn't tell you.
Q. How long did you hold a bench warrant for him when you and Judge Page had this street conversation?
A. Well, I think there was a bench warrant issued at the same term he defaulted.
Q. Was that the term before?
A. I think so; I think I had held a bench warrant for him some two or three months. It was some little time.
Q. Had you ever returned that bench warrant?
A. I think I had.
Q. Had you made any personal efforts to serve it?
A. Yes sir, I had.
Q. Had you then done it up to that time, at the time you had that talk with Judge Page?
A. Yes sir, I had.
Q. What effort did you make?
A. I had been to Leroy.
Q. Was that where Mr. Huntly used to live?
A. Yes sir.
Q. Had you been there expressly and solely on that business?
A. I think I had.
Q. You think you had; are you sure you had?
A. I am sure I had.
Q. Did you have other persons at the time?
A. No sir.
Q. How long was this before Judge Page and you had that street talk?
A. Oh, same time before.
Q. Had you been there afterwards?
A. After we had that talk?
Q. Had you been there between the time you went first, and the time you had that street talk?
A. Yes sir,
A. How long did you remain at Leroy?
A. I think I went down and back the same day.
Q. Had Mr. Huntly formerly lived at Leroy?
A. Yes sir, near Leroy.
Q. Did his family reside there?
A. His wife was there.
Q. Living there?
A. His wife was with his father.
Q. Did she accompany him in his flight?
A. No sir. That is, I say no—that is, I don't know.
Q. Did you put the warrant in the hands of any deputy at Leroy?
A. I think not.
Q. Did you state to Judge Page that you had been to Leroy at that time?
A. I don't know whether I did or not; I told him I had been down and sued the party.
Q. Did you have a deputy at Leroy?
A. I did.
Q. Did you put that warrant in the hands of that deputy, and tell him to look out for Huntly, all the time you held it?

A. I don't think I did.
Q. How many terms of court had intervened?
A. I think one.
Q. The deputies that you have spoken of are the special court deputies selected to attend in the court room during the term?
A. Yes sir.
Q. They are the persons to whom the custody of jurors is confided are they not, generally, they perform that kind of duty?
A. Yes sir, any duty about the court room.
Q. Very desirable to have reliable men, and men of integrity in those positions?
A. Yes sir, that's my idea of it.
Q. They also wait upon the judge, and bar, and jury, and perform generally whatever is wanted?
A. Generally, they are about the general work about the court room.
Q. Have you not frequently selected deputies concerning whom you have not consulted the respondent at all?
A. I think not.
Q. Now, Mr. Hall, at the time these consultations, in regard to court deputies came up, did you go to Judge Page and ask him about it, or did he come to you, or did it happen when you got together? or, in other words, did it happen when you went to him to find out how many you would be permitted to employ during the term then coming?
A, Since the Mandeville case, I have always gone to him; I always went to him on the first day of court, because I looked up the law; before that I did not know the law.
Q. Now, wasn't it your idea at the time you were selecting these deputies, that you wanted men there fit for their duties; who would be acceptable to the court and attorneys?
A. That certainly was one of the views that influenced me.
Q. And was not that one of the ideas which led you to get into that conversation?
A. That was a part of the idea.
Q. You did not take any offiense at the suggestions of the court, when he claimed that such and such a man would be a good man, did you?
A. Well, no; no, I don't know as I did; except once, when he suggested a man, I told him no. I didn't want to put him on because he had been complained of.
Q. And you did not take him?
A. I did not take him.
Q. Did the Judge acquiesce in your resolution?
A. He did.
Q. Now, you say on one occasion, Judge Page told you in regard to a man, whom he suggested, that he would not have him?
A. Yes sir.
Q. Well, he complained that the man was not fit, not competent, did he?
A. He said he was not fit.
Q. And you acquiesced in that, did you?
A. I did.

RE-DIRECT EXAMINATION.

Mr. Manager MEAD.
Q. You was about to say that before the Mandeville case, you went to Judge Page and he told you—that was as far as you got, what

was you about to say then that Judge Page had told you in regard to these deputies?

A. Why, he informed me immediately after I went into the office, that I could not use any of my special deputies, as court deputies, that the law gave him the right—and I got the idea that—

Q. The law gave him the right to what?

A. To appoint a deputy, and I got the idea that he had the same right to appoint court deputies as he had the jailor, that he approved of it; consequently, it run along in that way until he refused to pay Mr. Mandeville, and I looked up the law.

Q. Never mind what occurred since; state where this Mr. Huntley, whose bail was forfeited, resided; how far from the State line?

A. Well, I should say in the neighborhood of three or four miles from the State line.

Q. In regard to this Jaynes case; when that venire was issued it was at the second trial of that case in Mower county?

A. It was the final trial.

Q. The second or third trial?

A. The third.

Q. The first venire in which you summoned people about town, you only secured one jurors, from the fact that they had made up their minds?

A. I think that was the second one.

Mr. DAVIS. Isn't that *steering* the witness a little?

Mr. MEAD. No, I think not.

The witness. The venire was issued around in the town of Austin, and we only got, if my memory serves me right, two or three persons, and he says: "There is no use going out around here, take them out of the town."

Q. Who said that?

A. Sherman.

Q. State that over again.

A. Why, he says to me, there is no use of going away out in this county; you can get them right here in town. I went to work issuing a venire, taking from men in town, and the result was, I only got one man; then I issued another, that led out a little further. Went into the town of Lansing, and I got a few jurors, and then issued this one we are talking about going out so far, and they came in along as the officer traveled out, and as the case proceeded, men from different parts of the county came in, and were in the court room, which gave me an opportunity to take men that did not know anything about the case, and we went on and filled up the jury, before the venire was returned. Some of the men that were on the venire were never called.

RE-CROSS-EXAMINATION.

Q. Was this reprimand in the presence of officers and attorneys of the court?

A. Which one do you refer to?

Q. Where Judge Page reprimanded you about this venire?

A. Yes sir, it was in the court room.

Q. Didn't Judge Page tell you that it would not be permissible to have any of your special deputies also employed as special court deputies?

A. Certainly he wouldn't have my——

Q. Didn't he give, as a reason for that, that he wouldn't have any of this double-headed pay drawn—the general deputy pay and the special deputy pay?

A. No sir.
Q. What is the reason he gave you for not permitting you to nominate your general deputies to be special deputies?
A. Why, he wouldn't have Tom Riley in the room.
Q. Well, you had more deputies than Tom Riley, didn't you?
A. Well, I supposed if he shut out one, he would shut out all.
Q. Well, he gave the reason that he thought Tom Riley was unfit?
A. Yes sir.
Q. Did you ever endeavor to promote another deputy, except Tom Riley, to be special deputy?
A. Well, at the same term of court my deputy came over to Austin, some twenty miles away, and I informed him that an order had been made that he could not act.
Q. Based upon this Tom Riley business, wasn't it?
A. Yes sir; but then I didn't repeat it to Judge Page.

RE-DIRECT EXAMINATION.

Mr. Manager MEAD:
Q. You stated that Judge Page said he wouldn't have your Riley in the court room; state whether he used that expression as to Mandeville?
A. No sir; Mr. Mandeville had been in attendance before that with this court, and I supposed he was perfectly acceptable.
Q. State whether he made that expression in regard to Mr. Stimson?
A. He did.

RE-CROSS EXAMINATION.

Q. Was Mandeville one of your special deputies at the time he acted as special deputy?
A. He was not and had never been.

A. W. KIMBALL RE-CALLED

on behalf of the prosecution, testified:
Mr. LOSEY. Which specification do you call him on?
Mr. Manager MEAD. The last one.
Q. Have you examined the records of the district court of Mower county to ascertain if there are any orders filed there by Judge Page, for the appointment of special court deputies?
A. I have; there are several such orders.
[Three papers handed the witness.]
Q. What are those papers and their dates?
A. They are orders appointing court deputies, one of them is filed March 3d, 1876, another September 30th, 1875, and another April 19th, 1876.
Q. They are the original papers on file in your office?
A. They are.
Mr. Manager MEAD. We offer these papers in evidence. The papers were received without objection.
Q. Read the papers in the order of time in which they are filed?
A. [Reading.] "District Court, Mower county, general term, September, 1875. The sheriff of said county is hereby authorized to employ two special deputies, David Gates and James Cook, for services during said term, and the fees of said deputies are hereby fixed at three dollars per day. Sherman Page, Judge."

"Sept. term, 1875; order for deputies, filed September 30th, 1875. F. A. Elder, Clerk."

Q. That paper of which you have just read the date of its filing, what day of the term was it filed?

A. I have looked up the record a little on that; I think that was after the term was over; I think the term commenced the 22d or 23d of September.

Q. The next paper?

A. The next paper is:—"District Court, Mower county, general term, March 7th, 1876. The sheriff of said county is hereby authorized and empowered to appoint two special deputies, to-wit: F. W. Allen and Mr. Hunkins, to serve during said term, and the pay of said deputies is hereby fixed at a sum of two and 50-100 dollars per day each. Sherman Page, Judge District Court. Filed March 7th, 1876. F. A. Elder, Clerk."

Q. That is the first day of the term?

A. I am not sure as to that.

Q. Read the next.

"District Court, Mower county, September term, 1876. The Sheriff of said county is hereby authorized to appoint three special deputies to act during said term, to-wit: F. W. Allen, J. Phillips, Y. F. Cameron, and their pay is hereby fixed at the sum of two dollars and fifty cents per day each.

SHERMAN PAGE,
Judge of District Court.

Filed September 19th, 1876.
F. A. ELDER, Clerk."

CROSS-EXAMINATION.

Mr. LOSEY—

Q. What does the record show as to the date of those filings?

A. Well, I think there is one of them that is filed on the first day of the term, the others, my impression is, are not.

Q. I told you to look at the record.

A. The term commenced on the 21st day of September and ended on the 27th day of September; the order was filed on the 30th, I think.

Q. What year was that?

A. 1875, September term. The next order, the court commenced on the seventh day of March, 1876, the same day of the filing on the order; and the other order of the term 1876 commenced on the 19th day of September, 1876, the same date that the order is filed.

P. T. MCINTYRE, SWORN

And examined on behalf of the prosecution, testified:

Mr. Manager MEAD. Q. Where do you reside, Mr. McIntyre?

A. At Austin, Mower county, Minnesota.

Q. How long have you resided in that county?

A. I have been in that county since sometime in the summer of 1867.

Mr. LOSEY. Which specification are you examining him on?

Mr. Manager MEAD. The first.

Q. How long have you known the respondent, Judge Page?

A. Well, some six or seven years quite intimately, and previously to that, was merely casual, our acquaintance

Q. What official position do you hold in that county?

A. County auditor.
Q. How long have you been county auditor?
A. I have been county auditor four years, the first day of March.
Q. How long had you known Judge Page, prior to 1875?
A. Well, some five or six years.
Q. What were your relations, friendly, or otherwise, prior to 1875?
A. Quite friendly, sir, on all occasions.
Q. How often did you see him during the year 1874?
A. Oh! I saw him almost every day; past his place of residence almost every day; sometimes two or three times a day.
Q. How long did your friendly relation with Judge Page continue?
A. It continued, sir, up until sometime during the fall of 1875.
Q. Will you state to the court, what occurred then, with reference to your relations with Judge Page?
A. Well, sir, one morning when I was going down from my residence to the office, my attention was attracted by some noise behind me, and looking around I observed Judge Page over by the barn. It was the second lot from me, and he motioned me to come over there, and I went over, and after shaking hands and saluting each other very cordially and kindly and talking for a few moments on some casual matters, says he, "I understand there is some talk of putting John S. Irgens on the ticket this fall for Secretary of State—have you heard anything about it?" Well, I told him I had heard the matter mentioned. "Well," said he, "what do you think of it?"

Mr. LOSEY. In what manner does this have any application to the first article?

Mr. Manager MEAD. We expect to show that this interview ended in a dislike of Judge Page to this witness.

Mr. LOSEY. Well, I would like to know what that has to do with the fact that a band of music and a crowd of people were permitted to meet in the office of the auditor?

Mr. Manager MEAD. We expect it had a good deal to do with a judge of the district court charging the grand jury that it is an indictable offense to have a band of music practice in an office, and we expect to show the reason and motive of that charge.

Mr. LOSEY. I would inquire of counsel in what manner and by what deduction they are going to get at that reason. I object to the evidence.

Mr. Manager MEAD. If the court please we simply offer to show the relations of the respondent, prior to the charge of Judge Page to that mememorable grand jury in March, 1877, and the delivery of that memorable charge wherein this man is accused of violating the statutes of the State and made the subject of criminal investigation. We are going to show that it proceeded from an ill feeling manifested daily and weekly in the city of Austin in the conduct of Judge Page against this man, culminating in that charge to the grand jury, simply to show the reason and feelings of animosity by which the respondent may legally be presumed to act in his endeavors to prostitute the court to avenge his private and personal spite.

Mr. LOSEY. We object still, your honor. It is a conversation it seems that occurred between the witness and respondent in relation to a man by the name of Irgens, as to whether he, Irgens, was going to run on the State ticket. Now by what deduction they are going to try and show that that fact showed malice on the part of the respondent toward the witness, I can't see nor conceive.

His idea that they may go all over Austin to prove gossip of every character, and drag it in here for the purpose of tacking it on to each of these articles, as I will show, has been done in some instances heretofore, upon the claim that they would show the intent of the respondent or his malice, and how it is finally to be bound to the case I cannot comprehend. How a conversation, had between this respondent and this witness, touching an individual, who has nothing to do with this case, to another that is entirely foreign to this case, can affect this charge in relation to what the judge did in instructing the grand jury as to the conduct of this man's office, or rather the investigation of his conduct, I cannot conceive.

The PRESIDENT. The chair is unable to conceive what relation it has. If the counsel desire, the chair will submit it to the court.

Mr. Manager MEAD. I would like to state in reply to what the counsel stated in his argument; we only hope to show that that conversation culminated in something of a quarrel between these parties, in which the witness had from the learned judge something in the nature of a threat which we say is connected with his persecutions in the charge to that grand jury. We do not care anything about the conversation further than the result of it was, that, from that day on, there was unfriendliness, no speaking, no communication between these parties, and that Judge Page on that occasion, as I am informed, threatened the witness, which we say, throws a flood of light upon the object of the charge to the grand jury by Judge Page, as being the outbreak of the respondent's malice towards this witness. That is all we desire to get at in order to show the relation of Judge Page to this man by his own statements, and by his own threats.

The PRESIDENT. The chair will submit the question to the Senate.

The question being taken on admitting the evidence, and the roll being called, there were yeas 18, and nays 12, as follows:

Those who voted in the affirmative were—

Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Donnelly, Edwards, Henry, Lienau, McHench, Morehouse, Nelson, Remore, Rice, Shaleen, Swanstrom.

Those who voted in the negative were—

Messrs. Doran, Drew, Edgerton, Gilfillan C. D., Goodrich, Macdonald, McClure, McNelly, Morton, Smith, Waite, Wheat.

So the question was admitted.

The witness. Mr. Page asked me what I thought of it. I answered that I thought Mower county was perhaps, is much entitled to a place on the State ticket as any of the other counties, and that Mr. Irgens was a good man. He hesitated a moment, evidently getting a little angry at that reply, and said he, "Young man, do you mean to say that you will support that man if he is nominated?" I told him most assuridly I should stand by Mr. Irgens, because I believed him to be a straight and honest man. "Why," said he, "that man is no more fit for that office than that dog of mine." He turned to his black dog lying there, and said he, "You will find it to your interest, young man, not to follow in that leading;" or words to that effect.

Well, I told him that that was a matter of opinion; that every man, in this country had a right to do as he chose; that if he did not see fit to support Mr. Irgens, good and well. That I had an equal right to support him. And with that he commenced and gave me a general——

Mr. LOSEY. You are called upon to state what was said?

A. I don't know as I could state what words, because I paid com-

paritively little attention to what he said, only when it referred to myself.

Q. State what you remember?

A. Well, he went on to say that Mr. Irgens was not a fit man for the office, he had neither the education, nor the ability to fill the place, and said he. "with these facts, would you dare to support such a man." him I told I should, most assuredly, stand by Mr. Irgens, and picked up my hat and left the place, and bid him "good morning" as I went.

Mr. LOSEY.

Q. Was that all the conversation?

WITNESS. A. Well, his lecture to me occupied no more time than I have.

Mr. LOSEY. Was that all the conversation that you remember?

Mr. Manager MEAD. I submit that the counsel may have the right to cross examine, after I have closed.

Mr. LOSEY: I desire to ask the question for the purpose of making a motion to strike out the evidence, and I ask the privilege to ask the question preliminary. That is, whether he has giuen all the answer that was made by the Judge. I ask that the testimony be stricken out, the entire questions and answers.

The WITNESS. Yes, those are about the entire questions and answers of any vital importance on the matter.

Mr. Manager MEAD. We certainly object to that, and claim that the witness shall answer the question that is on record.

Mr. LOSEY. I understand, Senators, that your action was taken upon the promise of counsel that he should connect this conversation in some manner with article first; and that, based upon that statement made by the counsel that it should be so connected, you permitted this question to be asked. Now I ask, Senators, what this barnyard talk has to do with this specification? What this statement made by Judge Page in regard to this man Irgens to this witness now upon the stand, in relation to a political matter entirely foreign to any matter at issue here, and to this specification, I ask, what has it to do with this case? Why should the record be cumbered with it? What propriety is there in hearing it here? What does it prove? Does it prove any matter, fact, or thing connected with this case? It proves nothing. Is Judge Page to be chased through his district from one end to the other, and is every conversation, every street talk he has, to be dragged into this case, and the record cumbered with it? That is what is being done now. The counsel says he will connect the two things. The witness fails to connect the two things; fails utterly and entirely. Now, I ask, Senators, whether this record is to be cumbered with this trash? for it amounts to no more and no less than trash.

Mr. Manager MEAD. I can inform the counsel that I shall carry out what I promised, and that we expect to prove that on the very next day, the witness meets Judge Page and the judge refuses to recognize him, and from that day to this, this model judge has refused to recognize one of the highest officers of the county, simply because he would not obey his directions in regard to some political matters. The very next expression of the witness will be, that the next day he meets Judge Page and was not recognized, and from that time to this, except upon a single occasion, when he suffered abuse from the lips of Judge Page, he has never recognized him upon the streets or anywhere else, and as a result of all that, and in obedience to the fell spirit of revenge, we find

that a charge was subsequently given to a grand jury of the city of Austin by Judge Page, wherein he sought to convict this man of a crime and send him to prison. Now, if that is not conviction, plain and palpable,—if that does not show facts that this court ought to know, in order to understand who they are trying, and to analyze his conduct, to determine whether he is a person fit to hold the position of judge any longer, then I cannot tell what testimony would be of weight or value in such an investigation.

Mr. LOSEY. Judge Page's conduct in that regard is not here on trial. The simple matter on trial here now is, as to what Judge Page did in court, when this matter came up before the grand jury, concerning which full evidence has been given. This matter of the auditor's office is now on trial here, and not the conduct of Judge Page out side and independent of it.

The PRESIDENT. The counsel move to strike from the record the questions and answers of the witness.

The clerk will call the roll.

The question being taken on striking out the questions and answers—

The roll being called, there were yeas 10, and nays 20, as follows:

Those who voted in the affirmative were—

Messrs. Clement, Edgerton, Gilfillan C. D., Macdonald, McClure, McNelly, Rice, Smith, Waite and Wheat.

Those who voted in the negative were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clough, Deuel, Donnelly, Doran, Drew, Edwards, Finseth, Goodrich, Henry, Lienau, McHench, Morehouse, Nelson, Remore, Shaleen and Swanstrom.

So the motion to strike out did not prevail.

Q. Now, after that interview, when did you next see or meet Judge Poge?

A. The next time I saw him, sir, was I think, the next day at noon, or between twelve and one o'clock.

Q. Where?

A. It was on the streets of Austin, between his and my residence and the office; I was going home to dinner, and he was apparently coming from dinner.

Q. State if you saw any difference in his conduct?

A. I noticed so much difference in his conduct towards me, that it prevented me from saying, "How do you do, Judge," which I had on the tip of my lip at the time to do. by the way of his carrying his head, and turning his eyes from me. (Laughter.)

Q. State how often during the years 1875 and 1876 you had met Judge Page in the city of Austin?

A. Well sir, it would be impossible for me give the number of times, I have met him pretty much every day when he has been in town.

Q. State whether Judge Page recognized you on the occasion of his meeting you on the day after the conversation you have allluded to in your testimony?

A. No sir, never but upon one occasion.

Q. State whether or not he has recognized you during these many times you have met him during the years 1875 and 1876?

A. No sir, he exhibited the same conduct towards me that he exhibited on the next occasion when I met him.

Q. State whether he has ever spoken to you?

A. He has on one occasion.

Q. When and where was that?

A. It was in the auditor's and treasurer's office; it was some time in the spring of 1876.

Q. Now will you state to the court what occurred there?

A. The clerk and treasurer's office are together, and the auditor's in the next room adjoining. The three principle offices of the county, the auditor, clerk of the district court, treasurer and register of deeds are in three rooms, one succeeding the other. The auditor is the first door, the next is the treasurer, and the next the clerk of court, and the next the register of deeds.

I was in my own room at work; had been at work very hard indeed, late and early, getting out the March apportionment. I think it was towards evening in the afternoon along sometime, Mr. Page, I noticed, was in the clerk of court's office sitting facing my office. I noticed that through a side window, that is between the two offices; the treasurer and clerk of court being in the same office. He was talking, apparently, to some one sitting at his right in the office at the desk occupied commonly by the clerk of the court, and I paid no attention to what he was saying or what was going on; I had work enough to keep me out of mischief myself, until his voice got so loud and excited that I looked up from my work to see what the trouble was, and just then he caught my eye and said "I intend a part of that for your benefit too, young man." He was quite angry at the time, apparently.

Q. What reply did you make to that?

A. I told him I thought I had heard a jackass bray before now.

Q. What did he say?

A. He says, what is that you say, sir.

A. I told him he was the meanest, the most contemptible whelp that ever set foot on the soil of Mower county.

Q. What else occurred?

A. Well, he stamped his foot, and got so white and excited he could hardly sit on the seat; he was stuttering, and all I could hear from him was once in a while, "Yo-o-u-u are another!" or something to that effect, until finally the treasurer, who was in the office, got up and shut down the window. I raised it again, and went for him; I don't think I raised the window the second time, but stuttering and stammering came his voice towards me, and done the best he could under the circumstances. The treasurer again shut down the window in a few moments, and held it down, and as a matter of course held down more than I could raise up, to do my best.

Q. Have you had any conversation or interview with him since then?

A. Never sir; not a word.

Q. State whether, up to the present time, he has ever recognized you, at any time or place, except what occurred in the auditor's office, since that conversation up at his house?

A. He never has.

Q. Are you a member of the Austin band that has been referred to in this investigation?

A. Yes sir, I am.

Q. Will you state to the court the circumstances under which they met at the auditor's office, and whether you were present?

Mr. LOSEY. We object to that; the grand jury found certain facts in connection with it.

Mr. Manager MEAD. We submit it would be hardly just to this witness—an officer of that county—to have the testimony and record stand

as it does now; this court ought to be informed in justice to him whatever may be the effect upon his case, of the fact that he was a member of that band, perhaps the leader; that he was always present, took care of the keys and the lights, and I ask that he be permitted to testify upon this matter in order that the circumstances may be more clearly apprehended.

The PRESIDENT. I think the question is admissible.

Q. State about the band prior to March term of court, 1877, meeting in the auditor's office, and whether you were at all times present or not?

A. I have been a member of the band since its organization sometime in the winter of 1875 and '76, and, of course, the band was rather short of funds, and did not feel we were able to hire a place in which to meet and practice, and I suggested to the boys the propriety of meeting in my office, inasmuch as there was a desk there, in which there is nothing but the tax rolls from I think at that time from '67 to 1875, and we went there; I carried the keys myself.

Q. State whether, prior to March term of court, 1877, you called the attention of the county commissioners, and what direction they gave you in regard to that matter?

A. Well, it had been rumored on the streets very commonly that Judge Page was going to have that stopped.

Mr. LOSEY. We object to that.

Mr. Manager Mead. Never mind; just state what occurred between the county commissioners and you in regard to that band.

A. That drew my my attention to the matter, and I went to their first meeting, after my attention had been called to the matter, and just after the board had organized. I stated the case to them as it was, that the band was meeting there, and I told them, that if any member of the board had any objections, whatever, to it, I should stop it at once. The only directions I got was, some of them laughed at me, and others said, "there was no harm," in anything of that kind under by personal care.

Q. State whether this was prior to the March term of court, 1877.

A. Yes sir.

CROSS EXAMINATION.

Mr. LOSEY:

Q. Outsiders come in sometimes?

A. Mighty few.

Q. I asked you if any came in?

A. I don't know sir, of any being in, because we didn't want them there as a band.

Q. What did you mean by mighty few?

A. I meant just what I said, exactly.

Q. Then there were a few?

A. They were very few, indeed, if any

Q. You are one of the petitioners to the House of Representatives that Judge Page may be impeached are you not?

A. I hope so, sir.

Q. Well, wern't you the only petitioner?

A. I don't know as to that; I am one of them, I am certain of that.

Q. Don't your name head the petition, as a matter of fact?

A. I rather think it does, sir.

Q. You signed it officially?

A. I may, or may not; I don't know as to that, how it was signed; my name was to it, I will guarantee you that.

Q. You concluded it was your duty as county auditor, didn't you, to so sign it?

A. Yes sir, I did.

[Petition handed witness.]

The WITNESS: That is correct, I guess, so far as my acquaintance of the matter goes.

Q. You examined the statute, I presume, to find out?

A. No sir, I done nothing of the kind; I done it simply and solely for the cause of liberty.

Q. Is the duty not laid down in the statute?

A. I don't know as it is. It is something I have paid no attention to. I can't tell you now all that is contained in the charges.

Q. Well, sir, was the nature of this charge which you have been questioned on, mentioned in the petition?

A. I don't know, sir. I am not sure whether it was or not, now.

Q. About how much money have you contributed towards this matter?

A. I have contributed just $100, and I am ready to give a hundred more, if necessary. [Laughter.]

Mr. LOSEY. Well, that is all.

On motion the court adjourned.

Attest:

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

NINETEENTH DAY.

ST. PAUL, WEDNESDAY, JUNE 5, 1878.

The Senate was called to order by the President.

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

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Deuel, Drew, Edgerton, Edwards, Gilfillan C. D., Gilfillan John B., Goodrich, Hall, Henry, Hersey, Langdon, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Nelson, Remore, Rice, Shaleen, Smith, Swanstrom Waite and Wheat.

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

The sergeant-at-arms having made proclamation,

The Managers appointed by the House of Representatives to conduct the trial, to-wit: Hon. W. H. Mead, entered the Senate Chamber and took the seat assigned.

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

The PRESIDENT. Are the honorable managers ready to proceed?

Mr. Manager MEAD. We are, and we ask that George Baird be sworn.

MR. GEORGE BAIRD, SWORN,

And examined on behalf of the prosecution, testified:

Mr. Manager MEAD.

Q. Where do you reside?

A. At Austin.

Q. How long have you lived in Mower county?

A. Twenty-one years.

Q. What official position have you held in the county?

Mr. DAVIS. What particular article are you on now?

Mr. Manager MEAD. The third specification.

The Witness. I have been sheriff; I was once post master.

Q. When, and for how long were you sheriff of that county?

A. Two years; during the years 1873 and 1874.

Q. How long have you been acquainted with the respondent, Judge Page?

A. Since 1866; twelve years.

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

A. Yes, I had an interview with him.

Q. When was it?

A. It was on the 31st day of May, 1874.

Q. Where did it take place?

A. It was on the edge of the street next to my barn.

Q. Well, now you may state to the court what was said, between Judge Page and yourself, on that occasion?

A. He says to me: "Why didn't you obey my orders last night, and make arrests?" I told him that I thought there was no occasion to make arrests; that there was no riot. He says: "Don't you tell me there was no riot again." He says: "That was a riot under our statutes." I asked him if he thought it was because I was afraid to make arrests. He says: "No, it was not because you wasn't afraid, but you didn't know how; you havn't got any brains; you ought to have organized a posse." He says: "If I thought it was because you were afraid, that you intended to disobey my order, I would fine you; I'm a great mind to fine you anyway."

Then he says, "there had better have been a dozen men killed, than to have such a disgrace on our city." And afterwards he says to me: "We are going to make some arrests, and I want to know whether you will do your duty." I told him I had never refused to serve any papers placed in my hands. That was the substance of what was said there.

Q. What was his manner of speaking?

A. Very angry; he shook his fist.

Q. State whether that was a casual meeting between Judge Page and yourself, or whether he came for the purpose of having that interview at your place?

A. Well, I could not really tell, of course. He came along in the street—whether he saw me before, I don't know.

Q. What time of the day was it, if you remember?

A. This was not far, I think, from eight o'clock. It might have been between eight or nine.

Q. In the morning or evening?

A. It was in the morning; Sunday morning.

CROSS-EXAMINATION.

Mr. DAVIS. Q. This was a street talk, held near the barnyard, wasn't it?
A. Yes—there was no yard there.
Q. Well, it was a street talk with the judge?
A. Yes sir.
Q. Held near a barnyard?
A. Yes sir.
Q. That barnyard is in the year of your yard, abutting the edge of your lot, and you are neighbors?
A. Yes, neighbors; but our property does not adjoin at all.
Q. In going down town does he have to go by your place?
A. Not at all.
Q. How far is you house from his?
A. Well, it may be twenty or thirty rods.
Q. Well, what was it he said to you on that occason?
A. Well, he says, "why didn't you obey my orders last night, and make arrests?"
Q. What order was it he had given you the night before?
A. Why, it was to arrest all the bystanders there, and disperse the assembly.
Q. Was that during the progress of what is called the whisky riot?
A. Yes sir
Q. When that order was given you how long had that state of things continued, whether it was a riot or not?
A. When the order was given?
Q. Yes.
A. Oh, it might have been half an hour when the first order was given.
Q. It was after that riot, as I term it, that Beisicker and the other men mentioned in these articles was indicted, was it uot?
A. Yes it was the same proceedings.
Q. It was an assemblage of people which resulted in some of the parties engaged in it being indicted by this grand jury, Beisicker and others?
A. Yes sir, they were indicted.
Q. Was there considerable excitement in Austin at that time?
A. That evening do you mean?
Q. That particular meeting?

Mr. Manager MEAD. We desire to object as not cross examination.

Mr. DAVIS. I don't want the riot gone into, we are entitled to trace out the course of this talk; perhaps the judge was right in censuring this gentleman, his testimeny refers to a transaction which occurred the day before the judge addressed him. Now, if that appeared here, he had a perfect right, he was perfectly right in doing as he did.

The PRESIDENT. The question will be admitted.
O. Was there considerable excitement in Austin at that time?
A. That is, this evening?
Q. Yes sir?
A. There was some excitement.
Q. Did that excitement continue over a period of two or three days?
A. Well, more or less; more or less on the street.

Q. Was there any great excitement in town at that time?
A. I don't think it was a great excitement.
Q. Did you hold meetings at your house during any of the nights at this time or at the house of one of the citizens?
A. I did not hold any meetings.
Q. Well, were you present at a house, when a meeting was held for the purpose of devising means for public protection?
A. I was asked to go to a house; I didn't know what they wanted me for.
Q. You found out afterwards that it was to devise means for public protection, did you not?
A. No sir.
Q. Did it have anything to do with this so-called *whisky riot*?
A. Well, yes, something to do with it.
Q. Wasn't that the sole object of that convocation?
A. No sir.
Q. How many people were at that meeting?
A. O! I think, perhaps, somewhere eight or ten.
Q. Did they deliberate upon the state of things, then existing in that city.
A. Yes; but I can't tell you what they talked about.
Q. Did they advise you to increase your deputies?
A. Judge Page advised me.
Q. He was present, was he?
A. Yes sir.
Q. Did anybody dissent to the advice from the judge, that he gave you there?
A. I don't think they did.
Q. Did you, in consequence of that advice, appoint a number of special deputies, to patrol that city nights, and look out for the public peace?
A. That was not what they were appointed for.
Q. Did you in consequence of that meeting appoint an specially deputies?
A. I did appoint some special deputies.
Q. How many were there?
A. I don't know, there may have been twenty.
Q. Did these special deputies patrol the city at night?
A. Only two of them was appointed, the rest were appointed to make arrests the next day.
Q. Did you believe that it would take twenty deputies to make the arrests?
A. I did not ask for any deputies.
Q. You appointed them, did you not?
A. At Judge Page's instance, he insisted upon it.
Q. You was sheriff of the county?
A. Yes.
Q. And he insisted upon the appointment of deputies?
A. He insisted upon it, yes sir.
Q. And you did it?
A. I done it to have peace.
Q. You did it to have peace?
A. Yes sir.
Q. Well, was it after you appointed these deputies that Judge Page

ordered you to make the arrests, which he referred to in his conversation with you?

A. O, no.

Q. That was before?

A. This meeting we are speaking of was on Sunday night, and this conversation occurred on the morning of the same Sunday.

Q. Did those deputies make any arrests Monday?

A. No sir.

Q. On Tuesday?

A. I think not, I don't know but it was Tuesday.

Q. Did they make any arrest at all?

A. Not any; those special deputies made arrests on Monday.

Q. How many people did you arrest?

A. I arrested three persons.

Q. For being engaged in riotous proceedings?

A. Well, that is what they were accused of.

Q. Did you arrest them on a warrant?

A. I did.

Q. Did'nt you go on Monday morning and get two or three of these deputies to help you make these arrests?

A. I carried out Judge Page's programme, yes sir.

Q. That don't answer the question; did'nt you go Monday morning and get two or three of these deputies to help you make the arrests?

A. I did at his suggestion.

Q. Well, you were mighty anxious to show your subserviency to Judge Page in that matter?

A. Well, I admit I was a little afraid of him then.

Q. Is that transaction the transaction mentioned in this article which the managers have abandoned here?

A. I don't know that they have abandoned any.

Mr. CLOUGH. The Managers have not abandoned any article, the documents that were sent, that are stated in article five, are admitted in your answer to it; there is no occasion, as the Managers think, to go into any evidence under article 5 (five), as you admit the making and sending of those articles.

Mr. DAVIS. Is that the same transaction which is referred to in the article of impeachment here, which Judge Page relates to him; that letter from Preston?

A. Yes, sir; I supposed so.

Q. You were up here last winter before the House committee?

A. I was.

Q. How long did you stay?

A. I was not here only a day or two at a time.

Q. Well, off and on what period of time?

A. I was here a very few evenings; my duties c all me here every day or two.

Q. What are your duties?

A. Mail agent.

A. Well, did you have something to say in this impeachment.

A. I did not do any lobbying.

Q. Speak to anybody about it?

A. Well, I had a great many accuaintances here.

Q. And you expressed your views to them, as to the propriety of this impeachment.
A. Well, yes; that is I—
Q. Had some acquaintances in the legislature, didn't you?
A. A few.
Q. Contribute any money to this prosecution?
A. I have.
Q. How much?
A. Fifty dollars.
Q. When did you do that?
A. Some time since March.
Q. Who did you pay it to?
A. C. H. Davidson.

RE-DIRECT EXAMINATION.

Mr. Manager MEAD.
Q. You have spoken of some meetings held then at the house; what was the object of those meetings?
A. The talk at these meetings, particularly the Sunday night referred to, was in regard to making arrests next day, and some thought, and Judge Page particularly, that there would be resistance made, and insisted on quite a number of deputies being made, and I told them that I thought there would not be any necessity of it, but he insisted upon it, and I made them, in pursuance of his request.
Q. There had been meetings held before.
A. None that I attended.
Q. What advice did Judge Page give you in regard to those temperance movements, or those riots?

Mr. DAVIS: I object to that.
A. On this 30th day of May, just shortly after dinner, he sent for me, saying that he wanted to see me in his office; I went up there.

Mr. DAVIS. I object to that, your honor, as no re-direct examination. I don't know whether the rule of the court intended to cover everything.

The PRESIDENT. No. I suppose the manager intended to confine himself to this particular occasion.

Mr. Manager MEAD. We withdraw the question.
Q. You stated, in words, to the question of the counsel, that you had appointed these deputies in order to have peace. To have peace with whom?
A. Judge Page.
Q. Before whom did you take these three persons, after they were arrested?
A. Before Justice Clough.
Gov. DAVIS. Was that justice of the peace the gentleman who now occupies the seat of senator from that county — Senator Clough.
A. The same person.
Q. He bound them over?
A. I think there was a change of venue taken.
Mr. Manager MEAD. I suppose the record is the best evidence.
Q. Had you not, before Judge Page and you had this talk near your barn, been ordered by the mayor of the city to arrest some persons engaged in these proceedings, and didn't you disobey that order?

A. I never was ordered by the mayor to make any arrests.
Q, Were you ordered by the mayor of the city to disperse the riotous crowd?
A. Not at all.
Q. Did you ever have any orders by the mayor of the city in regard to this assemblage?
A. Never.
Q. And therefore you have never disobeyed any order of the mayor?
A. Yes sir.
Q. You are as positive of that as of anything you have sworn to?
A. I am positive.
Q. Who was the mayor at that time?
A. D. B. Smith.

Senator HENRY. I would ask, if consistent with the rules, how many, if any, were killed at that riot in the city of Austin, in 1874?
A. Not any were killed.

LYMAN BAIRD, BEING RECALLED

On behalf of the prosecution, testified:
Mr. Manager MEAD:
Q. Are you the son of the last witness, the former sheriff of Mower county?
A. I am; yes sir.
Q. State whether you were present, or in the hearing of an interview between Judge Page and George Baird, your father, in the year 1874, near your father's house or barn?
A. I was near enough to hear some of it.
Q. Will you state to the court what you heard?
A. I heard Judge Page say, "Why didn't you obey me last evening, and make arrests?" I could not hear what father said, bnt I could hear Judge Page say to him: "I don't think you failed to make arrests because you were afraid; because, if I thought so, I could fine you, and I have a good notion to fine you anyway." Then father said something that I could not hear; and the Judge said that we had better have had a dozen men killed than have this disgrace upon our town. He said something about father's not having any brains, but I couldn't state in what connection.
Q. How far were you from Judge Page and your father?
A. I was some distance.
Q. About how far?
A. Over 200 feet.
Q. What was the manner of Judge Page in speaking there?
A. He was very angry.
Q. Was he speaking loud or otherwise?
A. He spoke very loud.

CROSS-EXAMINATION.

Mr. DAVIS. Q. Any body else around but you and your father at the time that talk occurred?
A. My mother was with me.
Q. Where were you?
A. In the house.
Q. What month in the year was this?

A. Well, it was the last of May or the forepart of June.
Q. What time in the morning was this?
A. It was early Sunday morning.
Q. You were in the house, and it is clear across the block from this barnyard?
A. It is very nearly across the block.
Q. Were you examined before the House committee last winter?
A. I was.
Q. Did you testify anything about this?
A. No sir.
Q. How often have you talked about this with your father?
A. I have not talked about this except once.
Q. When was that?
A. That was yesterday.
Q. Did you talk it over with him?
A. I talked it before him.
Q. With others?
A. With this gentleman.
Q. With Mr. Mead?
A. Yes sir.
Q. With the exception of that conference, you have never conversed with your father about this transaction?
A. I think not.
Q. You understood that the conversation between Judge Page and your father, referring to the condition of affairs that existed, and was then existing, in Austin, did you not?
A. I think so.

RE-DIRECT EXAMINATION.

Mr. Manager MEAD. Q. Were you asked anything in regard to this matter last winter in giving your testimony before the judiciary committee of the House?
A. No sir; nothing of the kind.

Mr. Manager MEAD. In regard to specification No. 4, to charge ten, I am informed that the witness, Mr. West, who alone is fully conversant with the facts therein set forth, and by whom, we expected to prove the same, is not here.

We do not feel disposed to protract the prosecution any longer, and are satisfied with the testimony now before the Senate; but we will ask to put in evidence hereafter, the written surrender of Mr. Mollison by his bondsmen, as evidence under the first charge. I am directed to state that that will close the testimony on the part of the State, except, perhaps, some records which we have just now not at hand. One is the written surrender of Mr. Mollison by his bail, before referred to. We desire to reserve the privilege of putting in such documentary evidence as may come to hand during the day.

Mr. LOSEY. Have you that written paper with you; we would like to see it?

Mr. Manager CAMPBELL. I have not got it with me; I will bring it up this afternoon.

Mr. DAVIS. Is that all of the record-evidence that occurs to you?

Mr. Manager MEAD. We can think of no other, just now, but with that exception, the testimony for the prosecution is now closed.

Mr. Manager CAMPBELL. With regard to article five, there seems to be some misapprehension. I never intended to say that we had abandoned that article; what I intended to convey is found on page 27 of the of the journal of May 30th, 1878, wherein I say:

"In regard to article five we, as advised now, do not intend to introduce any evidence. Probably we shall not, but still we do not wish to be precluded from doing so, should we deem it necessary in the future, to put in that particular testimony.

If there is no objection, we would like to pass it in that way.

Mr. DAVIS. There is no objection.

Mr. Manager CAMPBELL. Now, in regard to the opening, my recollection was, that I stated or intended to state, at least, that as far as I was personally concerned, I did not see any impeachable offense in that charge; it was simply a pen and ink sketch of Judge Page, and that it was deemed by some of my associates, that there was considerable in it. Personally, I did not think there was much in the article, but, it being admitted for what it was worth, it is before the Senate.

I think that is about the substance of what I said, being now in, it must be taken for what it is worth, and it is before the Senate to decide.

Mr. DAVIS. I have no doubt but that my learned friend is perfectly correct. I would like to be informed whether in summing up this case our friends intend to insist on that article.

Mr. Manager CAMPBELL. As far as that is concerned, I will say that the manager who will close this case is not just now present.

Mr. LOSEY. I presume your associates are agreed.

Mr. CAMPBELL. Suppose my associates should not agree.

Mr. Manager MEAD. I suppose if we answer that question before the argument commences, at the close of the case, it will be in sufficient time.

Mr. DAVIS. Not by any means, the allegations are found upon the record, as to the facts and circumstances surrounding the case, and we are entitled to go into testimony on that point if we choose to do so.

Mr. CLOUGH. I think the counsel for the respondent can safely act upon the theory, that the managers will not abandon the fifth article, or article contained in the charges.

Mr. Manager CAMPBELL. The denial of malice as I understand it, is no denial at all. They admit the acts, and it is for the Senate to infer whether there is any malice; we can only prove malice by the facts, and as they admit them, then it is properly before the Senate, and for the senate to decide. While we do not abandon article five, the counsel can do as they please in the matter.

Mr. LOSEY. The respondent, by this article 5, is charged with corrupt conduct in his office, of being guilty of a misdemeanor. Now, in his answer he denies the allegations of official misconduct, and he protests that the article is insufficient in law, and that conviction cannot be had upon it; in fact, he demurs to the article. The managers say they do not propose to introduce any proof upon this article. We do not desire to be caught in any trap in relation to this matter, and it imposes upon us the necessity, under the pleadings in the case, of going

into that for the purpose of dispelling the allegation that has been made, of official misconduct on the part of the respondent.

Now, they have proven nothing. It was admitted in the opening here, that the matter alleged in the article was not an impeachable offense, admitted plainly and squarely, so far as the person making the admission is concerned, and he is the leader of the managers in this case. Now, I submit whether in fairness, in the situation in which it now stands, we ought to be compelled to introduce any proof upon this subject. I presumed we understand the purport of what Mr. Manager Cambpell said, in regard to that article, but as it was by us understood, it was to the effect that he didn't intend to introduce any proof under it, and that they did not intend to rely upon that article. As the counsel now explains it, it certainly was misunderstood by us.

Mr. Manager CAMPBELL. I would say, Mr. President, that if the question comes up, to strike out that article, then we are ready to discuss it. Standing as it does in there and being admitted, it is a part of the evidence in the case admitted by them. Now, while in itself, it may not be an impeachable offense, still if it tends to elucidate the disposition of this judge—and he is set forth in the tenth article to have been arbitrary to persons and to his officers—it would have some bearing in the case; and the counsel must take their own course. It matters not if we have proven nothing under it, it does no hurt; if they don't wish to introduce evidence under it, why, that is their own misfortune. If they move to strike it out then it is a question for the Senate to decide and not for us. As far as I am concerned, I am not particular what course is pursued. I have expressed firmly and honestly my convictions on this article, and I have nothing more to say on the subject. If they see fit to make a motion to strike it out under a demurrer, or argue it, I shall leave it for my associates to answer them, and not myself.

Mr. DAVIS. For the purposes of advising counsel, whether, in the opinion of the Senate, it will be necessary for us to introduce testimony in this article, and go into each charge as if it was an issue, we move to quash that article, and I make that motion without any desire to discuss the matter, except to say this in regard to the remark of my learned friend, as to the effect it may have, touching the admission that they claim we have made. If it is an admission, it is an admission of record, and can be appealed to. We want to know, Senators, whether we are obliged to put in testimony as to that riot, and the occasion of the judge sending this letter to Mr. Baird, and we therefore move to quash the article, for insufficiency in itself, and the state of facts now before the Senate.

Mr. CLOUGH: The managers have not consulted in respect to what course they would take, and so far as I am concerned—I think I speak the feelings of the managers upon this point—they would not like to have this question submitted to the Senate until first having a chance to consult and know what the collective ideas of the managers are on that subject. There is no occasion to submit the question at this time; I cannot see what use there is for it, just now. In the course of the day the managers will probably have a consultation on that subject, and I suggest that the consideration of the motion to quash be postponed.

Mr. DAVIS My learned friend has told us that we could rely upon it; that that article might be insisted on.

Mr. CLOUGH. That is a mere expression.

Mr. DAVIS. Certainly, and the gentlemen with whom the counsel is associated, understand what weight to give to his statements; I leave it to the Senators themselves, whether the impression has not been upon their mind that the fifth article has not been so acted on; if we have got to subpœna witnesses and examine them, and to hunt up records, we want to know it, and I think we are entitled to have the sense of the Senate upon the question.

Senator J. B. GILFILLAN. I think it is no more than fair that the counsel should know before their opening, something definite upon that subject, and I ask that the Senate go into secret session to consider that matter.

Mr. Manager GILMAN. I would suggest before this matter comes before the Senate for their disposition, that it would be proper for the Managers to have a few minutes to consult about this matter; I would suggest if they could have ten minutes in this matter through a recess, that they would be prepared to make a statement.

Mr. DAVIS. We have no objection to that.

Mr. Nelson moved that the Senate take a recess for fifteen minutes.

The roll being called, there were yeas 38. and nays none, as follows:

Those who voted in the affirmative were—

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

So the motion prevailed.

The recess being exhausted, the Senate resumed its session.

Mr. CLOUGH. Mr. President and gentlemen of the Senate:—Upon consultation, the managers have arrived at the opinion that the motion which has been made is an improper one, and ought not to be granted. I might say at the outset that it is wholly an unprecedented motion, so far as my acquaintance and recollection of precedents in respect to impeachments goes. I do not remember to have read of a case where a motion has been made, in the nature of a demurrer, to any articles of impeachment at the close of the evidence, on the part of the prosecution.

Furthermore, waiving the question of procedure, the managers are of the opinion that article five is one they will insist upon remaining before the Senate. Now, so far as the effect of that article is concerned, under the specification which we have filed here, by the order of the Senate, the matters which are alleged in article five, and which are admitted by the answer, is evidence tending to show the allegations of the tenth article, or the bill of particulars, the specifications of which were filed in court, under the directions of the Senate. At the opening part of the specifications, which were filed under the tenth article, is this matter. I read from page 20 of the journal of May 30th:

"Now comes the House of Representatives of the State of Minnesota, by the committee of managers heretofore appointed thereby to conduct before the Senate of said State the said impeachment, and without waiving the right to give in general evidence to establish the truth of the allegations contained in the tenth article exhibited in such im-

peachment, hereby gives notice that, to establish the truth of the allegations in said tenth article contained, it, the said House of Representatives, will rely upon each and all of the acts, matters and things stated in the articles heretofore included in said impeachment numbered from one to nine inclusive, and upon all and singular, the matters given in evidence to prove the allegations of such articles numbered as lastly aforesaid."

Now, that of itself would have been sufficient reason why this motion which has been made should not be granted. The matters which are stated and set forth in article 5, and which are admitted to be true, have a tendency to prove the tenth article, and the specifications which the managers have filed under the tenth article. I think the matter laid down in the fifth article, if it were standing alone, might not properly have been introduced, and it might have been a question whether the senate, sitting on that article alone, would have convicted the respondent, who was impeached before it. That is one question. But standing as one of a series of articles, and tending to illustrate the character of the facts which may have been done and charged, in the other article, illustrating the character of the man who has been impeached, why, I think it is proper, and it certainly is in accordance with precedents of the highest character, that the article should stand.

Now, you, gentlemen, remember the Andy Johnson impeachment trial. I have looked for the book, or volume of the report of that trial, containing the articles, but cannot find it. You, gentlemen, will remember, in the accusation against Johnson, which sets forth the remarks which he had made, and his demeanor before the public, upon the occasion of his traveling around the country; the occasion which is commonly known as "Andy Johnson, swinging around the circle." That was one of the principal accusations, and it stood from the beginning to the end of the impeachment proceeding. That article like this, stood there as an illustration of the man, that was on trial; and had a tendency to throw light upon the motives of his acts, which were charged in the balance of the article. Now, for these reasons, we say, that this motion ought not to be allowed; the defense has not been hurt, no hardships have been imposed upon them. We have offered no evidence. We have been heard, and if inference of guilt can be drawn from the article, certainly the counsel for the respondent can reply, and the respondent himself has not yet been heard. I think the article should stand.

Mr. DAVIS. Mr. President and gentlemen of the Senate: The fifth article of this bill of impeachment charges a distinct and substantial offence committed on the 3d day of May, 1874.

The crime which is charged is clearly and fully set forth in this paper. It is that for which, among other things, the House of Representatives has presented itself at your bar, and demanded an impeachment of the respondent. My learned friend who was up a few moments ago, is mistaken in saying that this article is admitted; our answer alleges as follows:

"Denying every allegation of official misconduct therein set forth and contained, if any there be, and protesting that such article is insufficient in law."

So there was a denial. Now, upon that state of things, it was surely incumbent upon the gentlemen to put in their proof. We are not to be put in the perilous position in which they seek to force us, or take the

responsibilities, that they will put in no proof in regard to one article which is unsupported by evidence.

But my learned friend, just up, has taken another tack. Under the order of the Senate, article ten was permitted to become prolific a few days ago, and after an incubation of several days there was spawn thrown from that article in the form of seven or eight more specifications. I supposed that article was thrown out of the proceedings by recognizing it as the legitimate parent of its offspring, but now they seek an affiliation, and to impute the progeny of it to article five. Now that is unfair; the respondent is guilty or not guilty upon article five as the allegations and proofs may show, and there is no proof whatever offered here.

Again, my learned friend says, it is unprecedented that a motion of this kind should be made at this stage of proceedings. The Senate will perceive that we protested in the first sentence to our answer to article five, that the article is insufficient in law of itself, and charges no crime. For those reasons, whether a motion to quash be designated in that way, or whether it is the bringing of a demurrer to the sufficiency of that article, or whether it is a demurrer to proof is immaterial, we ask that this article may be dismissed from the consideration of the Senate, and from our own.

Mr. Edgerton moved that the Senate go into secret session,

And the roll being called, there were yeas 32, and nays 4, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Clough, Donnelly, Drew, Edgerton, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Henry, Hersey, Houlton, Langdon, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Nelson, Rice, Shaleen, Smith, Waite, Waldron and Wheat.

Those who voted in the negative were—

Messrs. Deuel, Doran, Morton and Remore.

So the motion prevailed, and the Senate went into secret session.

The President announced that the motion of Gov. Davis to quash the fifth article was before the Senate.

Mr. Macdonald offered the following:

Ordered, that motion of respondent's counsel be sustained.

The question being taken on the adoption of the order,

And the roll being called, there were yeas 15, and nays 21, as follows:

Those who voted in the affirmative were—

Messrs. Clement, Donnelly, Edgerton, Gilfillan C. D., Houlton, Langdon, Lienau, Macdonald, McClure, McNelly, Morton, Rice, Waite, Waldron and Wheat

Those who voted in the negative were—

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clough, Deuel, Doran, Drew, Edwards, Finseth, Gilfillan John B., Goodrich, Henry, Hersey, McHench, Morehouse, Nelson, Remore, Shaleen, Smith and Swanstrom.

So the order did not prevail.

Mr. Gilfillan C. D., offered the following:

Ordered that no certificates for per diem be issued by the clerk to the members of this court until after the witnesses are paid.

Mr. Nelson moved to lay the order on the table,

And the roll being called, there were yeas 16, and nays 21, as follows:

Those who voted in the affirmative were—

Messrs. Ahrens, Bailey, Bonniwell, Clough, Edgerton, Finseth, Henry, Hersey, Lienau, McClure, Nelson, Remore, Rice, Shaleen, Swanstrom and Wheat.

Those who voted in the negative were—

Messrs. Armstrong, Clement, Deuel, Donnelly, Doran, Drew, Edwards, Gilfillan C. D., Gilfillan John B., Goodrich, Houlton, Langdon, Macdonald, McHench, McNelly, Mealey, Morehouse, Morton, Smith, Waite and Waldron.

So the motion was lost.

Mr. Nelson moved that the further consideration of the order be postponed until next Wednesday.

Which motion prevailed.

On motion, the Senate resumed business in open session.

The PRESIDENT. The chair announces that the Senate has refused to sustain the motion of counsel for respondent, to quash the fifth article.

Mr. LOSEY. I am ready to proceed, but as it is about time to adjourn the forenoon session, I would like to commence the opening with the afternoon session. I think I can finish this afternoon.

The PRESIDENT. The counsel states that he can finish, probably, this afternoon, if the Senate will adjourn at 12 o'clock.

On motion the Senate adjourned until 2 o'clock P. M

AFTERNOON SESSION.

The PRESIDENT The counsel for the respondent will proceed with his argument and presentation of the case.

Mr. LOSEY. Mr. President and Senators, in the division of labor as originally apportioned among the counsel for the respondent in this case, it was not expected that I would occupy or fill the position I am about to take; hence I shall not bring to this opening quite the amount of preparation that I would have brought had I known in advance that I was to perform this duty. Pressed somewhat by the labors of this trial; obliged to prepare to meet the evidence presented by the prosecution as the case has progressed, I have not had such time for thorough preparation as I would wish for, and I may not argue this matter as connectedly as I otherwise would had I known in advance that I was to take this place.

The counsel for the respondent have an important duty to perform, in the conduct of this case; but it is a matter of but slight importance, compared with the duty which you, as Senators, have laid on you. I appeal to you all, gentlemen, laying aside all prejudices you may possess, if you have any, (and it is not fair to presume that you do have such) judging as you would be judged hereafter, I ask you to take this case into fair and just consideration, and give such a verdict when it finally closes, as you would desire to have rendered, if you stood in the position of this respondent. In the language of scripture of old, I invoke you to remember that the ground whereon you stand, is holy. That you are here resting upon your consciences, that you must decide this case, unless you violate your oaths, according to the law and the evidence, as it is here presented to you, and not otherwise.

The rights of this respondent are at stake; they must not be dealt

with lightly by you or by us. That, which every American citizen holds dear; that which thousands have sought our shores to obtain; that, which makes every man proud to say "I am an American,' as it made the inhabitant of Rome proud to say, "I am a Roman," the right of citizenship and to hold office; that right which makes every American citizen a monarch in his feelings, the respondent is on trial to be deprived of or not deprived of as you may by your verdict say.

It is right and it is proper, Senators, that you should weigh well this consideration when you come to consider of your verdict in this case, that you should not deal with it lightly; that you should treat it as a matter that every citizen holds most dear; that you should treat it as a matter that every citizen of the State has a right to demand of you should be treated, solemnly, as you are sworn to treat it. That you should consider and weigh it in every aspect, so far as the evidence and the law bear upon it; and further than that, it is a matter we have a right to ask of you, Senators, who are laymen in this tribunal, and we confidently do ask you to follow the law as it is laid down to you by the members of this Senate, who are lawyers and are accustomed to decide legal questions.

They, who are in the habit of weighing the force and effect of laws, are better able to judge of their force and effect than they who are unaccustomed to consider legal questions. We ask you to treat this case, gentlemen of the Senate, in a spirit of fairness; we ask nothing more nor less. *We demand that;* we have a right to demand it. And any man on trial, where the deprivation of his rights, as a citizen, is at issue, ought to demand, has a right to demand, and can demand it.

Now, gentlemen, who are the prosecutors here? Where do the bar of Sherman Page's district stand to-day? Where do the people of his district stand to-day, independent of the bar? Where does the bar of Houston county stand? Where do Buell, Harris, O'Brien — all the members of the bar of that county stand? Where does Murray stand? Where do Wells and Colburn stand? Where does Jones, of the county of Fillmore, stand? Where do all members of the bar of that court (except one or two who desire to fill respondent's place if his ruin can be accomplished) stand to-day? Where do the members of the bar of the county of Freeborn stand? Where is Stacy? Where Tyrer and Parker? Where are the men that have been accustomed to practice in the court of this respondent, year in and year out, ever since he sat upon the bench? Lawyers have always, in all ages, stood between the people and oppression in trials of corrupt judges. I ask where are the lawyers outside of this little coterie of dishonest politicians of the county of Mower? I ask, gentlemen of the Senate, where do they stand to-day? At the back of Sherman Page, hoping for his discharge.

It was said in the opening of this case, that eminent men had been impeached during the history of this country. It is true. It was said that Addison was impeached. He fell a victim to party pejudices, and yet, to-day, in the State of Pennsylvania, whose Senate impeached him, there is not a man whose name is more revered, nor is there a man whose character for honesty and incorruptibility is more staunch or firm. Why was Pickering impeached? impeached because he was drunk upon the bench, and he would not reform himself after the solicitation of his friends. Why were Barnard, McCune and the other judges of the State of New York, impeached? for the sim-

ple reason that it was proved in the Senate of the State of New York that they *sold* justice.

Others have been impeached as the counsel stated, but I say to you, Senators, that you may search the reports of the impeachment trials through the whole history of this country, and you will not find an example or precedent of a man's being impeached for the acts which are charged here to Sherman Page as crimes.

The State of Minnesota, gentlemen, you are about to establish a precedent for. This State may be said to have just commenced its growth. Twenty years have scarcely passed over its head. The precedents you are forming to-day, the law you are to establish, on the trial of this case, is the law to govern hereafter partially—for it will govern partially—the trial of all impeachment cases in this State in the future. I say the law you are making, and which is to govern hereafter, is a matter of more importance to the people of this State than the conviction of the respondent. And it is a matter the people of the State have a right to demand the fullest consideration of at your hands. And they will demand it hereafter, for when the light of public opinion comes to bear upon the decisions that are made on this trial, if those opinions are wrong it will be a matter of more regret to the members of this Senate than it ever will be to the respondent sitting here on trial. This State may be said to be in its formative character, and what you do now is to govern in a measure hereafter—it must and will govern.

Why is Sherman Page impeached? Has it ever been known before in the annals of history in this country, that a man was impeached for scourging out of the halls of justice a gang of thieves, as he has scourged them—defamers of character as they have been proven to be here on this trial? Thieves! as the proof shows; violators of the law—for whoever steals fees, or whoever misappropriates the public funds, as the evidence here shows was done, is a violator of the law. And for the doing of that this respondent is to be impeached! Aye, the proud position is occupied by the assembly of the State of Minnesota to-day; they stand in that niche in the temple of the high court of impeachment never occupied by the people of any State before. They stand here presenting articles of impeachment against a man for bringing to justice a horde of dishonest malefactors and violators of the law; nothing more, nothing less. Has one word been uttered by any man who has sworn in this case as against the character of the respondent? Not one. There has been no word uttered that touched the integrity of his character as a judge. Fair and impartial in all his decisions, as every lawyer has said who has testified here; even his enemies admit the fact. Always holding the scales of justice evenly balanced between his enemies and his friends, his opponents and those who were for him, he stands here to-day without a stain upon his character, without a tarnish upon his name, with the lustre of his fame undimmed so far as his impartiality and honesty is concerned. Answering for what? For the punishment, senators, of men whom you must say were violators of the law in every instance, or defamers of character in the acts they were committing.

Now, Senators, this Senate is a harbor to the respondent; it is the harbor into which his ship of defense must be steered, and through which it must go; and whether it is to be to him a harbor of destruction, or a harbor of safety, depends entirely upon your views of the law

and facts, and upon your honesty and fairness in their consideration. The facts and the law of this case are with the respondent. As you render honest judgment in this case, so will the safety of this respondent be. So far as the law of this case is concerned, gentlemen, we can show you, and I think we can show you beyond any peradventure, that respondent never acted in all or any of the deeds charged against him, outside of the strict construction of the statutes of this State; that he never did anything beyond the duties imposed upon him by law to perform. He performed such duties fearlessly and without favor, and for that he is being impeached here.

Before I proceed to the argument of this case, I desire to talk upon the construction to be given to your constitution and your laws, the law that is to govern the final decision in this case, and I shall be obliged to go over some ground that has been gone over heretofore.

Gentlemen, our claim is that the respondent can not be impeached, except for corrupt conduct in office, and that that is what is meant in contemplation of law by the several provisions of your statute, and by the constitution of your State, that he cannot be impeached except for corrupt conduct in the performance of his official duties. Section 14, article 4, of your constitution, provides that "the House of Representatives shall have the sole power of impeachment through a concurrence of a majority of all members elected to seats therein. All impeachments shall be tried by the Senate, and when sitting for that purpose, the Senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members present."

Sec. 7, Art. 1, provides: "No person shall be held to answer for a criminal offense unless on the indictment of a grand jury, except in cases of impeachment."

Sec. 8, Chap. 54 of the Statutes, is as follows, and this seems to be the section on which the counsel relied. in his opening, in claiming that this case was outside of the pale of all impeachment trials that have ever been had heretofore. We do not take that view of the law. We claim that no offense is impeachable that is not indictable: "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 delinquencies or malfeasance, is a misdemeanor punishable by fine and imprisonment."

Every misbehavior in office! That means, by fair construction, every misbehavior in the performance of the duties of an office. That is the construction we place upon it, and it is the only fair construction to place upon it. Else how would you get at the offenses that are impeachable at all? Is it impeachable for Judge Page to go out on the street and talk in a loud tone of voice? Is it impeachable for him to go down on the street, and if a man calls him a liar, to knock that man down? Is it impeachable for him to have a quarrel with a neighbor, if he sees fit to have a quarrel? The counsel would have you construe this statute to mean, that every misbehavior that this respondent happens to be guilty of, while he holds this office, is misbehavior in office.

Why, gentlemen, it is an unheard of construction of the law of im-

peachment. It was never adopted in any court of impeachment on God's earth, and if the State of Minnesota adopts it, through its Senate, it will never be followed hereafter by any other court. It is an unheard of construction of the statute. Misbehavior in office, meaning that every misbehavior that a man may fall into is an impeachable offense. Suppose Sherman Page should go down to his hotel and get drunk in his room, quietly Is that an impeachable offense, bringing no disgrace upon any one except himself? He might be impeached if he went upon the bench drunk and disgraced himself and the people whose servant he is, for that might be an impeachable offense; but he must be guilty of some sort of corrupt conduct in office—in the performance of the duties of his office—before he can be impeached. The managers have assured you over and over again, gentlemen, when arguing concerning this tenth article, that they were going to prove that this respondent was habitually in the habit of acting harsh towards the officers of his court, and towards other officers of Mower county. They have proved three isolated instances which prove no habit, and go for nothing. The last witness, McIntyre, making himself so ridiculous that we did not deem it necessary to give him a cross-examination, swearing to a conversation had with Judge Page, commenced by himself. French swearing (and in time we will explain that to you, and show you that French's testimony is incorrect in almost every particular except one, and that Judge Page did call Mr. Greenman to proceed with the criminal case)—French testifies, and endeavor to prove this habit by showing that an attorney was appointed to fill his place while he happened to be out of court; and the other circumstance proved this morning, the barn-yard talk had between Baird and the respondent—and that is the sum of the evidence—about which all this talk has been had, over which this court has been delayed, through which we have waded, which fills page after page of this impeachment record, which we have been assured was the article upon which these learned managers were to rest as the solid foundation through which they were to obtain this impeachment, if all other charges failed. This is the matter which has been proven under it. It is a shame and a disgrace, gentlemen, that that kind of proof should have been presented here as the proof upon which that article is to be substantiated before you. Why, Senators, taking our view of the construction of this law, which view I believe such of you as are lawyers will not hesitate to accept, misbehavior in office means corrupt conduct of some character while in the performance of the duties of his office.

The constitution of Minnesota, section 1, article 13, reads as follows: "The governor, secretary of state, treasurer, auditor, attorney general, judges of the supreme and district courts, may be impeached for corrupt conduct in office, or for crimes and misdemeanors." That which is made a crime under your statutes; that which is made a misdemeanor under your statutes; that which amounts to corrupt conduct in office, may be impeachable. Nothing more. And unless it is shown here by the evidence that Sherman Page, in something which he has done, was guilty of corrupt conduct in office, of a crime and a misdemeanor, then, gentlemen, no conviction can follow. And it seems to me that the rule that has prevailed always in courts of this character heretofore; the rule that was laid down by Wirt, and which was followed by the Senate of the United States; by such men as Webster. Poindexter, some of the ablest men this country ever had, ought to be the rule of this Senate.

I propose to read from the trial of Judge Peck, the argument of William Wirt, as to the law which we claim should govern this trial.

Peck was impeached for arbitrary and oppressive conduct in the arrest of a party under color and pretense that he had committed a contempt of court, and it was also alleged that he had been guilty of an unjust and arbitrary act in sentencing the party who had been guilty of contempt to imprisonment; and if any Senator will take the pains to read the article upon which the sentence was passed upon Lawless, whom Judge Peck sent to prison and fined, they will discover that so far as the libel in it was concerned, it bore no comparison in its severity with the libel made upon Judge Page by Mollison, in Mower county, and the Senate of the United States held, that notwithstanding the fact that Peck brought Lawless up for the publication of that article, fined and imprisoned him, he should not be impeached, and they acquitted him, because it was said Peck might have believed he had that right.

"The respondent has answered, denying the charge in both its aspects, of an unlawful act and a guilty intention; the burthen is on the managers to make good the charges, both as to the illegality of the act, and the guilt of the intention. It is not enough for them to prove that the act was unlawful, (though this I apprehend is beyond their power) but they must go farther; and to prove that this unlawful act was done with a guilty intention, even if the judge was proved to have mistaken the law, that would not warrant a conviction, unless the guilt be also established, for a mere mistake of the law is not crime or misdemeanor in a judge. It is the *intention*, that is the essence of every crime. The maxim is (for the principle is so universally admitted) that it has grown into an axiom, *actus non reum facit, nise mens sit rea.*

"Sir, if the impeachment had not contained the charge of *the guilty intention*, the respondent under the advice of his counsel, would have demurred to it, not by a special demurrer to the *form* without charge, but a general demurrer to the *substance*, for the *intention* is the *substance* of the crime. The honorable managers who prepared this article of impeachment, were perfectly aware of this, and have, therefore, very properly, charged the *intention in express terms.*

"Sir, it is a *material* part of the charge, and what it was *material* to *charge* it is *material* to *prove.* Let them prove, first, that the respondent acted *unlawfully* in pronouncing the sentence which he did pronounce, but if they can make out their proposition (which we conceive to be impossible), they have something more behind, for they have charged that in acting thus unlawfully he did it with *the intention wrongfully* and *unjustly to oppress, imprison* and otherwise *injure* the said Luke E. Lawless, *under color of law.* Now, if the respondent thought he was acting lawfully, and so acted with the intention to discharge what he conceived to be his duty as a judge he cannot be guilty of this charge."

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

"The charge necessarily implies that the judge was conscious he was usurping a power he did not possess; that he did it *wilfully, knowingly,* and that he did it with the *intention* charged, *wrongfully* and *unjustly* to oppress Mr. Lawless, *under color of law.*

"Now, sir, this proposition the honorable managers are bound to establish, and both its terms, by the evidence in the case. It will not be enough for them to excite a suspicion, to raise a doubt upon the subject —to leave the minds of the honorable court." They must cast the balance distinctly, remove every reasonable doubt, and place the illegality of the act and the guilt of the purpose beyond question, before they can expect from this honorable court a sentence of guilty."

"Now, gentlemen, there are two principles of law which we have a right to invoke here, although we do not deem it necessary to invoke them: 1st. A man is always presumed to be innocent until he is proven to be guilty.

"2d. If there be any doubt in the mind of this court as to the guilt of the accused upon these articles, it is the sworn duty of this court to resolve that doubt in behalf of the respondent.

"One of the honorable managers, seeming to perceive the impossibility of satisfying any candid mind that the respondent was guilty of the intention charged, endeavored to escape the rule of the criminal law, by contending that if they fixed on the respondent the commission of an unlawful act, the guilty intention charged in the impeachment followed as a necessary implication of law. This I deny, for then every mistake of law on the part of a judge would become a crime or a civil injury, for which he would be personally responsible. The honorable manager sought to illustrate his proposition by the cases of murder or forgery. If, said he, a party be proved to have committed a deliberate murder, will he not be presumed to have intended to commit murder? Is separate proof of intention ever required in such a case? Or if a man be proved to have committed forgery, will not the law infer the intention from the act?

"This is plausible. Let us examine its solidity. It is the proposition that they must maintain, and from which alone they can have any hope of success in this case. Is it sound?

"They ask, first, if a man be proved to have committed a deliberate murder, whether the law requires any separate proof of a guilty intention? Certainly not. Why? Because he cannot be proved to have committed a deliberate murder without having fixed upon him *the proof of the guilty intention*, for that guilty intention is a necessary part of the proof of a *deliberate murder*. But that is not a case in which the law infers a guilty intention from the simple act; murder is not a simple act; it is a technical term, presenting a compound of act and intention: the act is the killing, the intent is of purpose and with malice aforethought. But let us take the act by itself and see whether the law will supply, by implication, the guilty intention. The analysis will prove the policy of the proposition attempted to be maintained by the honorable manager, and establish the solidity of the principle for which we contend.

"The simple act is killing a reasonable being in the peace of the country. If on mere proof of the *act of killing* the law would imply the *guilty intention*, then *all* killing would be *murder*; but is it so? We know that it is not. Every lawyer is familiar with the three great divisions of homicide into *felonious, excusable* and *justifiable*. He knows that the *first felonious* homicide, is again subdivided by the *criterion* that the first

grade is of *murder*, which is done of *purpose* and with *malice aforethought*, the punishment being death; the second being *manslaughter*, in which there is the want of that deliberate and guilty intention, but which being done suddenly, and in the haste of passion, the offender has the benefit of clergy. Then there is excusable homicide, as fully in self-defense or by misfortune a justifiable homicide, as where the killing is in execution of the sentence of law, or for the prevention of crime.

In all these cases, the simple act is the same—it is the killing of a human being. What is it that shades off this same act from a crime of deepest dye through all its gradations until it becomes not only innocent, but an act of merit? *It is the intention.* If one man poison another of purpose, and with malice aforethought, it is murder. But a mother poisons her child, by giving it arsenic through mistake for magnesia, she has done it with *deliberation* and with the exercise of her best judgment. The act is the same in both cases; it is the killing by poison. Why is it crime, in the one case, and no crime in the other? Because of the difference of intention proved, not a different intention implied by law; but a different intention established by proof.

"Take the other illustration put by the honorable manager, the case of forgery. What is forgery? It is the fraudulent making or alteration of a writing to the prejudice of another man's right. The fraudulent intention is here again an essential part of the crime. It must be done to the prejudice of another man's right. But the act of imitating the hand writing of another so as to deceive the man himself, and lead him to admit that it is his own, may be done, and is often done without crime. It is done through playfulness, and is rendered innocent by the absence of all fraudulent intention; all intention to prejudice another man's right.

"It is true, that to have made or altered a writing to his own emolument and to the prejudice of another man's right, and the proof stop there, the forgery is proved, because the fraudulent intention is apparent; in the proof of the facts already asserted; but that is not the case of an intention implied by an operation of law, it is the case of an intention proved by the facts in evidence. The facts are utterly inconsistent with an innocent intention and are consistent only with the guilty one. But permit me, under this head of forgery, with which the Hon. Manager has furnished us, to put another case rather closer in analogy to the case at bar. Let us suppose that the man accused of forgery holds a power of attorney to use the name of his principal in a great variety of specified cases, and suppose some of the specified occasions of his powers are so equivocally worded that he might well have supposed himself authorized to use it in the case charged as a forgery. How would the court, presiding at the trial, charge the jury in such a case? Would they say:

"Gentlemen take the power of attorney and examine it; and if you think on fair construction of the instrument that it gave him no authority to use the name of his principal in this case he is guilty of forgery, and you must find him guilty!"

"*No sir.* The court would take the instrument into their own hands. They would scan its terms. They would tell the jury that the power was so ambiguously expressed that the man might well suppose himself authorized to do the act which he had done, that if he could reasonably be believed to have supposed himself so authorized, which, under the circumstances, he might have done, he was guilty of no crime, because the act does not make him guilty unless his intention was guilty, and that,

in such a case, the doubt was to acquit. Even if the court, themselves, in such a case, should be of the opinion that the letter of attorney did not, on a correct construction, authorize the act which he had done, they would then say that he had done an unlawful act, and, in a civil suit they would set it aside as against his principals, because it had not been done within the scope of his authority.

" But could they in such a case come to the conclusion that he had done a *criminal* act and punish him for it criminally. Never, so long as a *fair doubt* could exist, as to the *guilt* of his *intention.*

"Transfer this reasoning to the bar, the respondent's counsel entertain no doubt that under the laws of the land he possesses the power which he exercised on this occasion; that the case was a proper one for its exercise, and that it was exercised under a conscientious sense of duty. They believe that the case stands authorized and justified by all the principles and precedents which have been placed before you, both in the American and English books. The honorable Managers on the other hand, say that they differ with us in this opinion; that these authorities gave him no such power; that they extend but a little way, and that the respondent passed the line drawn around him by the books.

"Now, suppose that this honorable court should be of the opinion that the respondent has not the power which he has exercised; that the judges, whose example he has followed, mistook the law of contempt; that elementary writers hitherto had received as authority in our tribunals, have carried the powers of the court too far; or suppose they should think that the respondent has misconstrued the authorities, that they do not, in reality, go the full length to which he has carried the power? yet, if they shall also believe that from the existing statement of elementary and reported cases, and from the course pursued by other courts, in like cases, both in England and the United States, the respondent might have believed he had the power, *might have thought the case a proper one* for the exercise of the power, and *might have been influenced* by a sense of official duty in doing what he did. Is it possible that, under circumstances like these, you can affirm on your judicial oaths, not only that he had no power, but that he *knew* that he had no power, and must have consciously, and intentionally, usurped the power for the guilty purpose of oppressing Lawless?

"Sir, can it be denied that such is the state of the authorities, that any professional man of the first science in his profession, might, with all his heart and conscience, have fully believed and affirmed the existence of a power. I will venture to assert that you may consult one hundred of the most eminent lawyers in this country on these authorities, and that a great majority of them will express an opinion in favor of the power. Permit me to ask this honorable court, the authorities have all been read before you—would it detract from the reputation of the first lawyer in the land to express the opinion that, according to these authorities, the power to punish such a contempt exists in our courts; you might differ with him in the opinion, but would you pronounce him ignorant of his profession, nay more, would you pronounce him a scoundrel for having given such an opinion, yet this is the drift of the arguments on the other side.

"You are called upon to pronounce Judge Peck to be a *criminal* for doing no more than what he saw had been done, not only in England, but in the States of the United States. Yes, sir—in those States which have been the loudest and strongest in the liberty of press, and the right of trial by jury, this power has been exercised by the courts. Look at

Virginia. Is there a State in the Union more truly republican, more lofty and high minded, more ardent in the asserting of all popular rights? Yet, in that State, you have seen, sir, that this same power has been asserted and exerted by the courts, and declared to be indispensable to the protection, independence and utility of those tribunals. Now, sir, with such a host of precedents before him, was it strange that Judge Peck should believe the power to exist? and if he might have so believed, can you infer from the simple act of its exercise a *criminal intention*? For this is the argument I am now asserting, the argument being that if he had not the authority of the law for what he did, there is no necessity to inquire into intention; because of the acts of being unlawful, the guilty intention follows as a necessary consequence. I say, on the contrary, that the question of legal power in this case, is a question on which the most enlightened men of the profession may honestly differ in opinion, and in this, I consider myself as making a very liberal concession, because I really think the power so clearly asserted by all the authorities, that, but for what we have heard, we might well have anticipated an entire unanimity of opinion in its favor.

"But it is enough for my argument to say that it is a power in regard to which enlightened and honest men may well differ in opinion, for if they may honestly differ there can be no crime or misdemeanor in holding or acting upon either opinion, yet, by the argument which I am resisting, you are called upon to say that if, on your construction of the authorities, Judge Peck had not the power which he exercised, it follows as a legal consequence, that he acted with the criminal intention charged in the article of impeachment. No sir; a judge may mistake the law and still be an honest man. How often do we hear the most upright and enlightened judges differing in their opinions on questions of law? The one side or the other must be mistaken, for both cannot be right. The one side or the other must be for doing what is unlawful, but does it therefore follow that the side which is in error is criminal?

"Now we have sometimes instances of a whole bench, admitting the error of a former decision, and solemnly retracting that error; but who ever supposed that they were criminal, either in the first opinion or the last? The law is not of the exact law of sciences. You cannot reduce its principles to demonstrations. Differences of opinion among the professors are proverbial. It is for this reason that appellate courts are instituted. We see the opinions of inferior courts reversed every day, and this not only in civil but in criminal matters. But no one ever thought of impeaching an inferior court because it had mistaken the law; and yet, according to the argument, they ought to be impeached in every such case, because an unlawful act, we are told, necessarily involves a criminal intention. I respectfully insist, therefore, that although you should differ with Judge Peck and his counsel with respect to the extent of his judicial powers, and think that he had not the power to punish the conduct of Mr. Lawless as a contempt of court, it does not follow that he is guilty of the misdemeanor charged in the impeachment, because the inquiry still remains whether this was an honest mistake of judgment, or whether he acted with the guilty intention charged in the impeachment; and that this guilty intention must be placed beyond doubt before you can convict him, because the principle of the criminal law is that to doubt is to acquit.

"I insist, too, that this guilty intention is not to be inferred from the alleged incorrectness of his judicial opinion, but must be satisfactorily

proved by the evidence in the cause. The Hon. Manager, I humbly conceive, then, was rather unfortunate in his illustrations from the cases of murder and forgery He did not perceive from the very terms in which he stated his propositions, involved that very proof of intention, as a fact, which he supposed the law would raise by implication. * * * * * * Does the honorable Manager intend to argue that the judge had no lawful authority to pass the sentence which he did; that the imprisonment and suspension being without authority were unlawful and oppressive, and that this wrongful and oppressive imprisonment and suspension, being the natural consequences of the judge's unlawful act, must be presumed to have been intended by him. Does not the gentleman perceive that by this process of reasoning he is begging the whole question; first, that the judge acted without authority of law; second, that he knew he was acting without the authority of law, for it is only by the assumption of both these positions that he can arrive at his consequences of an intention wrongfully and unjustly to oppress and injure. For he surely does not mean to contend that every unlawful imprisonment flows from intentional oppression of the judge who has ordered it. How often has bail been refused through the mistake of judges when it ought to have been allowed, and the consequence invariably is an unlawful imprisonment?

"How often have men been discharged on *habeas corpus* who have been wrongfully imprisoned through the mistake of judges? Would the gentleman apply his argument to such cases; would he say that wrong, oppression and injustice are the natural consequences of *such* mistakes; and that as every man is presumed to intend the natural consequences of his own actions, therefore, those judges (admitted to have acted under an honest mistake of their duty,) must be presumed to have intended to wrong, oppress and injure, the man whom they have sustained. Does he not perceive that by such an argument he would be maintaining a solecism in terms, and that the whole fallacy arises from the misapplication of a principle perfectly true and sound in itself? Every man must, indeed, be presumed to intend the natural and practical consequences of his own actions; but the moral character of his action takes his color from his mind, and the act, whatever it may be, does not make him guilty, unless his mind be guilty. If the consequences which he aim to produce are necessarily immoral in themselves, his mind is guilty and imparts its guilt to his action.

But, if intending to do right, he does, through mistake, that which is wrong, what kind of logic is that which would seek to fasten upon him by induction, a guilty intention, against the very terms of the hypothesis. Although it be true, then, that every man is to be presumed to intend the natural consequences of his own actions, and therefore Judge Peck must be presumed to have intended that Mr. Lawless should be imprisoned and suspended from practice, it does not follow that he intended wrongfully and unjustly to oppress and injure him, because wrong and injustice were the natural consequences of the honest delivery of an official opinion by a judge. The very reason why a man is presumed to intend the natural consequences of his own actions, and is held responsible for them, is because he must have foreseen these consequences at the time of his action. But can a judge be presumed to foresee that wrong and injustice will follow from his pronouncing an opinion which he honestly believes to be a correct opinion, and to be demanded by his official duty. The question carries its own answer with it, and fairly

exposes, I conceive, the misapplication of this principle to the point under discussion.

"We are not now discussing the matter of fact whether Judge Peck erred in the expression of his opinion, and even if he did err, whether his error was so palpable that he must have been conscious of it, or whether the case was attended with any circumstances which will justify this honorable court in pronouncing the respondent guilty of the intention charged, will constitute a subsequent part of my inquiry. We are now engaged in settling the preliminary question of the discussion, and fixing the true question before the court, and I insist that the guilty intention charged by the article of the impeachment, is an essential part of the offense, and must be clearly and distinctly made out by proof before the honorable managers can call for the conviction of the respondent.

"I insist further, that even if the honorable managers could succeed in proving that the judge was not warranted by the laws of the land in punishing the publication of Mr. Lawless as a contempt the guilty intention would still remain to be proved.

"For I deny the proposition, that the law will annex, by implication, a criminal intention to every opinion of a judge which is shown to be erroneous; and while I admit that every man is presumed to intend the natural consequences of his own actions, because he must have foreseen that they would follow, I deny that the respondent is to be presumed to have intended wrongfully and unjustly to imprison, oppress and injure Luke E. Lawless, by the sentence which he pronounced, because wrong and injustice are not the natural consequences of a judicial opinion honestly expressed, and, therefore could not have been foreseen by the respondent when he pronounced that opinion, even although an opinion they have held to have been erroneous. And I contend that, even although the judge should be shown to have acted erroneously in point of law (which I confidently believe cannot be shown), yet, unless the principles of the criminal law are to be, now and here, for the first time, torn up and reversed; the judge is presumed to have acted innocently and honestly, until the contrary shall be established by the proof.

"But I find that I have not yet done with these preliminary principles, for another of the honorable managers, (Mr. Wickliffe) has advanced a proposition so broad and directly confronted by all the authorities, that had it not been for some other things that I have heard in this case, I should have heard with unmixed surprise. The honorable manager tells us that 'he cares not for proof of intention, that he cares not whether the judge acted wrong from ignorance or intention. That ignorance of the law, is no excuse in the unlearned layman much less in a learned judge. That every man is presumed to know the law, and *a fortiori* a judge, whose office it is to understand and administer the law. If, therefore, a judge through ignorance of the law has done that which he had no power to do, he is just as guilty in the eye of the law as if he had sinned intentionally against the light of knowledge.

"Then according to this process of reasoning, a mistake of the law by a judge is an impeachable offense. But is it possible that the honorable manager can mean to contend that a judge is answerable, either civilly or criminally, for an error of judgment; that he can be either sued, indicted or impeached for such an error! If such be his meaning,

he is in direct conflict with all the authorities on the subject. The question is not a new one. It has been long since settled, both in England and in the United States, and I am not aware that for many centuries an advocate has, either by inadvertence, sanctioned or even countenanced the position which has been thrown out by the gentleman. From the reign of Edward III. to the present day, the current of authorities is clear and uniform, the other way; and establish beyond controversy, the principle that the judge of a court of record is not answerable, either civilly or criminally, for a mistake of judgment in his judicial character. The English authorities are reviewed by Chief Justice Kent, in the case of Yates and Lansing, 5 Johnson's Reports, 291. The case was that of a civil suit against Chancellor Lansing, for having punished as a contempt, an act which had been finally decided by the High Court of Error and Impeachments, not to be so punishable. In the page to which I have referred, Chief Justice Kent announces, in the following terms, the proposition which he establishes by the English authorities.

" 'The doctrine which holds a judge exempt from a criminal suit or indictment for any act done or omitted to be done by him, sitting as a judge, has a deep root in the common law. It is to be found in the earliest judicial records, and it has been steadily maintained by an undisturbed current of decisions in the English courts, amidst every change of policy, and through every revolution of their government A short view of the cases will teach us to admire the wisdom of our forefathers, and to revere a principle on which rests the independence of the administration of justice. '*Juvat accedere fortes atque haurie.*"

"Having gone through some of the authorities in the Year Books, he proceeds thus, on page 292: 'These cases, and many more of these of the like effect which could be gleaned from the Year Books, conclusively show that judges of all courts of record, from the highest to the lowest, and even jurors, who are judges of fact, were always exempted from prosecution by action or indictment for what they did in their judicial character. It did not escape the discernment of the early sages of the law that the principle requisite to secure a free, vigorous, and independent administration of justice applied to render jurors as well as judges inviolable; and I fully acquiesce in the opinion of Lord Chief Justice Wilmot, that 'trials by jury will be buried in the same grave with the authority of the courts who are to preside over them.'' Chief Justice Kent then proceeds to examine the authority subsequent to the Year Books, and in the courts of this review comes to the case of Hammond and Howell, to his remarks on which I beg leave to call the attention of the court. In page 293: 'But the case of Hammond vs. Howell, (1 Mod. 184; 2 Mod. 218,) deserves our particular notice, as being peculiarly weighty on the point before us. This is the case to which I have already alluded for another purpose. The defendant was Recorder of London, and, as one of the judges of Oyer and Terminer, had fined and imprisoned the plaintiff, because he had brought in a verdict as a petit juror, contrary to the direction of the court and the evidence. If ever a case was calculated to awaken sensibility and to try the strength of this principle, this must have been one. It arose soon after the decision in Bushel's case, in which it was agreed by all the judges that a juror was not finable for his verdict. The act of the defendant was admitted to have been illegal, and no doubt it struck the whole court as a high-handed and arbitrary measure.

"The counsel for the plaintiff admitted the weight of the objection that an action would not be against a judge of record, for what he did *quatinus* a judge; and he endeavored to except this case from the general principle, by contending that what the defendant did, was not warranted by his commission, and that therefore, he did not act as judge. But the court did not yield to such miserable sophistry; for they held that the bringing of the action was a far greater offense than the imprisonment of the plaintiff, for it was a bold attempt both against the government and justice in general. They said that no authority or resemblance of an authority had been urged for an action against a judge of record, for doing anything as a judge; that this was never before imagined; and no action would be against a judge for a wrongful commitment, any more than for an erroneous judgment; that though the defendant acted erroneously, he acted judicially, and if what he did was corrupt, complaint might be made to the king, and if erroneous, it might be reversed. The complaint to the king here contemplated, is with reference to an impeachment or removal; and the court observe that the case put as rendering that course proper was if the judge had acted corruptly in doing what he had done; that is, with a wicked intention to oppress, under color of law.' In the further progress of the same opinion, Judge Kent cites the case of Grovenvelt vs. Burnwell, (12 Mod., 386; 1 Salk., 396; 1 Lord Raym, 454;) in which Sir John Holt, after stating this exemption of the judge from all liability for mere error of judgment, concludes 'that it would expose the justice of the nation, and no man would execute the office of judge, upon the peril of being arrainged by action or indictment for every judgment he pronounces.' 'I shall close this review of the cases,' says Judge Kent, 'with noticing one arising in an American court. The case that I allude to is that of Phelps and Sill, lately decided in the supreme court of Connecticut, (1 Day's, case in error, 315). From the characters composing that court, I think the decision entitled to great consideration. That was a suit against a judge of probate for omitting to take security from a guardian, and the court held that the action would not lie. They said that 'it was a settled principle that a judge is not to be questioned in a civil suit for doing, or for neglecting to do a particular official act, in the exercise of judicial power That a regard to this maxim was essential to the administration of justice; if by any mistake in the exercise of his office, a judge should injure an individual; hard would be his condition if he were to be responsible for damages. The rules and principles which govern the exercise of judicial powers, are not in all cases obvious; they are often complex, and appear under different aspects to different persons. No man would accept the office of judge, if his estate were to answer for every error in judgment, or if his time and property were to be wasted in litigations with every man whom his decision might offend."

"'Judicial exercise of power' continues Judge Kent, 'is imposed upon the courts. They must decide and act according to their judgment, and, therefore, the law will protect them. The chancellor, in the case of the plaintiff, was bound in duty to imprison and re-imprison him, if he considered his conduct as amounting to a contempt of his court. The obligations of his office left him no volition. He was as much bound to punish a contempt committed in his court, as he was bound in any other case to exercise his power. He may possibly have erred in judgment in calling an act a contempt, which did not amount to one, and in regard-

ing a discharge as null when it was binding. This court may have erred in the same way; still it was but an error of judgment, for which neither the chancellor nor the judges of this court are or can be responsible in a civil suit. Such responsibility would be an anomaly in jurisprudence. No statute could have intended such atrocious oppression and injustice. The penalty is given only for the voluntary and wilful acts of individuals, aiding in a private or ministerial capacity. It is a mulct, and given by way of punishment. The person who forfeits it, must knowingly, contrary to the act, re-imprison, or cause the party to be imprisoned. There must be the scienter, or intentional violation of the statute; and this can never be imputed to the judicial proceedings of a court. It would be an impeachable offence, which can never be averred or shown, but under the process of impeachment.'"

Senators—this authority has been followed by impeachment courts throughout this country, ever since it was made authority by its adoption by the Senate of the United States, and there has never yet been a decision made in this country, holding that the judge of a court was responsible in courts of law for any mistake he may have made deciding a case, and no judge has ever been indicted in this country for any decision made by him, while on the bench. Nor has a civil action ever been maintained against a judge, because it is said, courts shall not be bothered, they shall not be responsible for their decisions, whether right or wrong, provided such decision be not corruptly given. Now, laying down this principle as the law which we believe to govern you in the decision of this case, I proceed to the argument of the questions that are raised by these several articles. My argument on the law is mostly written, and I will read from my brief, premising it by saying that the views I express are the views of Judge Page now, and were his views at the time he rendered his several decisions, complained of under these several articles. They are the views he took then, that we honestly believe he was right in taking.

ARTICLE I.

THE MOLLISON MATTER.

This article in substance charges respondent with improperly and for malicious purposes, causing the trial of D. S. B. Mollison, a person indicted for libel, to be delayed against the objections of said Mollison. Under this article, the prosecution must establish these facts: First—That the trial of Mollison was unlawfully as well as improperly delayed, and to prove this, it must appear that the delay was without the consent of the accused either express or implied. Second—That the trial was delayed for malicious purposes, viz., to injure the accused. Persons charged with crime, "shall enjoy the right to a speedy and public trial." Now, gentlemen, what are the facts in relation to this matter? Did Mollison ever through his counsel or himself, demand that this indictment be dismissed? Did he ever make any request of the court (taking his own evidence here as a criterion by which we are to judge), did he ever make any request of the court asking that the indictment be dismissed. Not at all. He appeared there from term to term, according to his evidence, and we think it is shown by his own evidence he was never in fact ready for trial. He appeared in

court, but he admits himself that he had never subpœnaed his witnesses; that he had never done a thing for the purpose of preparing for his trial. It is not fair to say that Mr. Cameron was not his attorney. He was his attorney. What was the court to presume concerning this? Mr. Cameron appeared in court, asked the court to allow him to withdraw the plea of "not guilty," that had been interposed, and put in a demurrer to that indictment. No notice was given the court afterwards, according to the evidence of Mollison, that Mr. Cameron was not acting as his attorney. The matter was never brought to the attention of the court in any manner. The court presumed that Mr. Cameron was acting for Mr. Mollison, and he had a right to presume it from what had already transpired.

"If there is good cause the action may be continued from term to term." That is the provision in section 9, Bissell's Statutes. What is good cause?

In opening this case, Mr. Manager Campbell made the statement, that Judge Page, without any impropriety, could have tried this case. The managers could not have examined the law, for every lawyer will admit that a person against whom a libel is alleged to have been made, would be utterly unfit to sit as a juror in the trial of that case. As to challenges and disqualification of jurors,

I quote from Bissell, pages 1055 and 1056.

"A challenge for cause is an objection to a particular juror and is either

First. General; That the juror is disqualified from serving in any case, or

Second. Particular: That he is disqualified from serving in the case on trial. General causes of challenge are:

First. A conviction for a felony.

Second. A want of any of the qualifications prescribed by the laws to render a person a competent juror.

Particular causes of challenge are of two kinds:

First. For such a bias as when the existence of the facts is ascertained, in judgment of law, disqualifies the juror, and which is known in this chapter as implied bias.

Now, suppose Judge Page had been on trial in that court before triers, to determine his competency to sit as a juror in that case. A case on trial of an alleged libel of himself, any lawyer can see at a glance, that he could not sit as a juror, and consequently he was disqualified from acting as a judge. In his view of the law in that respect the manager was simply mistaken. If respondent was disqualified, and no reasonable person will dispute the proposition, it was his duty to use reasonable diligence to procure the attendance of some other judge to hear the case. This could be done under the provisions of section twenty-one, page 723, Bissell's Statutes:

"Whenever a judge of the district court is interested as counsel or otherwise in the event of any cause or matter pending before said court in any county of his district, another district judge in an adjoining district shall, when thereto requested by said judge, attend and try said cause, and the judge of any district shall discharge the duties of the judge of any other district when convenience and the public interest requires it; and whenever a district judge is a party or otherwise interested in any cause, another district judge in an adjoining district shall, within his district, transact any *ex parte* business there, and determine motions and grant orders in such causes when brought before him,

which acts shall have the same force as if done in the district in which such actions are pending."

The manager was eloquent in his allusion to the willingness with which judges of the district court of this State performed the duties of other judges of the State when requested, and he alluded to the fact that the governor of this State, exercising a power which he has a right to exercise, requested a judge to go into Judge Page's district and hold court on account of the inability of respondent to preside in his district, while resting under these charges. He gives that as a reason why Judge Page could have obtained a judge in a very short time to have tried Mollison's case.

Now what is the fact? Judge Page, as we will show you, within a month from the time he went upon the bench, or a very short time thereafter, commenced correspondence with Judge William Mitchell, and with Judge Dickinson, and some other judge, who lived in an adjoining district, and that in pursuance of this correspondence Judge Mitchell came to Mower county, as the proof will conclusively show, to try the cases, in which Judge Page had acted as counsel, and in which he was interested. The counsel stated here that they would be able to show that there was no jury present at the time Judge Mitchell appeared there in July, 1874. The record, gentlemen, shows that there was a jury at the time judge Mitchell was in attendance; that a jury was called in the forenoon, that they were discharged to appear in court in the afternoon, and did so appear. And Mr. Cameron, as the attorney for this man Mollison, came into court before Judge Mitchell and consented that this case be put over, and continued in behalf of Mr Mollison. What does this show? It shows that they never intended to try this case, they did not want a judge there; that was not their object; they simply wanted that case on the calendar from term to term, and when the case happened to be called Mollison could come up in an impudent sort of a manner and cry, "here sir, here sir, I am ready for trial."

This respondent had to arrange with these judges who lived in adjoining districts. They had to accommodate him when they could, and each of those judges living near him are busily engaged all the time. The respondent could not obtain a judge for that spring term; he made every effort that it was possible for him to make, and we will show you by the correspondence that occurred between him and Judge Mitchell that at the very earliest day that it was possible for him to obtain a judge, he did obtain one; and gave this complaining Mollison a chance to have his case tried.

They have paraded the fact here that, when Mollison was finally brought to trial before Judge Brill, he was acquitted. You have read that libel, Senators; you know that it was as gross a libel as was ever perpetrated upon a human being. It is acknowledged here, by Mollison, who perpetrated the libel, that it was a lie, and the supreme court of this State, by their decision, stamped it as a lie; and Mollison knowing this, never wanted to come to trial; that was not his object. He wanted to rise up impudently in that court, and whenever this case was called, he wanted the privilege of standing up and saying: "Ready! ready!!"

I say, gentlemen, that when the evidence of Mollison himself was finished, actuated by such motives as ought to have actuated the managers, they should have risen up and said: "Gentlemen of the Senate, we will abandon the first article of this impeachment."

The animus of Mollison, his conduct while here under oath—every article of evidence that was given in connection with that specification by him show no wrong was done him. but that he was treated more leniently than he deserved. Why did he impudently keep bowing his head and nodding assents to the different statements when parts of the indictment were read which were grossly libelous against respondent? It is said that this respondent oppressed him; was guilty of corrupt conduct when he said to him, "Why do you bow your head;" addressing him, as Mr. Kinsman said, in an ordinary tone of voice, he impudently answered: "My head is my own, and I have a right to do with it as I please." A pretty subject he is to charge corruption and oppression upon the court under these circumstances, and then the complaint is made, although not alleged in this specification, nor made a part of it, upon which a mere scintilla of proof is introduced, for the purpose of aiding and assisting a little in showing a malicious action and a corrupt intent on the part of the judge.

The complaint is made here that fifteen hundred dollars bail was required and was excessive. He had no difficulty in giving bail. By what criterion are you to judge of this matter of excessive bail? How are you to reach a conclusion, senators, upon the evidence already introduced here, as to whether the bail was excessive, and as to whether the respondent was corrupt in his action in relation to it? We claim that their issue is outside the record in this case. We claim that there is really no evidence to sustain it, notwithstanding the statement made by these managers that it does show corruption. Did Mollison ever ask to have his bail reduced? Did he, through his counsel, complain at the time he came in court to give his bond? Did he ever appear before the court and say he was oppressed by reason of his resting under that bail bond? Did his bondsmen proceed in the manner provided by the statute of the State to discharge the bond? Nothing of the kind. And I assert here, that if instead of treating Mollison as he did, this respondent had sent him to jail for his conduct in court on that day, he would have been guilty of no offense against the laws of this country or of this State.

Why gentlemen, how is the reputation and dignity of courts to be maintained? How is their authority to be maintained, if men are to be impeached for acts of the character that this respondent is shown to have committed in cases of this character.

The gentlemen contend that a man has a right to come into court and bow his assent to a gross malicious libel upon the court, and that when the court calls his attention to the fact, he may tell the court in an impudent sort of a way, it is none of his business what he does with his head. So far as the conduct of Mollison is concerned, in connection with his efforts to bring his case to trial, what did he do. His constant efforts were to harrass the respondent under the direction of somebody, and his counsel says he gave him no direction; and at last despairing of harrassing respondent by other means, he comes into court behind the sheriff for the purpose of presenting a paper to the court delivering himself up on that bond. Your statute provides how bail may deliver up their principal, and it was an improper proceeding from beginning to end, and the court treated it precisely as every court in this State would have treated it. The court simply said to the sheriff, "I have nothing to do with the matter at all." If Mollison's bondsmen desired to release themselves from liability on his bond, it was their duty to arrest Mollison, and go and deliver him to the sheriff, and it was the

sheriff's duty to then take him into his custody, and it was the business of the sheriff to put him in jail, and it was the business of Mollison after he was incarcerated, to appear before the court and ask that he be released, and he could not be released in any other manner.

Now, gentlemen, it seems to me that so far as this article is concerned, they have utterly failed of proof. The respondent was never guilty of the conduct charged in the Mollison specification. Men who were in that court of justice, who saw just what was done from term to term, and from time to time, who knew accurately what was done, will appear here and testify, and it will be shown to you as clear as the light of day that so far as the conduct of this respondent was concerned in connection with this matter, there was nothing illegal or wrong.

On the day when Mollison says that respondent refused to permit him to speak he came forward and plead to the indictment; (and the gentleman who read that indictment will appear here as a witness before you.) The plea was, not guilty. He was asked it he had counsel. He stated that he had not. He was asked if he would obtain counsel He stated that he would not obtain counsel. He left the presence of the judge immediately; went back among the audience; sat down four or five seats back from the bar, and finally rose up, and in an impudent tone said that he wanted to speak. He did not ask to be heard upon his case; he was desirous of making a *stump speech*, in that court, and the court told him no, he persisted in speaking, and then the court said to him: "Not a word, sir."

Why, gentlemen, to say that the conduct of the respondent was anything but, in the highest degree, proper, is to say that courts cannot maintain their dignity and decorum—that they are to be interfered with by every upstart who desires to come in and interfere with them.

There was no oppression. The idea that what Judge Page there did was corrupt! The idea that there was improper conduct, on the part of respondent! The idea that there was anything done which any court would not have done is too preposterous to deserve a minute's consideration. Any court in this land thus interfered with would have suppressed Mollison's turbulence quite as promptly as did Judge Page. I have had some experience myself in courts of justice for the last twenty years, and I have seen men much more harshly treated by other judges, than Mollison was, for attempting to do much less offensive acts in court. Mollison had been guilty of gross contempt of court; he was trying to do that which he could not be permitted to do, if the dignity of the court was to be maintained. This respondent gave him a fair chance to be tried, he was unwilling to be tried before Judge Mitchell. After these articles of impeachment had been preferred, Judge Brill went down and tried Mollison's case.

It has appeared in proof here, gentlemen, that Mollison was acquitted. It is a sad comment, senators, upon the action of jurors in this country, that a man guilty of publishing a libel, as gross a libel as there is here shown to be, could have been acquitted as Mollison was acquitted. It shows such gross prejudice; it is so outrageous an act of injustice" that it seems to me it should have been the last evidence the managers should offer for the purpose of showing corruption on the part of the respondent. Accused as this respondnet was, of buying and selling justice, his character traduced in the wanton manner it

was, the supreme court of this State sustaining the very acts that he was alleged to have been guilty of corruption in doing, the acquittal of Mollison, is no credit either to the intelligence or honesty of the jury who gave the verdict of acquittal. At that term held by Judge Brill, the evidence here shows Mollison was not ready for trial. Mollison states that in a day and a half they got ready for trial a that term. They did not expect to try the case even then. They wanted it to hang by the gills in that court, for the purpose of using and swinging it as a club to hit the respondent with from time to time when an opportunity offered.

French says that it was agreed that that action should be dismissed. Gentlemen, we will show you, by Gordon E. Cole—and no man will dispute or doubt his word—we will show you that so far as this respondent is concerned, and French places himself with Gordon E. Cole at the time these conversations occurred, not one word was ever uttered by him; no understanding was ever had with him whereby it was agreed these criminal cases should be dismissed. It is true he said, so far as he, Mollison, personally was concerned, if they saw fit to make a retraction of those articles, he did not desire to have those cases pressed, but he distinctly stated to Gordon E. Cole that he would not agree to dismiss the indictments for libel, that he would say nothing concerning them, he would not exercise any authority, that he would not even express a wish in relation to the matter, and he did not; they were not even talked about, but he distinctly told them that he did not control them; that they were in the control of the district attorney, and that as he said must be done, so must be done.

Do you wonder, Senators, that Mollison was acquitted with French there, acting as the district attorney of that county? Is it any surprise to any man among you, that with French acting as district attorney of that county and conducting the prosecution of that case, Mollison was acquitted? You will at once admit, after seeing and hearing French under oath, and hearing him testify, as you have heard him from day to day, during the progress of this trial, that you are not in the least surprised. He has shown so much interest antagonistic to the respondent; he has conducted himself in such manner under oath; his evidence covers this case from the top to the bottom: his evidence is the blanket the managers have laid over the case. His contradictions are so numerous, his statements are so varied and contradictory in relation to a great many matters—as I will show you before I close—that I cannot believe you are going to take his evidence as being of such a character as to weigh much in the final decision of these matters.

Securing Judge Mitchell at the earliest practicable moment after the indictment was found, secured to Mollison all of his constitutional rights, or, in other words, a "*speedy trial.*" He voluntarily waived this right at that term, and thus released respondent from any further obligation or duty, until he came forward and indicated his readiness and demanded a trial, which he never did.

Had he done so, and a reasonably speedy trial had not been secured to him, then he might have moved the dismissal of the case, and would have been entitled to have the motion granted. He has slept upon his rights — has waived them, and is in no situation to complain. Thus the charge of neglect is completely refuted. But suppose it is proven, then what evidence of malice is there in the case? Can malice be presumed or *assumed* from the fact, that Mollison was charged with

the publication of a libel concerning respondent? If the charge was true, (and there is no averment in the article that it was not), the promptings of malice, if there were any, would have led respondent to urge and hasten Mollison's trial, that he might be punished. There could be no motive for its postponement. If it were alleged and shown that the charge against Mollison was trumped up, and there was no evidence to support it, and that respondent knew it, and had been instrumental in procuring the indictment, then there would be an evident motive for delay in the trial. But there is no such condition of things here. No personal ill-will or hostility towards Mollison can be shown.

I come now, gentlemen, to the consideration of

ARTICLE II.

The gravamen of the charge contained in this article is that respondent unlawfully and maliciously interfered, and used his official position to prevent the allowance by the board of county commissioners of Mower county, of a legal claim in favor of Thomas Riley, then a deputy sheriff, and afterwards made a wilfully erroneous decision on the same claim. Riley's claim was for serving subpœnas for defendants who were under indictment, and to which indictments demurrers were then pending. Riley had no legal claims against the county. Persons charged with crime are entitled to compulsory process for witnesses when needed, but in the absence of statutory provisions are not entitled to the services of an officer at public expense to serve such process In accordance with the constitutional provision the Legislature has enacted that "The clerk of the court at which any indictment is to be tried, shall issue blank subpœnas for witnesses," &c. 2 *Bis. Stat.*, 978. Clearly within the meaning of this law, a clerk has no authority, or rather is not required to issue subpœnas for a defendant until an issue is to be tried, which requires, or may require, the attendance of witnesses.

A demurrer raises no such issue, and while it remains undetermined, no rights of the accused can be protected by subpœnaing witnesses. The hearing on demurrer is not such a trial as requires the attendance of witnesses, hence is not such as is contemplated by the statute. There is no presumption that a demurrer will be overruled and the accused required to plead, and if he were, the law has fully protected his interests and secured every right. He is entitled to twenty-four hours to plead after he has been arraigned, and to four days after pleading to prepare for trial. (2d Bis., 1053, section 216.) If he is unable to prepare in the time granted by statute, he is entitled to a continuance for cause. If the dumurrer is sustained, as it was in these cases, the defendant is discharged, and of course no witnesses are required. The result in these cases shows that the services of Riley were wholly unnecessary. This construction of the law fully protects persons charged with crime, and also protects the public. If defendants could procure subpœnas and have them served at public expense before there is any issue of fact requiring evidence, endless useless burdens could be imposed on the public at the will and instance of such persons. There is no authority to limit the number beforehand, hence, if he can subpœna one witness

under such circumstances, he can a thousand; and if a county must pay for one it must for all, for obvious reasons. All costs made by defendant before an issue is joined by plea, are unnecessary. Are such costs or fees ever to be paid by the public? Clearly not. Costs made at the instance of a defendant when unnecessary, are not legal fees and are never a legal charge against the public. Here the question arises, when are the fees of officers who serve subpœnas for the defendant to be paid by the county?

I propose, Senators, to show you, presently, the inquity of this whole transaction and its innate rottenness. The only provision of law authorizing such payment reads as follows:

"Where any prosecution instituted in the name of the State for breaking any law thereof fails, or when the defendant proves insolvent or escapes, or is unable to pay the fees when convicted, the fees shall be paid out of the county treasury, unless otherwise ordered by the court."

2 Bissell's Statute, p. 976, sec. 42.

Quere: does a prosecution "fail," within the meaning of this statute, where a demurrer to an indictment is sustained?

But admitting that it does Riley, for other reasons besides the one already given, had no legal claim against the county.

The prosecution claims that Riley's bill was presented to the commissioners in March, 1875. The prosecutions were then pending, hence there was at that time, no legal claim against the county The orders sustaining the demurrers were filed August, 1875. In January, 1876, Riley's bill was again presented. At this time the prosecutions had terminated; but at the March term previous and at the time when Riley was engaged in serving the subpœnas, respondent in open court, gave directions to the clerk that the fees in these cases should not be paid by the county. Of this fact Riley was notified by the clerk, but it is claimed that the clerk did not enter the order, hence it had no validity. Let us examine this proposition: "Every direction of a judge made or entered in writing and not included in a judgment is an order; an application for an order is a motion."

2d Bis., p. 853-4.

The order contemplated in the statute referred to (2d Bis., p. 976) is clearly not such as would be made in an ordinary legal proceeding. It is not required to be entered nor filed; if entered, where should it be found? all that is required is that the officers entitled to fees in any given case, have notice in some way at some time that they must look to the defendant for their pay instead of to the county, and that the county commissioners have notice of this fact.

The requirements of the law in this case were fully complied with. Notice was first given to the clerk, then to the county board, and by them to the claimant, Riley.

But if it be claimed that a formal order was necessary, then we say that the order made was sufficient.

It was the duty of the clerk to enter the order made by respondent in his minutes. This was in open court. But his failure to do this did not impair nor vitiate the order. It could have been entered at any time afterwards. Courts have full power to correct their own records, but this was not corrected, still it was sufficient if parties to be effected by it had notice that it had been made.

But again, if it be claimed that respondent was before the board of commissioners as an officer, or that what he then said in opposition to the

allowance of Riley's bill must be taken as coming from him officially; then we say that even this was a sufficient order and notice that the bill should not be paid out of the county treasury.

It does not make any difference when the order was given, if it was given at all, if Riley had notice that the fees for serving those subpœnas would not be paid, or would not be allowed out of the county treasury, that was all the notice that the respondent was required to give, and all that Riley was entitled to.

The decision complained of, which was rendered by respondent on this same claim, was correct for the reasons above stated, and was made in good faith, and I call your attention, Senators, to the decision filed in the case. Riley, by the decision, was not deprived of his fees. He was employed by defendants who were all able to pay for his services and must do so.

What is the history of this Riley bill? There had been a riot in Austin, the grand jury of the county had presented indictments to the court against certain persons, Beisicher, and two others, charging them with being guilty of inciting a riot in the city of Austin.

A demurrer was interposed by G. M. Cameron in behalf of the defendants; that demurrer was undecided, and while it was undecided, subpœnas were issued for ninety-two individuals living in the town of Austin, with two or three exceptions, commanding them, to appear in court on several given days. Not on one day; but some of them were to appear on the sixth as the subpœnas show; some of them to appear on the eighth; some of them to appear on the tenth; some of them were to appear on the thirteenth. What was the object of it. It was a plan on the part of Cameron and defendants in the cases, to let Riley, their friend, scoop out of the treasury of that county a haul of fees. Its object was nothing more nor less a high-handed act those gentlemen had indulged in at other times, and when the judge saw the fraud that was being perpetrated, he at once put his foot upon it and said, "You shall not have those fees." Look at the injustice of it. Could they have had any difficulty in the five days given them by law after the decision of the demurrer, if adverse, in preparing for trial? None. But they go to work and subpœna twenty to thirty witnesses in each of these cases, each involving the same transaction and the same facts, and all residing, with one or two exceptions, within a stone's throw of that court-house, and they present a bill of $43.00, or something like that, and the treasury is to be robbed of that sum; a small steal, it is true, but involving the same principle as a large one. Every Senator here who examines into the facts, knows this act was unnecessary. Cameron and Riley both knew it was an illegal act they were perpetrating. They understood it as well as you understand it here to-day. Acknowledge that principle—acknowledge that courts are to be governed by that principle; acknowledge that as a right defendant may subpœna all the inhabitants of a town (and that is about what was done here), and you have established a principle which in dishonest hands will gut the treasuries of the State. It was simply an attempt to use a power supposed to have been given by statute. If they may subpœna *one*, they may subpœna ten thousand—there is no limit to the number. And I say to you, Senators, that it is not the practice that has been adopted by courts in this State.

The very practice that Sherman Page adopted in this matter is the practice in Judge Mitchell's court. I am told that it is the practice in

Judge Crosby's court; it is the practice, I am told, in the courts in this city, and is the practice of other courts in this State. It affords full protection to a defendant; all he has to do is to step into court and say, "Your honor, I desire a subpœna for a certain witness who I am afraid is going to leave, or who, I am afraid, can not be subpœnaed in this case, provided I wait." A man must apply to the judge of the court for the right to issue his subpœnas, if he expects the State to pay his witnesses.

Now, what was this case: ninety witnesses subpœnaed, all, with one exception, living in Austin. The men who were indicted subpœnaed and Riley, the deputy named as a witness in one subpœna, returned that subpœna as served by himself on himself, a fraud that is proved by its recital. Evidence of the acts of the respondent has been dragged in here for the purpose of showing his malice against Riley.

What bodes it, whether the respondent loves or hates Riley I would like to know? What difference does it make as to the guilt or innocence of this respondent under this charge in his specification? Who cares whether he hated Riley or not? I don't, nor you don't. His decision was a correct decision under the laws of the State. It affords sufficient protection to defendants and, gentlemen, what is much more important, it affords protection to the treasuries of the counties of the State. You open the door here. You say that a man shall be impeached for an act of that character. You throw open the door to robbers of the treasury. You say that a rotten lawyer and a corrupt sheriff may combine together that they may subpœna witnesses in behalf of defendants at the expense of the county without leave of the court or without showing cause why; and you have opened a door and provided a place for thieves of that character, that will scoop out more money from the treasuries of the counties of this State—more money than if you were to open the treasury of the State at night once a year to robbers.

It looks to me supremely ridiculous that upon the law of this case, as it exists, and upon the facts as they are presented to you by the prosecution that the respondent should be called to even introduce proof upon an article of that character, where the evidence stands, in the condition in which it stands here. It is a burlesque upon law, upon courts and upon justice; it is an injustice that would be condemned by every right minded man, when he once understood it, that a man should be called upon, his acts even questioned, for performing a duty which Judge Page there performed, standing with his back against the door of the treasury of that county, to prevent these desperate devils from robbing it; [laughter] that is all there is of it; there is nothing more, nothing less, and I defy the managers, I don't care which argues this case hereafter, I defy them to put any reasonable construction on the law and the facts of this case, which will not agree with the construction that I have placed upon it here.

If I were advising Sherman Page to-day, and he were to go back into Mower county to sit upon that bench, and have this question presented again, I should—as God is my judge—I would tell him that I could see nothing which I believed he could change, so far as his conduct in this Riley case was concerned, and do his duty.

As a lawyer, I say that, and I appeal to you as lawyers, to sustain it. What does he sit there for? what is he put there for? He is put there to protect the treasury of that county; he is put there to enforce the laws of the land; his decision was right and just; and I say to you it is not

the law, and the statute is not to be construed in that sort of manner, that men are to be permitted, under the shield of its provisions, to go in through the doors of the treasury, and rob—in that kind of style. Ninety-two subpœnas, in three little petty cases; issued in behalf of these defendants, (a demurrer pending at the very time, the counsel who obtained these subpœnas, not knowing what the decision upon that demurrer would be), for the purpose of subpœnaing people who lived within a stone's throw of the court house door! And managers of the House of Representatives of this great State of Minnesota, standing here and insisting that a judge shall be impeached for corrupt conduct in office, in doing an act of that kind! It is an anomaly, gentlemen, in courts of impeachment. It is something unheard of, I say, and I don't believe the managers can explain the law connected with the facts, as they have been introduced here, upon any other hypothesis or basis, than as I have explained it here.

Gentlemen, our position is, that no matter what feelings Judge Page may have had towards this man Riley, that as long as the act that he performed was a legal act, it made no difference. Now, there has been a great deal of evidence produced here in relation to this specification. It is charged, and it is shown here, as evidence of malice on the part of Judge Page toward Riley, that Judge Page appeared before the board of commissioners of the county of Mower, at a meeting held by them some time subsequent to the time when this bill was made by Riley and the subpœnas served, that he appeared for the purpose of giving an opinion as to the validity or non-validity of Riley's bill. He had a right to appear there at that time. It will appear to you that he knew nothing concerning the fact of Riley's bill coming up before the board of commissioners at that time, but that Judge Felch, while the bill was pending, came over to his house, in the city of Austin, and requested him to go before the board of commissioners and explain the facts in relation to Riley's bill. The bill was then pending. Judge Page, as a citizen, and as a tax-payer, in obedience to that request went before the board of commissioners, and he told them that he had made an order in relation to the payment of Riley's bill; that is, that he had told the clerk that Riley's bill for the subpœnaing of these witnesses would not be paid. There has been some question raised as to whether he told the board that such an order had been filed; but it don't make any difference with the issue here whether it had or not, it was made, and the fact will appear to you, when the proof comes in, that he did, while in court upon the bench, tell Mr. Elder, the clerk, that the pay for serving those subpœnas would not be allowed; and that, Senators, was enough.

Now, there is something said in relation to a conversation that was had between Judge Page and French, in the office of the county auditor in relation to this bill. It will appear to you, in the progress of the proof of this case, that Judge Page happened accidentally to be in the office of the auditor on that day. It will appear to you, as I understand the proof, on our side of the case, that French, on that day, wantonly assailed Judge Page, and charged him with corrupt conduct in office. Now, what was he to do? Electing him to a judgeship did not deprive him of his human nature. Electing you to this Senate, gentlemen, does not deprive you of the privilege of getting mad, when you are charged with gross improprieties, and if Page had knocked French down there on the spot, would it have been corruption in office, or would it have been an act that he ought to have been impeached for, in view of the fact that

he was charged with being corrupt, in the discharge of the duties of his office?

St. Paul said, "Live at peace with all mankind, *if it be possible.*" (Great laughter.) Thereby implying that even in Jerusalem and Jericho, in Bethany and Nazereth there were some people it was not possible even forthe apostle to live in peace with.

Why, Senators, it is human to err; men cannot help erring. You cannot perfect humanity by putting it in a judicial position. You cannot make men better than God and nature has made them by giving them place and power. Ever since the day when Adam fell through the instrumentality of Eve, it has been the fate and the lot of all mankind to err. They have erred so much that it has become a proverb, "it is human to err" What was Judge Page to do then, when charged with corruption? Was he to sit down and quietly rest under it? Will Senators say that that was his duty? I know it is an injunction of scripture, and laid down in the new Testament: "If thine enemy smite thee on the right cheek turn to him the other also." But what did Christ himself do? When an officer struck Jesus with the palm of his hand we find Jesus rebuking him, with becoming indignation; he did not turn his other cheek, Godlike as he was, but said: "If I have spoken evil bear witness of the evil, but if well, *why smitest thou me?*" There was no *cheek turning there.*

Now, I am prepared to admit that when Judge Page and Lafayette French met, they did not fall on the necks of each other, for the purpose of hunting up strawberry marks. [Great laughter.] Judge Page, when he went upon the bench, retained his characteristics, he retained his human nature, and there is not a judge in this State who has not done the same thing. You cannot make men better than God made them, by electing them to judicial positions. And you cannot make men better than God has made them by putting them into the position of Senators; and every man among you knows it. [Laughter.] It don't need an argument upon that subject. Human nature is human nature the world over, no matter where you find it; and it was no evidence of official corruption on respondent's part; it was no evidence of malice that on that day when French accused him of corruption, as the evidence will show you he did, when it finally discloses itself, that the judge turned upon him and rebuked him in the severest terms—and I would say right here, that if he had knocked him down, as I would have done, and as you would have done, he would have done precisely right, and you would have justified the act.

A man, because he occupies a judicial position, is not to lie down under insults of every character. That expression it is alleged respondent used at that time, was never used at all. He never used the term "dirty Irishman." We have plenty of gentlemen who were there;—it will rest upon the testimony of those commissioners, men unimpeached and unimpeachable—all there was of it, French accused Judge Page, openly and boldly, of corruption. Judge Page had assisted the young man, he had bolstered him up from time to time, and he turned upon him with indignant rebuke, as any man should have done, and rebuked him for his statement; and then, not knowing that the board was in session, he turned to

them, when his attention was called to the fact, and said to the board, "Gentlemen, I was not aware you were in session, else I would not have said even what I have said."

This evidence, gentlemen, is introduced for the purpose of showing malice on the part of Judge Page. Malice—doing a legal act—I assert here—and I defy managers, through their counsel, and through themselves, astute as they are, to produce an authority that a defendant has a right to subpœnas, to be served at the expense of the county, in a criminal case, in the State of Minnesota, without first obtaining an order from the judge that they may be so served. The judges of this State, as I understand it, have ruled that the defendants have no such right, except upon the order of the court upon cause shown, and it is the only protection that can be had.

It is right in the furtherance of justice, and in the protection of the treasuries of the counties of the State that the law should rest on that basis and on no other. I understand there are men before me who have been circuit judges themselves; one, at least, and perhaps more, I appeal to you to sustain the construction that is now placed upon this statute, which judges sitting and acting in the judicial districts of the State have heretofore placed on it, and I know that I shall be safe in so appealing. I know that no one can fairly construe this statute other than as I have construed it; if they do, and if you do, with the doubt resting over the construction of the statute, that does rest over it, I say they have not proved, beyond a reasonable doubt, that Sherman Page, by his act, was guilty of corrupt conduct in doing what he did do at that time in relation to this Riley bill.

I come now, senators, to the consideration of

ARTICLE III.

The charge, if any, which is contained in this article, is neglect of duty in not ordering the fees of W. T. Mandeville, a special deputy, to be paid out of the county treasury, and abusive conduct towards said Mandeville. The law under which special deputies are appointed reads as follows:

"On or before the holding of any term of the district court, the judge thereof shall determine and fix by his order the number of deputies which shall be necessary for the sheriff to have in attendance at such term, and thereupon the sheriff shall designate and appoint such deputies. Such deputies appointed as aforesaid, shall be paid their per diem to be determined by the court, for attendance upon such court in the same manner as provided by law for the payment of grand and petit jurors." S. Laws, 1873, 163; 2 Bis. Stat., 725-6, sec. 34.

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

The exercise of these powers is a duty; the failure to exercise the first in any case would be neglect of duty; the failure to exercise the second would be neglect in a case where the sheriff had made an appointment in pursuance of a proper order. The order fixing the number of depu-

ties may be made at any time during a term, but will ordinarily be made at the opening by a verbal instruction to the sheriff, and will be fixed at any time. The same order which determines the number of deputies will ordinarily fix their per diem. This order should be filed with the clerk in order that he may know the amount to enter in his certificate. The appointment made by the sheriff, or a copy thereof, should also be filed with the clerk for the same purpose.

This article as a complaint would be demurrable for the reason that it fails to aver that the appointment of Mandeville was made in pursuance of any order or authority from the court. I was amused at counsel when they sought to introduce the second order, on this trial the other day. They alleged here with a great flourish of trumpets, that this respondent dated that order back. Why gentlemen, a greater imposition was never attempted upon a court of justice; he did what every lawyer and judge knows is universally done. In entitling an order made during a term he entitled it as of the first day of the term, and then signed the order afterwards, as judge; he dated it as of the first day of the term. Counsel supposed they had struck a bonanza the other day, and introduced this second order made by the judge; but it completely corroborated the order that he had originally made, and which they charged he was corrupt in making; it showed in and of itself that it was after the term had closed, else how could he have inserted the number of days that the deputy had served. As a matter of course he would not make an order that a deputy had served three days, and that he was entitled to three dollars a day, if he had not made that order at the end of the term.

And these subsequent orders introduced here tend to show, and do show that the practice, in that district, was not at all uniform, in reference to the appointment of deputies. Examine those orders, you will discover as we discovered yesterday, that they are made for the apointment of from one to three deputies, at the several terms of court. Some of those orders were made after the term was closed, as the evidence of the clerk shows, yet for the purpose of showing corrupt conduct and malice on the part of this respondent, they allege that he dated that order back, and, in fact, filed it after the term closed. The proof shows that he had previously done this at other terms of the court. Now, what is there of it? particularly as against Mandeville, doing it as the Judge did in several other instances. I ask you whether the proof of malice, as against this man Mandeville, does not completely fall to the ground, as made here. It does certainly; because it is shown to you, Senators, that orders of precisely the same character as that that was made at the term, at which Mandeville served, were made at several other terms previous.

They find fault with the fact that there was but one deputy at that term of court. It was a matter that, under the law, respondent might fix; it was a matter that, under the law, he had fixed there before; it was a matter that, under the law, he had fixed no different, theretofore, from what he fixed it at that term—and, mark you, one little piece of evidence that was drawn out of Sheriff Hall after he left the stand, and while he stood at the end of the table, near the managers—I asked him the question; "Did you draw pay during that term for your services in attendance on the court?" he answered yes, that he did. He could not put this man Mandeville in there to do work for which he was drawing pay, and then rob that county by demanding

that Mandeville should be paid as well as himself. It was a term of court held for the trial of one case and one man. It was not one of the general terms of court. There were no juries there being discharged or impanneled; there were no juries there to be waited on outside of the court, and others to be waited on inside of the court. The Sheriff's simple duty was to impannel one jury for the trial of one case, and what this respondent said to him, at the beginning of that term, was perfectly right: "You shall have but one deputy." Hall says that the respondent said nothing; the respondent says that he told him that he could not have but one deputy during that term; that one deputy was this man Allen whom Hall appointed.

Was it corruption in office that respondent tried to prevent this little, small steal of the sheriff at that time? Was it a malicious act on the part of respondent that he said to that sheriff, "You have drawn the fees yourself as deputy, and you have had one deputy here, and I will not allow for the service of another!" Pay the fees you have got for these services, notwithstanding the fact that you have been out on the street all the time drawing tenfold fees, in summoning jurors in here, whom you knew were ineligible, Mr. Hall, going around the streets of Austin and gathering in jurors, to try a case the facts of which have been in the mouths of every man, woman and child, for months and months previous—the rape case of Jaynes. It was no corruption in office, on the part of this respondent, that he remanded Mandeville to this sheriff, and said to him: "Go to your principal to get your fees." Standing again, as respondent was, against the door of that treasury, to prevent a petty robbery, respondent is brought here and charged with corruption for the doing of the act. I don't care what you find his language to have been to Mandeville, when he came to him and demanded his pay; it don't make any difference, when respondent came to the giving his judicial decision, finally, he gave it in a just and proper manner, and without partiality to anybody; and I defy this horde from the county of Mower, backed as they are by the power of this State, and by the power of its assembly, to show that respondent, sitting there, made or refused to make a single order that had the least taint of corruption about it. The proof shows that when the judge called Mandeville from the rear of the room and told him to come up to his desk, and he came up with Allen, in the presence of the clerk; that the judge wanted to know of Mandeville "what dirty work he had been doing for that man Hall that he should have appointed him a deputy." I say to you, gentlemen, right here, that it is a falsehood in its inception, and in every word of the sentence. Not a word, as Mr. Allen will swear, and as Judge Page will swear, and as Mr. Elder will swear, of that kind or of that character, or of that import, or its equivalent, or anything near its equivalent, was uttered by the judge at that time. Nothing of the kind; nothing that can possibly be tortured into a remark of that character. It is imported into this case bodily, for the purpose of producing an effect upon the minds of senators, to inject into this article malice such as is necessary to inject into it in order to sustain it before this tribunal. It is a lie in whole and in part, and I brand it as such here and now, without any fear of being contradicted hereafter by the evidence in the case, or without any fear, the managers in this case will be able to controvert my statement in any particular. It will be made so clear they themselves will not dare to get up and argue to the contrary.

Respondent did just what other judges would have done under like circumstances. He did just what any other honest man would have done at that time, occupying his place. Mandeville says he let down the windows; he says he built the fires; he says he had swept out the court-house. It may be true; we believe it is not. He did not carry the key to the court house, as he admits, and we will show by Mr. Allen, that he had the key to that court house all the time; and so far as the fixing of the curtains was concerned, which they say was the work Mr. Allen was engaged in doing for the first one or two days, we will show you, Senators, that Allen was engaged in that work about the period of one hour, and that this man Mandeville actually did no work there during that session. Talk about impeachment for an act of that kind! corrupt conduct in office! rottenness, malice in making a decision! A decision that no honest man could have made otherwise, no man desiring to protect the treasury of that county, no man desiring to be even decent in the performance of his official duties, could have done other than judge Page did then and there.

And yet the Assembly of the State of Minnesota, through its managers, come into this court and insist that respondent was guilty of corrupt conduct in office, in trying to prevent the sheriff from perpetrating that petty steal upon the treasury of that county. If a judge is to sit by and let petty steals go on, why shall he not sit by and let all steals go on? What is the difference, I ask Senators, between the one and the other? What rule is to govern him? Is it not the rule of just and right that he is to be governed by? Is not he to be governed by such rules as will prevent the robbing of the county through acts of its officials?

If not, then I desire to know for what he is elected. Suppose Mandeville should bring an action against the county to recover for his services. He must allege and prove a valid appointment under the law. He could not recover on a *quantum meruit*, nor can an official duty arise out of any such claim. Who is to determine the necessity for special deputies? The court. No one else has the power to do this. If the article alleged that respondent had determined, or knew and failed to determine, that Mandeville's services were required for the proper transaction of the business of that term, and so knowing had approved his service, it would present an entirely different case. But sheriffs cannot determine the necessity for special deputies, then appoint them, and then call on the court for their pay. Sheriffs have no power whatever to act in such cases, until first authorized by the court; and if nothing is said or done by the court as to the appointment of such deputies, the presumption is that none are necessary for the transaction of the business of the term. Now take which horn of the dilemma they have a mind to, and I don't care which horn the managers do take.

If the court had not made an appointment of Mandeville at that term, then he could not get any fees at all. In so far as his demand on the court was concerned, it amounted to nothing, either one way or the other, unless an order had previously been made for his appointment.

There is no duty which courts are required to perform towards deputies, except to fix their per diem.

Suppose that Mandeville had been a deputy regularly appointed, was it the duty of respondent to grant the request which the article alleges was made to him? Clearly not. He demanded an order that his services be paid out of the county treasury. Respondent had no authority

to make such an order in any case, and if made, the court officers would have no authority to disburse funds on it. So that in any view of the case respondent was right in refusing the order asked for. Such deputies are to be paid as jurors are paid, on the certificate of the clerk. 2 Biss., 973.

It is not alleged that Mandeville applied to the clerk for his certificate, an act which would be absolutely necessary in order to get his pay. Suppose that respondent had granted Mandeville's request, and had made an order that he be paid out of the county treasury, of what service or benefit would it have been to Mandeville? None at all. How then could he be injured by the refusal to do an act that would have been of no service if done?

If respondent has neglected any duty in the premises he could have been compelled to perform it by mandamus. What would have been the legal status of Mandeville, had he invoked this remedy; His application would have been dismissed at once, on the ground that the law imposes no such duty as he seeks to compel the performance of.

His case resolves itself into this.

The sheriff, without authority, employed Mandeville to do chores around the court room, (in his absence, probably,) and having declined to pay him, as he was legally bound to do, Mandeville seeks his pay of the county; and because respondent declined to lend his official position to that end, this charge is brought. With the same propriety respondent might be asked to order any of the sheriff's employees to be paid out of the county funds.

But it is claimed that respondent saw Mandeville about the court room during the term, and occasionally asked him to do some act of service. Suppose it to be true, it does not affect the case. The sheriff was paid for his attendance at that term. If Mandeville was at any time called on, it was during the absence of the sheriff, and in the belief that he was a general deputy. And that will be proven to you by the respondent himself. He didn't know whether Mandeville was in attendance on that term or not; all he knows is the fact that Mandeville came to him at the close of the term. He is situated, in that regard, the same as many other judges have been situated in this State from time to time. Men appear, flit into the court room, and act as deputies for a while; the judge may speak to them under the supposition that they are general deputies; they appear at other times, in the absence of the sheriff, and do and perform certain duties; but no amount of acquiescence of this character gives him an appointment. And I will say right here, that if the judge knew that he was there and acquiesced in his being there, it did not affect the legal status of this part of this case. But no amount of acquiescence of this character can create a legal right or claim against the public, nor impose a duty under the law.

None of the principles relating to contracts apply to cases of this kind This prosecution must prove that Mandeville was regularly appointed deputy sheriff, in pursuance of the provisions of law. 2 Bis. 237, sec. 104.

Now look at this case: here were Mandeville and Allen, two deputies of that court; here was respondent making an order fixing the number of deputies that should be permitted to wait upon that court during that term. At the beginning of the term the order at first was verbal. The counsel will say, as a matter of course, it was an unlawful act on the part of this respondent to refuse an order to Mandeville to get this

money out of the treasury of that county, but the principle in that was just simply this: whether the respondent was going to control the appointment of deputies as to the number, which the statute gives him the power to do, or whether that sheriff was going to override the law, and put fees into his own pocket through the acts of a deputy; he drawing pay for the service which the deputy had performed. That was the principle involved in this case.

There is no provision other than this for the appointment, or rather as to the manner of appointment, of any deputy. No appointment of Mandeville is recorded in the office of the register of deeds, and in all probability none was ever made. This is fatal to the prosecution under this article.

Mr. Nelson moved to adjourn until Friday morning at 9 o'clock, which motion prevailed.

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

TWENTIETH DAY.

ST. PAUL, FRIDAY, JUNE 7, 1878.

The Senate was called to order by the President.

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

Messrs. Ahrens, Armstrong, Bailey, Bonniwell, Clement, Deuel, Edgerton, Edwards, Finseth, Goodrich, Houlton, Langdon, Lienau, Macdonald, McClure, McHench, McNelly, Mealey, Morehouse, Morrison, Morton, Nelson, Remore, Rice, Shaleen, Smith, Swanstrom, Waite and Wheat.

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

The sergeant-at-arms having made proclamation,

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

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

The PRESIDENT. The counsel for the respondent will resume the argument of this case.

Mr. LOSEY. Senators, before proceeding, I desire to thank you for your consideration in adjourning over two evening sessions. I wish also to correct a mistake, which I discover I fell into, in stating the rights of defendants in relation to the issuing of subpœnas. I see, by the printed record, that I was made to say that in no case has a defendant a right to subpœnas in a criminal case. What I meant to say was, that in no case has a defendant a right to subpœnas in a criminal case

to be served at the expense of the State without making application to the court, and getting leave of the court to issue subpœnas to be so served.

I now proceed to the consideration of article four:

ARTICLE IV.

The facts in this case are these:

Dwight Weller was convicted of the crime of larceny, before a justice of the peace of Mower county; was fined, and appealed to the district court. The case having been reached the attorneys stipulated orally in open court that the judgment might be affirmed, which was done and judgment was entered against Weller and his sureties on his appeal bond, pursuant to law. 2d Bis., p. 769, sec. 175.

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

But there is no provision in the statute where a man is fined in a criminal case in the district court that an execution may issue against him for the purpose of collecting that fine, and the presumption is, that it was never intended by the Legislature of the State, that an execution should issue. All there is of it, the prisoner is to remain in the custody of the sheriff until such time as the fine is paid, and the sheriff has no power to permit him to leave his custody and go upon the streets until that fine is paid.

Now, it may be there is a power to issue an execution as against his sureties. I don't know how that is, but however that may be, I do not think there is any provision of law under which an execution can be issued for the purpose of collecting a fine in State cases like this.

A judgment in a criminal case before a justice may be enforced by execution. 2nd Bis., 770.

On the judgment rendered in the district court, the clerk issued an ordinary execution as in a civil action directing the sheriff to collect the amount with costs, and it was delivered to D. H. Stimson a deputy sheriff. Stimson went six miles to see Weller, did not make any levy, but took Weller's promise that he would go to Austin and make a payment on the execution of twenty dollars within a given time; Weller did so, and paid twenty dollars to L. French the county attorney, and took his receipt; French kept tht money until Weller complained that he had not received credit for it on the fine, and then paid it over to Stimson, who retained $5.50, and paid the balance $14.50 to the county. The grand jury at the March term 1877, investigated the matter, reported the facts, and Stimson in open court was required [directed] to pay over the balance in his hands.

It is alleged that the act requiring him to pay over the money was illegal, and that it was done in an oppressive manner for malicious purposes. It is also alleged that Stimpson collected twenty dollars on the execution, and that the sum retained to-wit, five and 50-100 dollars were his legal fees for making such collection.

First. The execution was issued without authority of law, and was void. This appeal was on questions of both law and fact, and the case stood in the district court, precisely as if originally instituted there. 2nd Bis. 769, sec. 172, 174.

"Upon a compliance with the foregoing provisions, the justice shall allow the appeal and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal. The justice shall thereupon make a return of all the proceedings had before him, and cause the complaint, warrant, recognizance, original notice of appeal, with proof of service thereof, and return, and all other papers relating to said cause and filed with him, to be filed in the district court of the same county, on or before the first day of the general term thereof next to be holden in and for said county. And the complainant and witnesses may also be required to enter into recognizances with or without sureties in the discretion of the justice, to appear at said district court at the time last aforesaid, and to abide the order of the court therein. Upon an appeal on questions of law alone, the cause shall be tried in the district court upon the return of the justice; on an appeal taken upon questions of fact alone, or upon questions of both law and fact, the cause shall be tried in the same manner as if commenced in the district court."

"Sec. 173. The appellant shall not be required to advance any fees in claiming his appeal, or in prosecuting the same; but if convicted in the district court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of his sentence, to pay the whole or any part of the costs of prosecution of both courts."

"Sec. 174. If the appellant fails to enter and prosecute his appeal he shall be defaulted on his recognizance, and the district court may award sentence against him for the offence whereof he was convicted, in like manner as if he he had been convicted thereof in that court, and if he is not then in custody, process may be issued to bring him into court to receive sentence."

The sentence passed was that defendant pay the amount of the fine fixed by the justice and costs. This amount was assessed by the clerk and entered in the judgment. No prospective costs for the collection of the judgment could be included, because the law does not contemplate that any could accrue, and makes no provision for doing so.

2 Bis. 975, sec. 36.

"Sec. 36. Prospective costs may be charged and taxed for filing orders, docketing judgment, and for one execution. A defendant who has been convicted and sentenced to pay a fine, is presumed to be, in fact must be present and in custody when sentence is passed, and is not entitled to be discharged until his fine is paid, and a transcript of the minutes of the court made by the clerk is all the authority which the sheriff requires to collect the fine or enforce the sentence. The law expressly declares how sentence shall be executed. (2d Bis. Stat., 1061, sec. 276.) Whenever any person convicted of an offense is sentenced to pay a fine, or costs, or to be imprisoned in the county jail, or state prison, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be a sufficient authority for such sheriff to execute such sentence; and he shall execute the same accordingly."

Now, gentlemen, you see by these statutes which I have quoted, that that execution in the hands of Stimson at that time was void.

Not void on its face, but void in law. It was an execution which that clerk had no right to issue. It was an execution on which Stimson had no right to make a levy. It was an execution which gave him no authority to make a levy under, because the clerk, in issuing it, had no jurisdiction, had no right to issue it. Your statute expressly provides the manner in which that fine, imposed by the court, must be collected; and this sheriff was guilty of permitting an escape of the defendant in the case of the State against Weller, and the whole proceeding of the issuing of the execution, and the acts of Stimson under the execution, were void *ab initio*.

To issue an execution in such a case is both unlawful and absurd. But it may be claimed that this was an execution regular on its face and protected the officer and authorized him to collect his fees. This position is untenable for two reasons :

First. The execution was issued without any authority whatever, and was void absolutely. Such process is no protection.

Second. Stimson knew that the execution was issued in a criminal case, hence had notice of its invalidity.

Admitting, however, that which is not true, that the execution was legal, and that Stimson was entitled to fees for whatever lawful act he performed under it, yet we say that he had no right to deduct his fees from an amount paid by the defendant to apply on his fine, and then pay the balance into the treasury. Weller was entitled to credit for every dollar he paid towards the discharge of his sentence, and officers cannot take money paid for such purpose and put it into their own pockets under the pretext that it is fees.

This whole transaction bears on its face evidence of the grossest irregularity from beginning to end. A sentenced criminal running at large and paying a fine in driblets, and an officer with an execution running about after him, receiving the driblets and taking his pay as he goes along, is certainly a novelty in criminal proceedings. Stimson could not certainly collect his fees of Weller under such a sentence, and he could not collect of the county, acting as he was under no authority of law.

Again—Admitting that Stimson was acting under a valid execution, and that all his acts were regular and valid, still he was not entitled to the money retained. He had done no act for which he was entitled to fees. He did not serve the execution.

2 Bis. Stat., 967, sec. 10.

"For serving a summons or any other process issued by a court of law, one dollar for each defendant served." He made no levy under it, and if he did he released the levy. He did not make a collection under it, and if he did, he was not entitled to a percentage, for he had made no levy. "Traveling, in making any service upon any writ or summons, ten cents per mile for going and returning, to be computed from the place where the court is usually held. Collections on executions, when the same is collected or settled after levy, at the rate of four per centum upon the first two hundred and fifty dollars, and two per centum upon the excess of said sum. Travel fees are not allowed, except in case where service is made. He made no service or levy, hence is not entitled to travel fees. (2 Bis., 968) He did not return the execution unsatisfied. (2 Bis. 969.) Hence we say that all the fees deducted were illegal; but, allowing his fees for every act claimed to have been done, the sum allowed by law (if it be possible to ascertain what

that is); yet he retained double the amount he could claim by any construction. The taking of illegal fees is a misdemeanor.

Now, you will remember, gentlemen, what Stimson's evidence was, when Gov. Davis called upon him to sum up the fees he had charged for the work he had done under that execution, and show us in what manner he got at that $5.50. What did he do? Why he was reduced to that strait at last, finding that it was utterly impossible for him to make up such a bill of fees, of saying that Weller agreed that he might take that amount.

Geentlemen, that sort of oppression, that sort of an act, will not be allowed in any tribunal, no matter what its character. The law has fixed the fees that officers may take, and when officers take more fees than the law says they may take, they are guilty of judicial robbery, not only judicial robbery, but something worse; it is a species of peculation of the meanest character. Something that no right-minded judge would permit at all, and it is made a misdemeanor by your statutes.

2d Bis. Stat. p. 975, sect. 32-3-4.

"SEC. 32. No judge, justice, sheriff, or other officer whatever, or other person to whom fees or compensation is allowed by law for any service, shall take or receive any other greater fee or reward for such service than is allowed by the laws of this State.

"SEC. 33. No fee or compensation allowed by law shall be demanded or received by any officer, or person, for any service, unless such service was actually rendered by him, except in the case of prospective costs hereinafter specified.

"SEC. 34. A violation of either of the last two sections, is a misdemeanor; and the person guilty thereof shall be liable to the party aggrieved for treble the damages sustained by him."

1st Bis. Stat., 236, sec. 98.

"SEC. 98 No sheriff, or other officer, shall directly or indirectly ask, demand, or receive for any services or acts, by him performed in pursuance of any official duty, any more fees than are allowed by law, under penalty of forfeiting, for such offense, to the party aggrieved, treble the sum so demanded or received, to be recovered in a civil action."

You see that his act, gentlemen, was made a misdemeanor by the statutes of this State. But the prosecution claims that respondent had no authority to require Stimson to pay over the money at the term, and in the manner described—that an order to show cause should have first been issued and served upon him. This claim admits the *power* to require the act to be done, but objects to the *manner* of its exercise.

Had this matter been brought to the attention of respondent by petition or an affidavit in the absence of Stimson, then the issuance of an order to bring him before the court and to give him a hearing, would have been necessary. But the law never requires the doing of useless acts, or rather, such as are not necessary for the protection of any rights.

Stimson had all the rights and privileges which could have been secured to him under an order to show cause; and let me say to you, gentlemen, that he admitted here, under oath, when swearing, that he did not swear before the committee of the House of Representatives, at the time he was originally sworn there on the articles as they were pre-

sented to the House, on the examination made by the committee, that he sought a hearing at the time he was in court, or asked the court to give him a hearing on that subject. He swears here now, for the purpose of bringing this case within what they considered the provisions of law, that he attempted to have a hearing there, and that the court refused it. Of that I will speak hereafter.

The matter was brought up in open court. The facts were not presented by affidavit or petition, but on the report of the grand jury after investigation. Stimson was present. The facts were stated to him by respondent; he then and there admitted that they were all true; he made no issue on which a hearing was necessary. Of what possible service then to him could an order to show cause have been? He asked no delay nor further hearing; in open court he admitted his official misconduct; there was nothing left to be investigated; an order on him to answer would have been a judicial farce. The mildest course possible was adopted; he was not punished, he was simply required to repair the wrong done; he ought to have been satisfied and undoubtedly was to escape indictment or a more severe penalty. This was a lawful exercise of that power which is vested in all courts to correct the misconduct of court officers. 7 Wallace, 355.

The misconduct of Stimpson was also a contempt of court. 2d Bis., 939, sec. 1., (3.)

"Section 1. (*Third.*) Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service."

Now what are the facts in Stimson's case? I am going to be very brief in my argument in relation to this specification.

He says he went down to Lansing; told Mr. Weller he must levy; admits in his cross-examination that he did not make any levy at any time; says he drove the cattle into the street, then Mr. Weller agreed to pay him a certain sum of money; he released the cattle and then went back to Austin. Mr. Weller agreed to pay $20. Stimson went back again; the same farce was gone through with—a levy upon the cattle and a release of the levy; and then Mr. Weller brought down twenty dollars, paid it to Crandall in French's office; French takes the money and pockets it; Weller comes before the grand jury, after two or three weeks, somewhat dissatisfied with the manner in which that officer was operating; he makes complaint.

No knowledge of any of these acts is shown to have come to respondent; not a word of evidence has been produced showing that respondent ever knew what occurred between Stimson and Weller, until on the day the grand jury brought into court the presentment that the managers have brought and introduced in proof, by which it appeared to the respondent in open court, that one of the officers had collected twenty dollars in money, and had retained five dollars and fifty cents. Having no right to collect it at all, what was the court to do? Stimson complains of the frosty manner in which the court treated him at that time. These managers and the counsel call the conduct of the respondent towards Stimson corrupt. If it be corruption to make an officer disgorge ill-gotten gain, then every judge of every court in this State, I say, better become corrupt at once. It is calling the enforcement of justice corruption. Retaining that money in the manner in which Stimson did, was stealing it in fact; nothing more nor less.

Stimson says that the court treated him in a corrupt manner and in an unjustifiable way, by compelling him to come up before the grand jury and an audience and disgorge in open court. Gentlemen, there is not a district judge in the State of Minnesota, but what in the performance of his duty would have done precisely the same as respondent did, under like circumstances, and there is not another man in that community outside of these few men who have banded together in the city of Austin, for the purpose of ruining this respondent, who would have the audacity to say that an act of that kind was any other than precisely just and right.

He had a right, maintaining the dignity of his position, as the respondent was then and there, and the inviolability of the court, to demand of Stimson, when the facts appeared as they did, that he should then and there pay over that money in open court. "Oh!" say the managers—the proof shows respondent "disgraced Stimson by compelling him to pay it before the grand jury." Where was the disgrace in that?

The matter had been brought up before that grand jury; they were awaiting the direction of the judge in relation to it, they had investigated it; they wanted to know whether anything further had to be done; and the court asked Mr. Stimson as the whole evidence shows then and there, what were the real facts in relation to his action, and Stimson admitted the facts as the grand jury had found in their presentment. Why he says he wanted to be heard; I appeal to you Senators what was the necessity of permitting him to be heard at that time. He had admitted the crime; he admits it here under oath; he swears to it. He shows by his evidence under oath here that he had been guilty of a misdemeanor, that which is declared by the statutes of this State to be a misdemeanor; a full hearing upon the facts then and there, and a full hearing of the facts here, would have shown that he was guilty, not only of contempt of court, but he was guilty of gross misbehavior in the performance of the duties of his office.

They say the respondent misused him because he said to the sheriff, "Mr. Sheriff, have you got a deputy by the name of D. K. Stimson?" What an insult it was, was it not, Senators, to ask that question? And what corrupt conduct it was on the part of the respondent to ask that question! The judge's tones they want muffled; not clear, so crime will not grate on the ears of thieves. His manner was too frosty, say they. I don't know how this Senate is to lay down a rule, or by what rule we are to be governed in ascertaining what sort of a tone or what sort of language a judge is to use under such circumstances. I appeal to every honest man sitting before me, had you occupied the position on the bench that this respondent occupied there and then, would you not have done precisely as he did? Would you not have said to Stimson, sitting there as the highest judicial officer on the bench in that district, would you not have said to him, "Come forward; here are the facts as laid before me by the grand jury of this county. Are you guilty? if yes, disgorge." You would have done precisely what this respondent did then and there, and I am not sure but many another man, in his indignation, would have gone farther than the respondent did in his reprimand.

Stimson said he desired to be heard. He has been heard here, and a full hearing does not absolve him no more than did the facts found by that grand jury absolve him, nor does it show that he had not committed a crime.

Gentlemen, Stimson heard these things in court. He went out from the court, and David, in the language of scripture, "was wroth," and he immediately became an impeacher. It was his opiniou then and there, because of the conduct respondent had been guilty of towards him in exposing his crime, that the respondent should be impeached, and he is one of the gentlemen who appears here in this tribunal among this immortal eleven, who formed a small ring in Mower county, at Austin, and contributed money to make public sentiment in the State tor the purpose of impeaching this respondent; and that is how the present situation has been brought about, and this is the character that is given this proceeding by this act.

Now, gentlemen, I will drop Stimson so far as my argument is concerned. I leave him to your kind consideration. So far as the 5th article is concerned, Senators, about which so much has been said, I will simply read you my brief.

ARTICLE V.

The fifth article charges no misconduct, admitting the statements to be true. The order therein set forth would, under proper circumstances, be a legitimate exercise of judicial power. Every district judge is *ex officio* a conservator of the public peace, and for that purpose sheriffs and other officers of the court are subject to his orders. It was not alleged that there was not such a condition of affairs in Austin at the time, as rendered such an order unnecessary. Hence the presumption is that it was necessary. It is alleged that it was calculated to create disturbance among the inhabitants of Austin. The order itself refutes this proposition, as it bears on its face evidence of having been issued to prevent disturbance. Again, it was directed to the sheriff alone, and could not have been known to the public, unless that officer exhibited and published it. If he did so, then he was the one who was fomenting disturbance. The order could not humiliate the sheriff unless he had been derelict in duty, and if he had, he ought to have been humiliated. The charge should be dismissed without evidence. It is four years old, and has been revived only for the purpose of filling out the "*case.*"

The order is a simple direction to the sheriff to do his duty, and he is expressly directed to be guided by the provisions of law relating to such cases. The duty of sheriffs to disperse riotous assemblages of persons is enjoined by the provisions of general statutes, page 616, sec. 1. He is guilty of a misdemeanor in refusing to exercise his authority in such cases.

General statutes, page 616, sec. 1.

"Sec. 1. If any persons, to the number of twelve or more, any of whom being armed with any dangerous weapons; or, if any persons to the number of thirty or more, whether armed or not, are unlawfully, riotously, or tumultuously assembled in any city, town, or county, it shall be the duty of the mayor and each of the aldermen of such city, and of the president and each of the trustees of such town, and of every justice of the peace living in such city or town, and of the sheriff of the county and his deputies, and also of every constable and coroner living in such city or town, to go among the persons so assembled, or

as near them as may be with safety, and in the name of the state of Minnesota to command all the persons so assembled immediately and peaceably to disperse; and if the persons so assembled shall not thereupon immediately and peaceably disperse, it shall be the duty of each of the magistrates and officers to command the assistance of all persons there present, in seizing, arresting and securing in custody, the persons so unlawfully assembled, so that they may be proceeded with according to law."

General Statutes, page 617, sec. 3.

"Sec. 3. If any mayor, alderman, president, trustee, justice of the peace, sheriff, constable, or coroner, having notice of any such riotous or tumultuous and unlawful assembly as is mentioned in this chapter, in the city, town or county in which he lives, neglects or refuses immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or neglects or omits to exercise the authority with which he is invested by this chapter, for suppressing such riotous or unlawful assembly, and for arresting and securing the offenders, he shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding three hundred dollars."

An armed force called out to suppress riots, shall obey such orders as are given by the Governor, judge of a court of record, or the sheriff.

General Statutes, page 617, sec. 5.

"Sec. 5. Whenever an armed force is called out for the purpose of suppressing any tumult or riot, or dispersing any body of men acting together by force, with intent to commit any felony, or to offer violence to persons or property, or with intent by force or violence to resist or oppose the execution of the laws of this State, such armed force, when they arrive at the place of such unlawful, riotous, or tumultuous assembly, shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all the persons who are committing any of the said offenses, as they have received from the governor, or from any judge of the court of record, or the sheriff of the county; and also such further orders as they there shall receive from any two of the magistrates or officers mentioned in the first section."

There is no attempt by the order to confer any authority or power on the sheriff other than that given by law, nor to require him to do any act outside of his duty. He is referred to a certain chapter of the general laws, and is told that he will be guided by its provisions. This removes any and all appearance of a design to violate or exceed legal authority. The chapter referred to covers the entire ground. The letter accompanying the order throws light on the transaction, and is evidence of a necessity for the order, and that it was issued to prevent disturbance instead of "to foment it." Judges are peace officers, and have power to do all things necessary to preserve the peace.

2d Bis. 1023, "Sec 1. The judges of the several courts of record, in vacation within their respective districts, as well as in open court, and all justices of the peace, within their respective counties, shall have power to cause all laws made for the preservation of the public peace to be kept, and in the execution of that power may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter."

I will now consider together

ARTICLES VI AND VII.

The points relied on by the prosecution under these articles are the following:

FIRST.—That Ingmundson was a law-abiding officer.

SECOND—That an investigation made by the grand jury in September, 1876, showed that his official business was done correctly.

THIRD—That there was no necessity for investigating the affairs of his office, in March, 1877.

FOURTH—That the facts presented to respondent by the grand jury at the March term, 1877, did not constitute a public offense.

FIFTH—That respondent exceeded his authority in directing the grand jury to return the facts, and in ordering an investigation after the grand jury had reported.

SIXTH—That all these acts were done maliciously to oppress Mr. Ingmundson.

SEVENTH—That respondent intentionally and maliciously abused the grand jury for not finding an indictment against Mr. Ingmundson.

To meet these positions involves a thorough examination of the laws of the State defining and specifying the duties of county treasurers.

It is presumed that no attempt will be made to controvert the well recognized legal proposition that county officers are the creatures of statute, and possess no powers except such as are conferred by law. They have no implied powers—none are necessary. In the discharge of their official duties they must follow the provisions of statute, right or wrong. These laws, so far as they relate to and control, and define the duties of officers who are entrusted with the collection and safe keeping, and disbursement of public funds, must be strictly construed. Public safety demands this. The tendency of all officers of this class is towards disobedience of law, and a liberal use of public funds for their own interests, and as a needed check on this looseness, the modern tendency is towards stringent legislation. The legislature of Minnesota has been making constant efforts to protect the public treasury by the enactment of penal laws, and providing for more rigid supervision At the last session a law was passed creating the office of public examiner, and authorizing him to slip into the office of a county treasurer at any moment, and require that officer to render an account of his transactions. So that the strange anomaly is presented, of a legislature enacting a stringent law to prevent official corruption and impeaching an officer for enforcing those already enacted for the same purpose. The disposition to use public offices and public funds, for the purpose of private gain, has created the necessity for the legislation above referred to. Wilful neglect to perform any duty enjoined by law, and every misbehavior in office is a misdemeanor, punishable by fine and imprisonment. (2 Bis. Stat., 984, Sec. 8.)

"Sec. 8. Where any duty is enjoined by law, upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to perform such duty, and every misbehavior in office, where

no special provision is made for the punishment of such delinquency or malfeasance, is a misdemeanor punishable by fine and imprisonment." The violation of a law by a public officer is presumed to be wilful and intentional. The duties of county treasurers and town treasurers are entirely separate and distinct. County treasurers receive funds as they are paid in for taxes for the use of the several funds, State, county, town, school, &c, and are required to apportion and keep a separate account with the auditor and with each fund, and with each town or district entitled to receive the same."

The auditor aids in this work. (Gen. Laws, 1874, Page 51, Sec. 108.)

"Section 108. The county auditor shall open an account with the State, county, and with each township, city, incorporated village or school district in his county, and immediately after each settlement with the county treasurer in each year, he shall credit the State, county, and each township, city, or incorporated village or school district, with the amount so collected for the use of the State, county, and any such township, village, or school district; and upon application of any town, city, village, or school district treasurer, the auditor shall give him an order on the county treasurer for the amount due such township, city, village, or school district treasurer, and shall charge them respectively with the amount of such order.

Provided, That the person so applying for such order shall deposit with the auditor a certificate from the clerk of the township, city, village, or school district, stating that such person is treasurer of such township, city, village, or school district, duly elected or appointed, and that he has given bond according to law."

The auditor shall give the town or district treasurer, an order on the county treasurer for the amount due, and shall charge the amount to them, &c. G. L., 1874, p 51-2, sec. 108. The country treasurer shall pay out funds only on the order of the proper authority.

2d Bisl. p 226, sec. 55.

"Sec. 55. The county treasurer shall receive all moneys, directed by law to be paid to him as such treasurer, and shall pay them out only upon the order of the proper authority. All moneys belonging to the county shall be paid out upon the order of the county commissioners, signed by the chairman thereof, and attested by the county auditor, and not otherwise. All moneys due the State, arising from the collection of taxes, or other sources, shall be paid upon the draft of the State auditor, drawn in favor of the state treasurer, a duplicate copy of which the State auditor shall forward to the county auditor, who shall preserve the same, and credit the county treasurer with the amount thereof."

"Sec. 30. The county treasurer shall receive all moneys directed by law to be paid to him as such treasurer, and shall pay them out only upon the order of the proper authority. All moneys belonging to the county shall be paid out upon the order of the board of county commissioners, signed by the chairman thereof, and attested by the county auditor, and not otherwise. All moneys due the State, arising from the collection of taxes, or other sources, shall be paid upon the draft of the state auditor drawn in favor of the state treasurer, a duplicate copy of which the state auditor shall forward to the county auditor, who shall preserve the same, and credit the county treasurer with the amount thereof."

The only lawful method of disbursing funds to towns, is on the order of the auditor, any other method is in direct violation of the statute and would prevent the auditor from keeping his accounts correctly.

Now, mark what I assert, the treasurer has no right to permit a dollar of town funds to go out of his hands, except upon the written order of the auditor. That is your law; and when he does that act he is guilty of a misdemeanor. You must remember when you are considering this Ingmundson matter, that Ingmundson had committed a misdemeanor, and has so sworn. When a man has committed a crime is it corruption or injustice or oppression for a court to call attention to that crime? It is not corruption in and of itself, and you cannot make corruption out of it by the demeanor of the Judge, or by the language he uses in calling attention to it. If a man has proven himself to be corrupt by doing an act, which is a misdemeanor, or if he has made such a mistake as in law makes him guilty of a misdemeanor, it is the duty of a court, for the purpose of protecting the people, to call the attention of the proper punishing power to it, and to stop it, no matter how heavy a hand the court has to lay upon the culprit; no matter about his position in office; no matter how well the man had been thought of in the community, that does not affect his acts. He is a public officer; he has certain duties to perform; he has got to travel on the line marked out by the laws of this State. Because your state treasurer, Seeger, did not travel on that line he was impeached, and because this county treasurer did not travel on that line; because he violated the law, the judge who called attention to it, is here to answer under articles of impeachment for corrupt conduct in so doing. Two offences of the same character. In the one case the man who did the act is impeached by the Legislature of this State, in the other case the respondent is impeached because he called attention to the malfeasance in office.

Now, gentlemen, look at the position in which respondent is before you, as admitted and sworn to by the party who claims to have been injured in his reputation and good name by the acts of the respondent. When Ingmundson paid Sever O. Quam, the treasurer of Clayton township, money on a verbal application, or rather gave him a check on the Leroy bank, he violated the law and made himself personally liable to the town. Quam was then a defaulter. The sum paid over to him by Ingmundson in this irregular method, was not, and of course could not have been charged to the town by the auditor, for he knew nothing of the transaction. Hence it was that when the new treasurer of the town applied to the auditor for his warrant or order for the amount due the town, the sum paid Quam was included in the order as due the town.

This act of Ingmundson in letting Quam have money belonging to the town in this private and illegal way was a misdemeanor, and indictable. It deprived the town of a very important means of information, and check on Quam, the defaulting treasurer. The auditor's accounts always open to the inspection of town officers, would not and did not show that Quam had received the money. By this act Ingmundson enabled Quam the more successfully to carry on his embezzlements.

But Ingmundson committed another crime in taking personal security from Quam in the shape of a town order which he knew had been paid. He had no right to take the order at all, except for taxes, and to take a paid order of a town treasurer with the intention, as was clear

in this case, of holding it as his personal security, and retaining the amount of it from funds that might come into his hands belonging to the town, was the grossest misconduct. Treasurers shall receive orders in payment of taxes, &c. General laws 1874, page 47, sec. 92.

"Sec. 92. He shall receive county orders in payment of county taxes, also the orders of any town or city, for the town tax of such town or city, without regard to priority of the numbers of such orders, except when otherwise provided by law."

Ingmundson also committed another crime by refusing to pay over the money belonging to the town of Clayton, when the treasurer demanded it on the warrant of the auditor, unless he first deducted the paid order received by Quam. He could not hold as an offset against the money, any orders except those received for taxes.

2d Bis. p. 998: Sec's. 95-6-7-8-9.

"Sec. 95. If any person having in his possession any money belonging to this State, or any county, town, or city, or other municipal corporation, or school district, has any interest, or if any collector or treasurer of any town or county, or incorporated city, town, or village, or school district, or the treasurer or any other disbursing officer of the State, or any person holding any office under any law of this State, or any officer of an incorporated company, who is, by virtue of his office, intrusted with the collection, safe keeping, transfer, or disbursement of any tax, revenue, fine, or other money, converts to his own use, in any way or manner whatever, any part thereof, or loans, with or with out interest, any portion of the money intrusted to him as aforesaid, or improperly neglects or refuses to pay over the same, or any part thereof, according to the provisions of this law, he is guilty of embezzlement.

"Sec. 96. Whoever is guilty of embezzling any money prohibited by this or the preceding section, not exceeding in amount the sum of one hundred dollars, shall be punished by imprisonment in the county jail not more than twelve months, nor less than three months; and whoever is convicted of embezzling a greater sum than one hundred dollars, shall be punished by imprisonment in the State prison not more than three years, nor less than one year, and by a fine in each case of twice the amount so embezzled; and if the court cannot determine from the verdict of the jury or otherwise, the amount of the sum embezzled, it shall impose such fine as shall be adequate and corresponding as nearly as may be with the penalty imposed by this section; and every refusal by an officer to pay any sum lawfully demanded, shall be deemed an embezzlement of the sum so demanded.

"Sec. 97. Any person demanding of an officer any sum of money which he may be entitled to demand and receive, and who is unable to obtain the same, by reason of the money having been embezzled as aforesaid, if he neglects or refuses for thirty days after making such demand, to make complaint against such officer, is an accessory, and shall be punished by fine not exceeding one hundred dollars.

"Sec. 98. The refusal of an officer to pay any demand in specie, where the sum so demanded was actually received by such officer in good faith, in checks, drafts, certificates of deposit, or currency which have depreciated in value, provided payment is tendered on the checks, drafts, certificates of deposits, or currency by such officer, or to pay any sum demanded of him, where there is reasonable doubts as to his duty or authority to pay the same, on such demand, or where such refusal is not

with a wrongful intent, shall not be construed to be an embezzelment according to the intent and meaning of the ninety-fifth and ninety-sixth sections of this title.

"Sec. 99. Whoever is mentioned in the ninety-fifth section of this title (chapter) shall pay over the same money that he received in the discharge of his duties, and shall not set up any amount as a set-off against any money so received, and all justices of the peace, clerks of the district courts, sheriff, and other officers, shall pay into the respective treasurers all the money collected on fines, within twenty days after said moneys are collected."

General statute 606, section 26.

"Sec. 26. If any person having in his possession any money belonging to this State, or any county, town, city or other municipal corporation or school district, or in which this State, or any county, town, city, village or other municipal corporation or school district has any interest, or if any collector or treasurer of any town, or county, or incorporated city, town or village, or school district, or the treasurer, or other disbursing officer of the State, or any other person holding any office under any law of this State, or any officer of an incorporated company, who is by virtue of his office, intrusted with the collection, safe keeping, transfer or disbursement of any tax, revenue, fine or other money, converts to his own use in any way or manner whatever, any part thereof, or loans with or without interest, any portion of the money intrusted to him as aforesaid, or improperly neglects, or refuses to pay over the same or any part thereof according to the provisions of this law, he is guilty of embezzlement"

County treasurer shall pay over moneys after each settlement in February, May and September each year, &c.

Gen. Laws, 1875, p. 33, sec. 109.

Section 109. The county treasurer shall, after each settlement in February, May and September immediately pay over to the treasurer of the State or of any municipal corporation or organised township, or other body politic, on the order of the proper officers, all moneys received by him, arising from taxes levied and collected belonging to the State, or to such municipal corporation or organized township and deliver up all orders and other evidence of indebtedness of such municipal corporation or other body politic and take duplicate receipts therefor, and file one with the county auditor."

Shall receive orders in payment of taxes, shall make settlements, etc.

Gen. L., 1877, p. 34, sec. 106.

"Sec. 106. On the last day of February, May and September, respectively of each year, the county treasurer shall make full settlement with the county auditor of his receipts and collections for all purposes from the date of the last settlement up to and including each day mentioned, and the county auditor shall within 20 days after each settlement send an abstract of the same to the auditor of State, in such form as the said auditor may prescribe. At the settlements on the last day of February and May, the treasurer shall make complete returns of his collections on the current tax list for the preceding year, showing the amount collected on account of the several funds included in said list."

Briefly stated, the facts as shown by his testimony as to Ingmundson's transaction with the town of Clayton, are these: D. B. Coleman, a resident of the town, held an order on the treasurer for $114.52. He presented it to Severt O. Quam, who was then treasurer, (1876). Quam paid $20; let Coleman keep the order, and said he would have to go to Austin to get the balance to pay it. Afterwards Quam paid the balance with Ingmundson's check on the bank of Leroy, and took up the order. Quam then carried this paid order to Ingmundson, who held it until the new treasurer, Soren Haralson, was elected, and then refused to pay the money belonging to the town, some $500.00, as shown by the auditor's warrant, unless he (Haralson) would take this order as money. Haralson demanded the money, and Ingmundson knew that the order had been paid, but refused until he compelled Haralson to take the order. Quam was a defaulter when he got this money of Ingmundson, and was afterwards indicted and escaped punishment by running away. In his settlement with the town, Quam was credited with the amount of this order. By this illegal transaction the town of Clayton has lost $114.52, or rather Ingmundson has retained in his hands and still retains that amount, which belongs to the town.

But to show the character of this model officer, and his habitual violations of well known laws, let us examine the manner in which he has used the public funds coming into his hands. In 1873 a law was passed authorizing the loaning of public funds under certain restrictions. Some of these restrictions were:

1. The amounts deposited in any bank, should not exceed the capital stock of the bank, as shown by the tax list.

2. That the banks of deposit shall be designated by the board of auditors.

3. That the bank shall give bonds in double the amount deposited,&c.

1st Bisl. Stat., p 227, secs. 56 to 59.

"SEC. 56. When any money is paid the county treasurer, excepting that paid on account of taxes charged on duplicate, the treasurer shlal give the person paying the sume, duplicate receipts therefor, one of which he shall forthwith deposit with the county auditor, in order that the county treasurer may be charged with the amount thereof, and there is hereby created a board of auditors, for each of said counties in this State, which board shall consist of the county auditor, chairman of the board of county commissioners, and clerk of the district court of either of said counties in this State, whose duty it shall be to carefully examine and audit the accounts, books and vouchers of the treasurer of their respective counties, and to count and ascertain the kind, description and amount of funds in the treasury of said county or belonging thereto, at least three times in each year, without previous notice to the treasurer, and make report thereof, and of their acts and doings in the premises, to the county commissioners at their next meeting after such examination, and to publish the result of such examination in one or more newspapers in their respective counties, and also to witness and attest the transfer and delivery of accounts, books, vouchers, and funds by any outgoing treasurer to his successor in office, and report the same to the board of county commissioners at their next meeting after the term of office of any treasurer shall expire.

"*Second.* All the funds of any of said counties in this State *shall be* de-

posited by the county taeasurer in one or more designated national banks, or State or private bank or banks, on or before the first day of each month, in the name of the proper county, of which said board are officers. Such bank, or banks, or bankers, shall be designated by the said board of auditors, in their discretion, after advertising in one or more newspapers published in their respective counties, for at least two weeks for proposals, and receiving proposals, stating what security would be given to said county for such funds so deposited, and what interest on monthly balances of the amount deposited upon condition that said funds with accrued interest shall be held subject to draft and payment at all times on demand:

"*Provided*, That the amount deposited in any bank or banking house shall not exceed the assessed capital upon the duplicate tax list. Every payment of the county treasurer shall be made on the warrant of the county auditor, or the chairman of the board of county commissioners, duly attested by the county auditor.

"*Third.* The treasurer shall keep the books of his office in such way and manner as to show plainly and accurately every receipt and disbursement or payment daily, and on same day on which such receipt and payment, or either of them, actually occurs, and no unfinished business shall be kept or entered upon loose memoranda or slips of paper, and the said treasurer's books shall be balanced plainly and accurately every business day.

"*Fourth.* Before any national, state, or private bank or banker shall be designated as such depository, such bank or banker shall deposit with such treasurer a bond payable to said county, and signed by not less than five freeholders of said county as sureties, which bond shall be approved by the board of county commissioners, and shall be in such amount as said board shall direct, which amount shall be at least double the amount of funds to be deposited with such bank or banker. It is hereby made the duty of the officers designated, and also of the board of county commissioners of the several counties in this State, to comply with all the provisions of this act: *Provided*, That counties in which there are no such bank, banks, or bankers, may be exempt from the provisions of this act so far as it relates to the depositing the funds of such counties with any such bank or bankers, if in the judgment of the auditing board and board of county commissioners of any such county it would be detrimental to the interest of such county to make such disposition.

"Sub-division 2.—The board of auditors shall each be entitled to the sum of three dollars for each day actually employed in the discharge of their duties under this act.

"Sub-division 3.—Any member of the board of auditors hereby created or of the board of county commissioners, who shall neglect or omit to discharge any of the duties imposed by this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars.

"Sub-division 4.—Whenever any portion of the funds of any county shall be deposited by any county treasurer in the manner as provided in this act, surch treasurer and the sureties on his bond shall be exempt from all liability thereon by reason of the loss of any such deposited funds from the failure, bankruptcy, or any other acts of any such bank or banker, to the extent and amount of such funds in the hands of such bank or banker at the time of such failure or bankruptcy.

"Sec. 57. On the last day of February and tenth day of October in each year, the treasurer shall exhibit his accounts since the last settlement, balanced to said day, to the board of commissioners and county auditor, and in the event of the board of commissioners not being in session, then to the county auditor alone, showing all the monevs received and disbursed by him since the last settlement, and the balance remaining in his hands. The books, accounts, and vouchers of the treasurer, and all moneys remaining in the treasury, shall at all times be subject to the inspection and examination of the board of commissioners or any committee thereof.

"Sec. 58. The county treasurer shall, on the last day of February and on the tenth day of October in each year, make a settlement with the board of commissioners, or with the county auditor of his county, and at such settlement in February return to said auditor the tax duplicate for the current year, showing the amount which remains unpaid thereon.

"Sec. 59. The county treasurer shall, on the last day of February, the fifteenth day of June, and the tenth day of October in each year make settlement with the auditor of his county, and on the fifteenth day of March and the first day of November in each year the county treasurer shall send by express, from the nearest public express office, to the state treasurer, all moneys by him received for State purposes, according to the last certificate of settlement with the auditor of his county, and the state auditor is hereby authorized to draw upon any county treasurer, in favor of the treasurer of state, for any money in the county treasury belonging to the State, at any time after the June settlement in each year, as herein provided for; and the county treasurer shall pay such drafts to an amount equal to the June certificate of settlement with the auditor of his county, and the state treasurer shall duplicate receipts for the moneys so paid, one of which he shall deposit with the state auditor. And the county treasurer is hereby required to pay over to any town, city or school district treasurer, any money found to be in the county treasury, at either of the within-named settlements, belonging to any town, city, road or special school fund, or other fund, in the manner required by law, and to take duplicate receipts therefor, one of which he shall transmit by mail on or before the fifteenth day of March next thereafter, to the clerk or recorder of the town, city, or school district to which treasurer the money is paid, which receipt shall be filed and safely kept by said clerk or recorder in his office."

No bids were ever made by banks, and no action was ever taken under this law in Mower county. Hence the funds have been left with the treasurer to be used and controlled as provided by former laws. Had the treasurer, then, any right to use the public funds as he has used them? Certainly not. It will be admitted that the funds have been placed in five different places—the First National Bank of Austin, the Mower County Bank, (private,) Bank of Leroy, (private,) 25 miles from Austin. Bank of Grand Meadow, (private, 20 miles from Austin, and the Bank of Spring Valley, (private,) 30 miles from Austin in Fillmore county. None of these banks, except the First National, has any assessed capital, and all are nothing more than private broker and exchange offices, and under the law of 1873, no deposits could be made with them. The funds are used by the banks in common with other funds, and interest has been paid to the treasurer at the rate of three

per cent. on monthly balances. This interest, during the last two years, Ingmundson has not accounted for. The funds are checked out as needed, but in case the bank suspended any day, there would be no security, except that of the individuals comprising the firm, as no bonds have been given. This reckless and dangerous disregard of the plain provisions of the law, can only be accounted for on the theory that there is some pecuniary as well as political advantage to accrue to the treasurer therefrom. It is a loan of the funds, nothing more nor less. A deposit with the right to use for a consideration. This is expressly forbidden by law.

2 Bis. 998, sec. 95.

"Sec. 95. If any person having in his possession any money belonging to this State, or any county, town, city, or other municipal corporation or school district, or in which this State or any county, town, city, village, or other municipal corporation, or school district, has any interest, or if any collector or treasurer of any town or county or incorporated city, town or village, or school district, or the treasurer or other disbursing officer of the State, or any other person holding any office under any law of this State, or any officer of an incorporated company who is by virtue of his office intrusted with the collection, safe keeping, transfer or disbursement of any tax, revenue, fine, or other money, converts to his own use in any way or manner whatever, any part thereof, or loans, with or without interest, any portion of the money intrusted to him as aforesaid, or improperly neglects or refuses to pay over the same, or any part thereof, according to the provisions of law, he is guilty of embezzlement."

Suppose the bank were an individual, and the county funds were put into his hands with the privilege of using them in his business, either for or without consideration, does any one doubt that this would be a violation of law? The principle is the same when the deposit is made with several individuals associated as a bank. But it will be said that the treasurer has given bond to the county, and is responsible with his bondsmen for any losses. The assertion shows how superficial are those who use it. If it has any force in such a case it has equal force in a case where the treasurer makes a direct loan of the funds to an individual in his own name and takes the highest rate of interest allowed by law, or where he invests the funds in speculations of any kind for his own benefit. The treasurer's bondsmen are liable for losses in both cases; yet both are wisely prohibited by law. William Seeger, a former treasurer of this State was impeached for the identical offenses which Ingmundson admits he is guilty of, viz.: loaning funds to banks. See proceedings in Seeger trial.

Ingmundson has also, while treasurer, purchased and received town and other orders unlawfully, and has retained from the funds when called for, sufficient amounts to pay such orders. He is authorized to receive orders for taxes and for no other purpose. Town and district treasurers are absolutely prohibited from receiving orders from county treasurers, unless accompanied by the said treasurer's affidavit, that they were not purchased at a discount.

1 Bis., 230; sec. 68.

"No county treasurer or deputy county treasurer shall either directly or indirectly contract for, or purchase any order or warrants issued by the county of which he is treasurer, or any State warrants or town orders, or of any city, town or other body politic, for which he is the collector of taxes, at any discount whatever upon the sum due on such orders or warrants, and if any treasurer or deputy treasurer directly or indirectly contracts for purchases, or procures any such orders or warrants at any discount whatever upon the sum for which the same are respectively issued, he shall not be allowed on settlement the amount of said warrants or orders or any part thereof, and shall also forfeit the whole amount due on such warrants or orders, and shall also forfeit the sum of $100 for each and every breach of the provisions of this section to be recovered in a civil action at the suit of the State for the use of the county; and the treasurer of State or the person to whom the county treasurer of any county is required to return the State county, township, city, town, school or road tax, is hereby respectively prohibited from receiving from any county treasurer any orders, warrants, or bonds in payment of taxes collected by him or his deputies, unless with said orders, warrants, or bonds, said county treasurer shall file his affidavit with the treasurer of State, or the person entitled to receive said tax, stating therein that all such orders, warrants and bonds were received at their par value, and whoever swears falsly in such affidavit is guilty of perjury, and upon conviction shall be punished by confinement in the State prison not more than three years."

General Statutes 1874; p. 47; sec. 92.

"Sec. 92. He shall receive county orders in payment of county taxes, also the orders of any town or city for the town tax of such town or city. without regard to the priority of the numbers of such orders, except when otherwise proved by law."

It will readily and clearly appear that Ingmundson has been an open, gross violator of law; hence the necessity for an investigation of his office by the grand jury.

Second. But it is alleged that the grand jury did investigate the affairs of his office at the September term, A. D. 1876, and found nothing wrong. It will be shown that the investigation there had was superficial and not adapted to the purpose, and really disclosed no facts, and the jury had no more substantial information when they concluded their work than when they commenced.

As a matter of fact, their attention was not at that term directed to any specific matters, and they did not attempt to cover the same ground as at the March term, 1877. New matters were disclosed and came to the knowledge of respondent previous to March, 1877, and the attention of the grand jury was called to them, at the opening of court pursuant to law.

2d Bis., 1035, sec. 98.

"Sec. 98. The grand jury being impanneled and sworn, shall be charged by the court. In doing so, the court shall read to them the provisions of this chapter, from section one hundred and two (twenty-seven) to section one hundred and seventeen (forty-two), both inclusive, and give them such information as it may deem proper,

as to the nature of their duties, and any charges for public offenses returned to the court, or likely to come before the grand jury; the court need not, however, charge them respecting the violation of a particular statute, unless made expressly its duty to do so by the provisions of such statute."

Third. Admitting that the matters above alluded to, or any of them can be established by evidence, it cannot be doubted that there was necessity for requiring the grand jury to make an investigation.

Fourth. The grand jury after long delay, and after being requested by respondent to present the facts, reported in substance that the treasurer had received the town order above alluded to of Sever O. Quam, after it had been paid, and refused to pay over the money belonging to the town when demanded, unless the amount of this order, $114.52, was first deducted.

The proof will show that when D. B. Coleman first presented the order to Quam, he (O. Quam) paid $20.00 on it. This money was not received of Ingmundson at the time the other was, and the presumption is that it was regularly received and had been charged to the town by the auditor. So that in any view, this amount was paid twice by the town.

There can be no doubt that these facts were sufficient to warrant the instruction given the jury. That if they had sufficient evidence to establish these facts, it was their duty to find an indictment. The acts were misconduct in office, hence indictable.

21 Minn., page 22.

"Upon the trial of an indictment for voting more than once at the same election, under a statute providing that 'whoever votes more than once at the same election is guilty of a felony, &c.' The only question of fact for the jury is, did the defendant, having already voted, voluntarily cast a second vote at the same election. The law conclusively presumes that all men intend their voluntary acts, and it is the duty of the jury, upon satisfactory proof of the criminal act charged, to find the criminal intent in accordance with the legal presumption."

"The said Michael Welch did then and there, on said first day of April, A. D. 1873, in said city of Stillwater, in said county of Washington, at said election vote in said city of Stillwater, in the first ward thereof; said Michael Welch being then and there a resident and legal voter in said ward in said city; and said Michael Welch did then and there, on said first day of April, A. D. 1873, in said city of Stillwater, in county of Washington, after the casting by him of the vote above mentioned, wrongfully, wilfully, unlawfully and feloniously vote a second time at said election in said city of Stillwater, said vote being cast by said Michael Welch in the second ward of said city of Stillwater; both of said votes being then and there by the said Michael Welch voted at the same election, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Minnesota.

"At the trial it appeared that the prisoner was a resident of the first ward of the city, and voted in that ward in the forenoon, and in the afternoon in the second ward. The prisoner was convicted, a motion in arrest of judgment and a motion for a new trial were denied, and he was sentenced to hard labor in the State prison for the term of six

months. The objections made to the indictment, and the exceptions taken at the trial are stated in the opinion.

"The indictment charges the defendant with the crime of voting more than once at the general municipal election of the city of Stillwater, held April 1, 1873, the defendant's first vote being cast in the first ward, of which he was a resident, and the second in the second ward.

"The counsel insist that the essence of an offense is the wrongful intent, without which crime cannot exist. This is true; but in cases like the present, where the law declares the act done by the defendant to be a crime, the only question is, did the defendant intend to do the act which the law has forbidden. He does not appear to have cast his vote by accident or under the constraint of superior force. His act was and must have been wholly voluntary. Every man is conclusively presumed to intend his own voluntary acts. As the defendant must have intended to cast the second ballot he must have intended to commit the offense charged.

"The cases cited by counsel, except one in California, are cases where the crime of which the prisoner was accused consists not merely in the doing of an act, with intent simply to do that act, but in the doing of an act, with intent thereby, and by means thereof to compass a criminal end, to accomplish an unlawful purpose. Thus, in prosecutions for larceny, the act of the prisoner—the mere taking—does not constitute the offense, but the act, coupled with the intent to steal; and the question is not, did the prisoner take and intend to take the goods? but did he take them *animo furandi*? So in trials for murder in the first degree, the question is not merely, did the prisoner intend to inflict the blow, (or do any other act,) which resulted in death? but had he a premeditated design to effect the death by means of the act done? And in State vs. Gowey, 11 Minn., 154, the question was not, did the prisoner intend to make the assault? but did he also intend to do great bodily harm? In such cases, where the crime consists not alone in the act done, and intended to be done, but also in the intent of the prisoner to effect certain results by means of the act, courts have sometimes admitted evidence of the prisoner's intoxication, as affecting his mental condition, and possibility or probability of his forming a premeditated design, or even an intention to perpetrate, by means of the act done, the crime wherewith he is charged.

"So in another class of cases, for instance: prosecutions for passing counterfeit money, where the prisoner's knowledge of its falsity is of the essence of the offense, he has been permitted to show that when he uttered the money he was so drunk as not to know that it was counterfeit.

"But it is obvious that such cases have no analogy to the case at bar. The defendant's purpose and motive in voting are alike immaterial; his offense is the same, although his two votes were cast for opposing candidates, so that the second neutralized the first. Here the only question is, did the defendant, having voted in the first ward, intend to vote the second time at the same election? In no case can a defendant, by proof of intoxication, rebut the legal presumption that he knows and intends his voluntary acts. In these instances above cited, the prisoner cannot show that by reason of his intoxication, he did not intend to take the goods he is charged with stealing; to strike the blow which resulted in death; to pass the money which proved to

be counterfeit; nor can he show by reason of his intoxication, he did not know that he took the goods, struck the blow, or passed the money.

"It is claimed that the defendant was so drunk that he voted the second time, that he did not remember that he had already voted, and that the act was innocent because done in ignorance of this material fact. But the plea of want of memory is like those of want of intent and want of knowledge; the defendant had cast his first vote but a few hours before; in the ordinary course of things, had he remained sober, it would be no excuse of his offense that he had forgotten at three o'clock in the afternoon that he had voted in the morning. It is not pretended that he is not a man of ordinary memory, and he must be held to the responsible exercise of the force of memory that he possesses.

A man is not the less responsible for the reasonable exercise of his understanding, memory and will, because he has enfeebled his memory, perverted his will and clouded his understanding, by voluntary indulgence in strong drink. A drunken man equally with a sober man, is presumed to know and intend the acts which he does, and to remember the acts which he has done. There is, accordingly, no reason why this case shall form any exception to the general rule of the criminal law, than an intoxicated man shall have no privilege by his voluntary contracted madness, but shall have the same judgment as if he were in his right senses."

You perceive, Senators, that so far as the grand jury was concerned, they had nothing to do with the question as to whether Mr. Ingmundson's intent was a good or bad one, when he violated the provisions of the statute. The jury had nothing to do with it, and as one old gentleman sworn here stated, they decided in that jury room that the law as given them by the court, and which the supreme court had laid down, was not the law of the land; that because Ingmundson had done this act innocently, as he claimed, while Ingmundson had paid out the money illegally as they all admitted, nevertheless the judge was wrong in his construction of the law, and although the act was in direct violation of the statute and a misdemeanor, the grand jury would override the law, and came to the conclusion in performing duty there that they were right, and refused to make a presentment.

Now, gentlemen, respondent construed the law, and the statutes of your State correctly. It was a duty he owed the people of this State. I claim respondent was right in his construction, for such is the law, and I claim it to be your duty now, in passing upon his acts to sustain him, and to justify him. I say that it is due the people of this State, that you should protect them, and when the acts of a treasurer are brought in question, in the manner in which Ingmundson's acts are brought in question here, that you should say the court that sustains the law, laid down in your statutes, shall be sustained in your tribunal in his decision. Think of setting a precedent, and saying that the acts of this respondent were unjust and oppressive towards Ingmundson, no matter how sternly respondent treated that grand jury, who were violating the law—as laid down in the statute, and as defined by the Supreme Court of the State. It amounts to simply this. You are asked to say the rendering of a correct judicial decision is corruption, no more and no less.

How is public opinion formed on matters of this kind? If you permit a driblet here to be taken out of your treasury, and a driblet

there to be stolen out of the treasury, if judges are to be impeached for taking notice of transactions of this kind, I ask where, in the name of God, are we going to land. Public sentiment is built up by slow degrees. It is said that on the Rocky Mountains there is a spring so small that a mere handful of mud placed in the channel on one side, and the waters flow towards the Atlantic ; placed in on the other side and they flow toward the Pacific. The waters of that spring creep silently through sedge and grass ; other springs gush in, a stream is added here and there; a brook babbles in at one place, a river finds its entry at another and at last that spring becomes the mighty Mississippi River, flowing past your own doors, bearing on its bosom the commerce of half a continent and running from arctic to tropical regions. You could scoop that spring dry with your hand. Where it laves the border of your State a Mississippi bluff placed in its course would soon be overtopped or undermined.

Precisely in that way, gentlemen of the senate, public opinion is formed. A little indiscretion here, a little indiscretion there, a small embezzlement in this place, a bigger one had in another place, the public conscience gradually worked up, worked on and hardened until the public cease to take notice of matters of that kind, and at last what do you find? Defalcations, robberies, embezzlements, in unheard of and unthought of amounts.

Men embezzling sums that would make Croesus rich ; yet this court is convened for the trial of this respondent for having stood in the door to prevent transactions of that kind; stood in the door to prevent a misdemeanor of the same character, to wink at which, is to educate the public conscience until it is blind to official misconduct. Will you impeach a man and deprive him of office for so doing? Had Ingmundson a right to complain that an investigation was about to be had ?

The grand jury in Ingmundson's case first presented an informal statement not signed by the foreman. This did not conform to the law requiring all indictments and presentments to be signed by the foreman. This irregularity the jury were instructed to correct, and to present, properly signed, such statement of facts as they found. This instruction was correct and regular, for two reasons:

First, the jury had (first taken upon themselves,) voluntarily made a report concerning this subject matter. It was then competent and proper for the court, and it was his duty to see that the report was put into proper shape to be acted on. This report, when properly signed by the foreman, was nothing more nor less than a presentment, as defined by statute.

2d Bis., St., 10, 36. Sec. 105.

"A presentment is an informal statement in writing, by the grand jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual, named or described, has committed it."

2d Bis., St., 10, 38. Sec. 126.

"If the court thinks that the facts stated in the presentment constitute a public offense, triable in the county, it shall direct the clerk to issue a bench warrant for the arrest of the defendant."

These two sections read together, clearly indicate that a presentment

is nothing more nor less than an informal statement of facts relative to the conduct of some person named or indicated therein. The court on such statement, is left to judge whether the facts constitute a public offense. In the absence of any showing to the contrary, the presumption is that this report or presentment was found by the requisite vote. If, then, respondent was justified in treating the report as a presentment—and it would seem that there can be no doubt as to this—then all subsequent acts in investigating the charge were lawful.

2d Bis. 1038, sec. 7, &c.

"The clerk, on application to the county attorney, may accordingly, at any time after the order, whether the court is sitting or not, issue a bench warrant under his signature, and the seal of the court, into one or more counties."

True, the complaint made by the county attorney was not necessary to confer authority to issue the warrant, as that might under the statute have issued on the presented facts, but, the complaint could do no harm, and was not a material irregularity. Bringing Ingmundson before respondent for examination was regular and proper, for all judges of the district courts are clothed with the powers of examining magistrates.

2d Bis. 1028, sec. 42.

"For the apprehension of persons charged with offenses, the judges of the several courts of record, in vacation as well as in term time, and all justices of the peace, are authorized to issue process to carry into effect the provisions of this chapter."

This was the most expeditious and least expensive course. Judges in the State frequently perform this duty, and there is in some cases great propriety in so doing.

Courts in this State have almost unlimited control over criminal prosecutions. If an indictment is not found at one term, the case may be ordered continued or submitted to another grand jury

2d Bis. 978, secs. 7, 8, and 9.

"Sec. 7. When a person has been held to answer a public offense, if an indictment is not found against him at the next term of the court at which he is held to answer, the court shall order the prosecution to be dismissed, unless good cause to the contrary is shown."

"Sec. 8. If a defendant indicted for a public offense whose trial has not been postponed upon his application, is not brought to trial at the next term of the court in which the indictment is triable after it is found, the court shall order the indictment to be dismissed, unless good cause to the contrary is shown."

"Sec. 9. If the defendant is not indicted or tried as provided in the the last two sections, and sufficient reason therefor is shown, the court may order the action to be continued from term to term, and in the meantime he shall be committed, or if the offense is bailable, shall recognize in a sum and with sureties, to the satisfaction of the court."

2 Bis. Stat., sec. 153, p. 1038.

"If twelve grand jurors do not concur in finding an indictment or presentment, the charge shall be dismissed. The dismissal of the charge does not, however, prevent its being again submitted to a grand jury as often as the court directs."

2d Bis. 1050, sec. 188–9.

"If the motion is granted, the court shall order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he has deposited money instead of bail, that the money be refunded to him, unless it directs that the case be resubmitted to the same or another grand jury."

"If the court directs that the case be resubmitted, the defendant, if already in custody, shall so remain, unless he is admitted to bail; or if already admitted to bail, or money deposited instead thereof, the bail or money is answerable for the appearance of the defendant, to answer a new indictment."

2d Bis. 1051, 198.

"Sec. 198. If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court allows an amendment where the defendant will not be unjustly prejudiced thereby, or being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be re-submitted to the same or another grand jury."

The grand jury are required to inquire into the willful and corrupt misconduct in office of all public officers.

2d Bis., 1036, sec. 112.

Section 112. The grand jury shall inquire:

First. Into the condition of every person imprisoned on a criminal charge, triable in the county, and not indicted.

Second. Into the condition and management of the public prisons in the county; and,

Third. Into the wilful and corrupt misconduct in office of public officers of every description in the county."

This being their duty they may be required to report such facts as they find for the information of the court. This information is frequently absolutely necessary to enable the court to determine whether a case ought to be resubmitted or dismissed.

These facts may be treated as an information or presentment and proceed in any lawful manner to investigate the charge.

Judges of districts courts are peace officers, and as such have plenary power to do all things necessary to preserve the peace or to enforce the laws, to prevent or punish crime.

2d Bis., 1023, sec. 1.

"The judges of the several courts of record, in vacation within their respective districts, as well as in open court, and all justices of the peace, within their respective counties, shall have power to cause all laws made for the preservation of the public peace to be kept, and in the execution of that power may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter."

The complaint and warrant issued against Ingmundson were sufficient in law and stated a public offense, but it is entirely immaterial in this proceeding whether they did or not. No objection was made to

them, and the question cannot be raised here. Ingmundson waived an examination and offered no evidence. Complaint is made that respondent used improper language toward Ingmundson at the time the examination was pending. As a matter of fact, no such language as is set forth was used at any time, and no language whatever was used while the case was pending; but, assuming all that is alleged to be true, it does not amount to official misconduct. It amounts to a statement that good men are liable to commit offenses, and when detected are liable to escape. The language in its face indicates an intention to give a substantial reason why bonds in all such cases should be required. It indicates no hostility towards the accused. He was able to give bail, and did so without objection.

Judges have a right to give their views and reasons in connection with official acts, and if casual remarks made in the course of legal proceedings are to be made the basis of impeachment, few judges in the country would be safe.

ARTICLE VII.

The seventh article charges abuse on the grand jury.

This charge must rest on two grounds, or it cannot be sustained.

First—The language used to the jury relative to their conduct must have been untrue.

Second—It must have been used for malicious purposes.

Courts have the right, and it is their duty to instruct grand juries as to any special matters within their knowledge proper to be investigated.

2d Bis., 1035. Sec. 98.

"The grand jury being impanneled and sworn, shall be charged by the court; in doing so, the court shall read to them the provisions of this chapter, from section one hundred and two (twenty-seven) to section one hundred and seventeen (forty-two), both inclusive, and give them such information as it may deem proper, as to the nature of their duties, and any charges for public offenses returned to the court, or likely to come before the grand jury; the court need not, however, charge them respecting the violation of a particular statute, unless made expressly its duty to do so by the provisions of such statute."

In accordance with this law respondent instructed the jury to investigate certain matters connected with the treasurer's office. It then became the duty of the jury to attend to such investigation. They postponed from time to time until the middle of the second week. They asked instructions several times, and finally presented an informal report. Under instructions this report was made more definite. The jury was instructed that the facts constituted an indictable offence, but they returned no indictment. The prosecution claims that respondent told the jury that they had violated their oaths. If this was true he had a right, and it was his duty, to tell them so. As a matter of fact it was true, and as a matter of fact respondent did not tell them so. He stated that if they had done certain things, or had failed to do them, it was a violation of their oaths, but did not say that they had done them.

2 Bis., 978.

This certainly was true, and the jury had no right to take offence at it, and would not, unless they were guilty.

If Ingmundson were an honest man, if his office had been conducted on right principles and on the lines laid down in this statute, by which he must be governed, by which you must say upon your consciences and your oaths, he shall be governed, if he had followed the line of official conduct laid down in that book which was made his bible when he took the oath of office, if he had followed that line could he find fault that an investigation of his acts was to be had; what was this respondent to do but take the matter in his own hands, and say to that grand jury, I am a conservator of the peace, a judge of this district, sworn to do my duty, I demand that you shall do your duty; was he to lay down for the sake of saving himself trouble, to be silent for the sake of pacifying these men, wink a blind eye at their acts. Not at all, you are not going to say that, it is neither just nor right that you should.

I say that if Ingmundson's acts were above suspicion, if he was doing right in that office, if he had done no unlawful acts, he need have had no fear of investigation; he ought to have courted it. But he did not court it. The minute the grand jury were directed to investigate him, that minute he became an enemy of this respondent; that minute he was ready to contribute money for his impeachment; that minute not only his hands but his voice were lifted to conspire for the impeachment and ruin of the respondent.

Ingmundson's evidence, given here under oath, ought to carry conviction to the mind of every Senator accessible to truth and reason, and ought to convince each Senator that this respondent was precisely right in all that he did. I am not going to find fault, gentlemen with all men of Mower county who have been dragged into this impeachment trial.

There are many honest, fair men in the ordinary pursuits of life who have appeared here, and sworn with reference to what occurred concerning this Ingmundson case and the charge of the court to that grand jury. They are not all bad men, there are but very few bad men among them, there are but a very few of what I would term *conscience stretchers* among them; but it is not in the reach of the mind of a human being to hear a conversation, to-day, or to hear me speak to-day, and be able to step from my presence, go off these capitol grounds and report what I say.

A portion of the jury had conspired to prevent anything like a thorough investigation, and by this means had delayed its action nearly two weeks. Their conduct deserved rebuke, and the public interests required it. A majority of the jury had determined to shield Ingmundson. This fact was brought to the knowledge of respondent by the foreman, and was apparent from their conduct. The language used towards them was not abusive in any sense.

There are but very few men in the land who have a mind capable of grasping a speech or a charge made, such as was made by the judge on that day, who can comprehend it in all its bearings, and finally come forward and testify, after the lapse of time, precisely to what was said, give the sense and the manner in which the expression came in, in connection with all things said, so as to faithfully and fairly represent it. It cannot be done. It is an impossibility; the courts recognize it as an impossibility, and say that class of evidence should be looked upon with more suspicion, especially when the parties giving it are warped, or

biased, or influenced by any considerations of interest or prejudice, than any other class of evidence known in the books.

I quote from the Law of Evidence, 1 Wharton, section 404: "The credibility of a witness to a fact seems to depend mainly on the four following conditions, namely: 1. That the fact fell within the range of his senses; 2. That he observed or attended to it; 3. That he possesses a fair amount of intelligence and memory; 4. That he is free from any sinister or misleading interest, or if not, that he is a person of veracity. If a person was present, at any event, so as to see or hear it; if he availed himself of his opportunity so as to take note of what passed; if he has sufficient mental capacity to give an accurate report of the occurrence; and if he is not influenced by personal favor, or dislike, or fear, or the hope of gain, to misrepresent the fact; or if, notwithstanding such influence his own conscience and moral or religious principle, or the fear of public opinion deters him from mendacity, such a person is a credible witness.

Of the dependence of credibility on the opportunities possessed by the witness for observation, we may draw an illustration from the line of cases which involve collisons at sea. It has been remarked that collision cases are peculiarlly distinguished for conflict of testimony; and thus may be partially explained by the prejudice felt by witnesses for their own boats. In boat cases a conflict takes place as to every question, as to which a conflict can be raised, and the gravest as well as the lightest yield to the common excitement. The late Mr. John Sergeant once illustrated this by relating a collison case that was tried when he was a young man. The two colliding ships being filled with lawyers, who were going from Philadelphia to Wilmington, to attend court. Which was the aggressor was the question to be tried, in the collision case; and on this question each lawyer swore with his ship. [Laughter.] But it is not only by prejudice or passion that such conflicts can be explained. The most dispassionate and the most accurate of observers, so we are told, when on one moving vessel, fail in taking a correct view of the absolute course of another vessel. We cannot overcome the instinctive belief that it is our vessel that is stationary, and it is the other alone that moves. Hence, Admiralty Courts have held that the testimony of mere observers on board a vessel, is to yield in cases involving the course and deflection of the vessel to that of those who hold her helm in their hands.

What is true of the sea is true though in varying degrees of the land. We all occupy standpoints which make us, however honest, more or less incapable of perfectly accurate observation. Until allowance be made for this incapacity, our testimony can not be properly weighed.

Now, taking the fact, Senators, that certain of these gentlemen who were upon that jury felt incensed with the course the judge had taken, they believing that the law laid down by the court—(which one of them swore here was overrode by him)—was wrong; taking that into consideration, it behooves us to weigh the evidence they have given in relation to what occurred in court, with a great deal of care.

Now, I presume that the only man who can testify accurately as to what charges were made in court at that time, is Judge Page himself, and I think his evidence, whatever it may be upon that subject, is entitled to more credit than that of the witnesses massed, who appear on both sides to testify in relation to that question; for a man who says a thing is much more liable to know accurately what he does say,

than any other man who sits by and hears it, and when you consider the great diversity of opinion shown here by the evidence in the recollection of the several witnesses as to what did occur in court at that time, their evidence weighs but very lightly in the case.

One man says that Judge Page was excited. Another man says that he was sarcastic; another man says that Judge Page's tone was no louder than usual; another man tells you—and that is my friend Dick Jones—that his manner was terrific, and yet, lawyer as Jones is, accustomed as he is to listen to evidence; and carry it in his head as he swears here he is, he can not remember, and does not remember, the facts as they occurred, as accurately as every layman who was there in the room—and who has testified here, pretends to have remembered it. Now, what comment shall we make on this, would not Jones be more likely to remember what occurred there, than any one else; he gives as an excuse for his being there, watching that thing, that he was retained by Ingmundson, and was there for that purpose. That evidence he gives on page six of the record, of May 31st, and I want to call your attention to it:

"Q. Were you retained as the attorney of Mr. Ingmundson?"

"A. I went there specially for that purpose, because I was."

Ingmundson in answer to the question, as to whether he had retained Mr. Jones, to be there at that term, swore positively and repeated it here on oath, that he had not retained Mr. Jones nor talked with any lawyer concerning that fact. Now what does it show?

I do not impute perjury to either of these gentlemen, as a matter of course; I am not here for that purpose; it shows that good men are frequently mistaken as to a fact. That they are diametrically opposed in their views of a fact concerning which one or the other must have been mistaken, and upon which one or the other must be right, as they have done here, and as many other witnesses have done during the progress of this trial. It shows the uncertainty of human memory; it shows the carefulness with which you ought to scan all this evidence as to the conduct of respondent at that time.

I care not for the evidence of the little coterie of impeachers who live down in the county of Mower; I do not care about the evidence of Crandall; nothing about the evidence of French; but very little about the evidence of Cameron, for when he was last under oath, he showed his prejudice by swearing that he was an enemy of Judge Page, that he always had been his enemy and his opponent; I care nothing about the evidence of this man Ingmundson; I care nothing about the evidence of McIntyre; they come here with unwashed hands, they come here so prejudiced, so warped, so biased, that you, Senators, in taking their evidence, must scan it in the closest manner, else you are liable to err. What have they shown themselves to be?

A band of midnight conspirators, banded together for the purpose of robbing a man of his character by unholy means, and when that charge was given to that grand jury on that day, this man French swears that Cameron, the Mepistophiles of the crowd, told him to write it down. "Page is going for you, you go for him."

Why write it down, Senators? What was the object, the purpose, and the intent of those men at that time? They saw their opportunity, they thought they could approach these grand jurors, who felt insulted

by the reprimand that had been given them by the court, especially those conscious of wrong doing, they thought that, backed by those jurors, they would be able to come in here and successfully present articles of impeachment against Judge Page, and have him convicted. They had got tired of his impartial manner of meting out justice to the people of that county and district, they were like the Athenians of old when they banished *Aristides the Just*.

When they came up, to vote for the ostracism of one or two persons, as they did every year to the voting place, voting on shells, one comes with a shell, who was unable to write, and handed it to Aristides.

Said Aristides: "What name do you wish me to write on your shell?"

Said he: "Write the name of Aristides."

"Why," said Aristiades, "Have you ever heard anything wrong of him?"

"No."

"Well," said Aristiades, "What is the matter?" "Has he ever done you any harm?"

"No," said the voter, "I am sick and tired of hearing him called Aristiades the Just"—and that is why he wanted to clean him out.

And so it was with those impeachers in Mower county, for Mr. Jones swears respondent's decisions were impartial. Every lawyer that you can produce in that district, will swear that Judge Page's decisions, from first to last, have ever and always been impartial.

Gentlemen, I have practiced in his court more hours than any man who stands or sits in this Senate chamber. I have practiced in his court more hours than any lawyer who has sworn here under oath; I have followed him through his district, year in and year out, from its western border to where the Mississippi washes its shore on the east, and I swear here now, that for impartiality, freedom from bias, and kindness upon the bench of the district court, I believe there is no man, in the State of Minnesota, his equal—unless it be Judge Mitchell. Dropping my position as an advocate, for a moment, appearing simply as a man and a lawyer, I swear that in all my experience, during twenty years, I have never seen that man who gave fairer decisions, uniformly fairer judgments, more impartial, or more just, than this respondent who sits here this day on trial for impeachment before you.

And who is he being pestered by? A gang of midnight conspirators, as they are shown to be. Attorneys crawling on their bellies in the filth and mire of petty retainers. A gang of men who have drawn into their net some good people to aid and assist them. Where do the counties of his district stand? The people of that district? You may go into all counties of his district except Mower; you may call up the men have been in attendance upon his court, and we will show by them, if permitted, and by many a good man from the county of Mower, that they believe him to have been actuated by the loftiest motives in all he has done. Tongue tied as he has been since he went upon the bench, pursued as he has been by night and by day, he has kept silent, until now his time for vindication has come. Their chief affidavit gatherer, Harwood,—a man whose forged signatures have become historic, whose deeds in that line were too heavy a burden to shackle this case with—they did not dare to swear here. Crandall, committing a crime under

the statutes by getting a justice to sign an affidavit officially when he never had administered an oath, is another of the leading spirits through whose help impeachment is to be brought about.

One word as to Riley, who is inoffensive and a tool; French, who failed in his duty and sold justice, when called upon to explain what work he had done in the trial of this Riley case, to win it, said he "made a speech;" Cameron, respondent's enemy, and the man who planned the conspiracy; Ingmundson, who ought to have coveted investigation; McIntyre and Stimson, who violated law;—are the life of this case. Respondent is charged with doing injustice, in the Riley matter; he is charged with doing an unjust act, by striking out a part of the stipulation presented in court—a stipulation which simply forfeited and gave away the rights of the county of Mower. Respondent discovered the fact, and the man who was doing the fraud is one of the chief impeaching witnesses in this trial, and that is one of the oppressive acts complained of. What was respondent's duty? Was it his duty to let the county be robbed? It was his duty to say, "You have stipulated the rights of the county away; the fact is not as you have agreed it is. I will not act as referee in this case, if this sort of iniquity has got to be perpetrated." He did say that the stipulation must contain the facts. That part of the stipulation was struck out; he introduced the proof. What credit is French entitled to unless corroborated. Advising the commissioners they ought to pay that illegal bill—a bill which every senator can see is illegal; again advising them to compromise the entire bill with Riley for the sum of twenty dollars. Subpœnaing no witnesses in the court below, doing nothing to win his case, except to use that valuble tongue of his, and when the matter comes before the judge for trial purposely giving his case away by a stipulation.

What should the judge say other than he did? That stipulation is not true. You are giving away the rights of the county. It must be amended and fixed, and it was amended and fixed, the case was won by the county, as it ought to have been, and as French knew it ought to have been.

Think you that Judge Page changes his character when he leaves the county of Mower? Think you, that when he passed out of the borders of Mower county, down into Fillmore county, or down into Houston county to hold court, he changed his character or his conduct? Do men go down perpendicular precipices in their daily life and conduct? Are not their character a part of them and a part, too, exposed and generally known among men? Can I appear here as one man to day, seen by men and talked to of men, and on another day can I change my character and make it different from what neighbors know it to be? "Can the leopard change its spots, the Ethiopian his skin?" Can men change their character at will? Are their characters worn upon their sleeve to be brushed off at will? Could Sherman Page have stood before the people of Mower county, administering justice, if he were a tyrant, if he were the corrupt man, it is charged he is; could he have gone down in those other counties, entirely changing his character, and have been the quiet, inoffensive man that he always was, presiding in court. If he was abusive to officers of court in Mower county, as it has been alleged he has; if he was abusive to the district attorney of that county, and guilty of corrupt conduct in his abuse, do you not think he would have done the same thing when he got down in the county of Fillmore.

If he did reprimand and upbraid those men in the county of Mower, it was because they deserved it. He cannot change his character; it is not within human power; no man can do it, and the discovery not be made; the cloven foot will crop out. He could not for five years hold courts and pursue the course he did, and not have it discovered. This stuff these conspirators, for the purpose of ruining the reputation of this respondent, have piled up these falsehoods, respondent has been unable to meet and stamp out, because tied up by his official position. When you consider it in its length, its breadth and its width, does it, altogether, constitute an impeachable offense? Did he act in all the decisions he gave outside of the pale of his duty as judge? I appeal to every honest man, I appeal to every one of you Senators, taking his acts from first to last, would you not have done as he did? Could you have done otherwise, knowing the law as he knew it, construing the law as it was? I ask you, could you have done differently? and if so, please tell me in what particular; show me the unjust judgment this respondent has rendered; show me the illegal order he has made; show me the corrupt decree that has come out of his mouth, and I will hush my voice at once.

Show me a man from the county of Fillmore; show me a man from the county of Houston; show me a man from the county of Freeborn, who will come here and say that for any acts done in those counties, they attach the least blame to respondent, and I will then abanden the case, if they are respectable people.

Why, gentlemen, I know this case; I know its history; I have seen it take root; I have seen it grow; I have felt that it was growing, and it has been a surprise to me, knowing the facts as I do, it has taken root to the depth it has; knowing the respondent as I do; knowing the men who appear here as prosecuting witnesses, as I do, it has been to me me a surprise; yea, I may say, a sorrow, that the people of this State would let a thing of this kind take root and foothold strong enough to present articles of impeachment against a man of Sherman Page's character.

Gentlemen, the history of to-day passes so rapidly down the stream of time to the broad ocean of the past, that the memory of most matters in which you and I participate, will soon have passed away, and be forgotten.

Not so the remembrance of this trial. This trial is to live in book form in the history of this State; that book is to be opened and perused by future generations, when the clods of the valley cover you and me; when the wicked cease from troubling and the weary are at rest; when our children rise up, and when their children rise up; then it is that your acts, done here in the progress of this trial, will be scrutinized, weighed and judgment given. Do you, Senators, wish to go down to the future recorded as having said that acts such as respondent is here answering for—are such acts as men should be impeached for hereafter in the history of this State? Do you wish to stand in history upon that sort of foundation? If you do, you are made of very different material from what I believe you to be. I want no such record for the use of future generations as this trial will make if impeachment be voted, a record that if impeachment follow, will be a conviction for doing acts which any lawyer must say were properly done first, last and always.

Senators, you will remember that some of the witnesses stated

that the judge did tell them that if they found certain facts to be true, it would be a violation of their oaths if they did not then present an indictment or presentment to the court, and such was the fact. The members of the grand jury as a matter of course were worried somewhat at that time; some of them opposed to the course of the judge, and as a matter of fact, strongly prejudiced at the time they came in for the purpose of being instructed by the court. It is not surprising if their remembrance of events differ and are not clear. Their duty was not performed when they refused to find an indictment upon the facts. There, undoubtedly had been a great deal of talk and feeling, a great amount of feeling on the part of Mr. Ingmundson, who showed feeling here. He clothes the respondent's acts with malice by offering the paltry excuse that he at a political meeting in Austin, alluded to the one man power, after which he says Judge Page did not speak to him.

Now, Mr. Ingmundson is a peculiar man, and if it were necessary it would be easy to show that since that term of court he has not spoken to a single grand juror, who voted against him in that grand jury room, and while Ingmundson may tell the truth, Judge Page always thought that Ingmundson had got mad at him, and refused to speak to him. He didn't suppose that he refused to speak to Ingmundson, but he understood from Ingmundson's manner, that Ingmundson was giving him the square cut. Malice can hardly be deduced from evidence of that character, they did not speak to one another when upon the street, it is true, but that proves nothing. Respondent heard nothing of this one-man power speech, and did not know anything about it. It had never been alluded to in his presence, nor did his attention happen to be called to it in any newspaper; and whether it happened, or not; I do not think it affects this issue, to any extent, either one way or the other. Judge Page, in his action, was simply influenced by the duty that he considered he was bound to perform under the statute. That is all there was of that.

His attention had been called to the facts he called the attention of the grand jury to; it was a matter of knowledge which had become public property; it was known to every man of that county. Quamm had run away; Huntington had run away, I believe, he had been indicted at any rate; there were two defaulters in two towns in that small county, and experience teaches you that it was a matter that had been talked of in the newspapers and investigated on street corners and talked about in families, until finally it had reached the ears of Judge Page.

This transaction between Ingmunson and Sever O. Quamm had been made a subject of newspaper report; the people of the town, because they had lost this money through the acts of Ingmunson in not requiring the warrant of the county auditor at the time he paid out this money, had talked and had knowledge of it, it had become the property of the people, it was in their mouths; they were talking about it from one end of the county to the other discussing it, and re-discussing it. A portion of the jury had conspired to prevent anything like a fair investigation.

That charge is warranted when you come to consider the statements made by these grand jurors. It is admitted by some of them here under oath, I won't pretend to particularize, but if you will look at the record you will ascertain the facts. It is admitted by some

of these men under oath, that the court had told them, as was his duty in giving his general charge, that if they were investigating the conduct of any man, it was their duty not to permit that man to appear before them to testify as to matters upon which he was being investigated, and upon which he might be indicted. They were told this, and were told if they did permit it, it would vitiate any indictment that might be found. They were given that in charge by the court, and they tell you so under oath. What does it show? It shows that there was a conspiracy in that grand jury room to defeat any action the jury might take, by getting Ingmundson in their room for examination, so that in case the jury did indict him, the indictment would be vitiated, by reason of the fact of his having been there. That is what it shows.

It is a strong argument in favor of the fact that Ingmundson's friends were manipulating that grand jury; it is strong evidence in favor of that fact; it shows that his friends were doing every act that could be done for the purpose of preventing an investigation. And, gentlemen, let me say here that the anxiety shown by Ingmundson to prevent that investigation at that time is suspicious. The fear shown in his trying to prevent it; his opposition is strong evidence to my mind that there was something rotten within his office. If he were honest, if he had a clean, unblotted record, if he had traveled on the line laid down by the statute, why did he object so strenuously to this investigation being had? Look at some of his acts: He had twelve thousand dollars in the hands of this man Wilkin, a banker. I hope he had not got his money in the hands of one of that class of bankers Christ scourged out of the temple. He had twelve thousand dollars in money of that county in Wilkin's bank; and yet with that money in bank drawing no interest, he goes there, takes $7,000, doing an illegal act in so doing—pays interest at twelve per cent. on that seven thousand dollars, and allows that banker to keep the other money for nothing; pays the interest, he cannot tell you for how long a time—for the period of some months—not authorized to do it by the commissioners of the county, but they silently acquiesce in it he swears.

And let me say, gentlemen, I am informed I was mistaken a few moments ago in saying he drew no interest; we can show that he had drawn interest on those deposits. I am told that it will be shown clearly and explicitly before the trial of this case finishes, he drew interest. If honest why did he. If he and Wilkin had not colluded and connived together, he could say to that banker, I have no right under the law to draw out of that fund money in your hands, and I have no right under the law to borrow this seven thousand dollars, still I will borrow it in my own name, thereby not violating the law, I will borrow it in my own name, you must not compel me to pay interest because the county whose money you have, will have to pay interest while I have this $7,000 out. We will let the interest of the one wipe out the other. He did not do as an honest man would have done, but we find him paying twelve per cent. interest, getting no interest out of the other county fund, and yet, Senators, he claims he was honest with it all! I hope he was.

Now, gentlemen, I do not suppose you are satisfied, from the evidence as it has been produced here before you, just what the conduct of Judge Page was upon that occasion. Witnesses swear that he is a firm man by nature, and he is. They swear that he is a positive man by nature, and he is. Some of them swear, as I said a

while ago in my argument, that he acted one way, and some that he acted another. What they do swear to depends upon the sort of impression they got in court at that time concerning this matter. What the real facts are, how much stronger they swear now on account of prejudice, you nor I cannot judge. We must take this evidence as we find it; we must judge it as we judge all human testimony, and we must make a large and full allowance for the passions and prejudices that have influenced these men who have come forward and sworn. A man's excitement, a man's passion, a man's prejudice, a man's feelings, will have more to do in bending his oath, in bending his evidence and making it conform to those feelings, than almost any one imagines until he has become accustomed to seeing it in court year in and year out. You may take fifty men, you may put them out on the street, you may let them see a transaction and those fifty, while they all agree that the thing did occur, put them in a room separate and apart, each one from the other, and let him write out the history of what occurred, and each account will be different. They all saw it from a different standpoint; they are each influenced somewhat by their temperament; they are influenced largely by their feelings; they are influenced by a thousand and one considerations, which no man can describe or explain. But influenced they are.

Now, gentlemen, so far as the manner of Judge Page on that occasion is concerned it makes but very little difference to the right understanding of this case; it don't make any difference whether he talked in what these conspirators call "an impeachable tone." These fellows from Mower county seem to think that if a man talks up loud, firm and strong that he ought to be impeached for so doing. Judge Page is a firm spoken man; but he is no firmer than a judge ought to be in laying down the law where men have violated it.

When the grand jury violated their oaths by refusing to take the charge as given them by the court upon the law, violated their oaths in deciding the law contrary to what the supreme court of this State had decided it; they ought to have been rebuked, and that they were rebuked in a strong firm tone, ought not to be a matter of impeachment, or even inquiry before a tribunal of this kind. No doubt Judge Page talked firm; no doubt Judge Page talked strong, but is it an impeachable offense, that he did so on that occasion? Shall he be impeached because he was indignant, that these men were endeaving to violate the law? Our witnesses give no such color to that transaction, as the witnesses for the prosecution give it; our witnesses did not view it in quite the light the witnesses of the prosecution viewed it here. They will appear and testify; we are not going to deny that respondent rebuked the grand jury; and we claim that it was his province, his duty, sitting there as a judge, to do that act.

That he rebuked them unkindly we deny; that he rebuked them in any other or stronger terms than the law warranted him in rebuking them, we deny; but that he did rebuke them we are here prepared to admit, when they had made that presentment and laid it before the court, the court in doing what he did in directing the attorney to make a complaint and have Mr. Ingmundson examined, did right. It was a matter left entirely to French's discretion. He could bring Ingmundson before whom he pleased.

On motion of Senator Nelson, the court took a recess to 2 o'clock P. M.

AFTERNOON SESSION.

Mr. LOSEY (resuming) The charge against Stimson is that during a term of court, and while he, as an officer, was in attendance on court he circulated and published a libel on the judge presiding. Stimson, as deputy sheriff, was an officer of the court, and as such was subject to the observance of alllawful orders and punishable for any official misconduct.

The principles of law relative to contempts committed by private citizens do not apply to this case. He was a peace officer and as such it was his duty at all times to keep and preserve the peace.

2d Bis. 235, sec. 93.

"The sheriff shall keep and preserve the peace in his county, for which purpose he is empowered to call to his aid such persons or power of his county as he deems necessary. He shall also pursue and apprehend all felons, execute all warrants, writs and other process from a justice of the peace, district court or other competent tribunal, directed to him by legal authority; shall attend upon the terms of the district court, keep his office at the county seat, and perform all the duties pertaining to his office."

The publication of a libel is a crime, and the commission of any crime is not only a breach of the peace, but if done by an officer, is neglect of duty, and misconduct in office is punishable as a contempt under the provisions of the Statutes of Minnesota.

2 Bis., 939, pr. 3, sec. 1.

"The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

"*First*—Disorderly, contemptuous or insolent behavior toward the judge while holding court, tending to interrupt the due course of a trial, or other judicial proceeding.

"*Second*—A breach of the peace, boisterous conduct or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding.

"*Third*—Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner or other person appointed or elected to perform judicial or ministerial service."

The publication of such a libel while the court was in session, would have a direct tendency to interfere with court proceedings, would impair the influence of the judge and bring him into contempt and disrepute, would destroy confidence in his integrity, and would thus of necessity corrupt the channels of justice. Hence it was also punishable as a contempt under the 9th subdivision of the same section.

But it is alleged that no affidavit or information was filed as the basis for contempt proceedings. None was necessary.

2 Bis. 940, sec. 2, 3, 4, &c.

"Every court of justice and every judicial officer, has power to punish contempts, by fines or imprisonment, or both; but when the contempt is one of those mentioned in the first or second subdivision of the last section, it must appear that the right or remedy of a party to an action or special proceeding was defeated or prejudiced thereby, before the

contempt can be punished by imprisonment, or by a fine exceeding fifty dollars.

"When a contempt is committed in the immediate presence of the court or officer, it may be punished summarily, for which an order shall be made reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of contempt, and that he be punished as therein described.

"Such punishment however, cannot exceed that prescribed by section twelve. Where the contempt is not committed in the immediate view and presence of the court, an affidavit or other evidence shall be presented o the court or officer, of the facts constituting the contempt.

"In cases other than those mentioned in the last section, the court or officer may either issue a warrant of arrest, to bring the person charged to answer, or without a previous arrest may, upon notice, or upon an order to show cause, which may be served by a sheriff or other officer, in the same manner as summons in an action, grant a warrant of commitment, impose a fine or both not exceeding the punishment prescribed by section twelve, and make such order thereupon, as the case may require."

A proper construction of sections three and four, page 940, 2d Bissell's Statutes, will at once point out the error into which the prosecution has been led in supposing that an affidavit was required. There is an apparent conflict in the provisions of the two sections. Section three evidently relates to cases where the contempt is, first, within the personal view of the court; second, in his constructive presence but not in actual view; for instance, some act was done in a court room which the presiding judge did not see, although present.

Section four relates to all contempts committed, not in the presence of the court; *i. e.*, not in his view, nor when actually holding court. Otherwise, the language used at the beginning of the section would have no force whatever.

Stimson's contempt was one covered by the provisions of section four. A warrant was issued without written information. It is claimed that the warrant is insufficient. No technical exactness was required in such cases. Still, this was sufficient. But that question cannot be raised here. Stimson did not object to the warrant; he had a full hearing on the charge.

His rights were in no way prejudiced by any imperfection in the papers. He had a fair hearing on the merits, and was finally discharged. The courts of this State are always open for the trial of causes.

2d Bis., 810, sec. 144.

"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.

"The judges of the several district courts may, by order, appoint such special terms in the counties of their respective districts, as may be deemed necessary or convenient, and at such terms all business hereinbefore mentioned may be transacted. When any matter is heard by the court or judge, the decision may be made out of term; and such decision may be an order or a direction that an order or judgment or

decree be entered ; and upon filing in the office of the clerk of the county where the action or proceeding is pending, the decision in writing, signed by the judge, an order or judgment or decree, as the case may require, if any, shall be entered by such clerk, in conformity with such decision."

This fact has an important bearing on the question of contempt. The element of malice is wanting here. All the facts will show that there was no personal ill-will towards Stimson. All that was said to him was of the most friendly character, and his discharge finally disproves malice. If he had been punished it might have been different.

ARTICLE IX.

The ninth article states no offense for which a judge could be impeached. Stripped of unnecessary verbiage the allegations amount to this:

First. That witnesses were required to answer irrelevant questions. It is not averred that any one was injured thereby, not even the party accused.

Second. That the attorney for Stimson was abused and insulted, by being told that the respondent was running the examination. Assume this to be true, what does it amount to? Were the rights of the accused prejudiced thereby? It is not so alleged.

Third. That respondent said that certain persons not connected with the subject matter under investigation, were worse than the Younger brothers, and ought to be in the penitentiary, and he could put them there if he saw fit.

Now, all this may have been true, for aught that appears in this article to the contrary, and if true it was not improper even to say so. The article does not state that said persons were not guilty of crimes; it only avers that they were "well reputed" in Mower county. The facts are not stated in the article. The answer recites the facts as they occurred.

It has appeared here, senators, in the course of the evidence introduced by the prosecution, that David Stimson, a deputy sheriff of Mower county, was circulating a petition which contained a gross libel upon the judge. I say, it has appeared that he was circulating that petition. It is true he denies the fact, but it is admitted that when the evidence was given before Judge Page it appeared that he had been showing this petition to Mr. Kinsman, and had had it in his possession.

Now, that may not have been circulating it in the general acceptation of the meaning of the term circulate, but nevertheless he had this petition, which contained a gross libel upon the judge, in his possession for the purpose of showing it round to feel the public pulse.

It was part and parcel of the conspiracy that was entered into by these men in Mower county for the purpose of removing Judge Page. It was one of the steps which these men desired to take, and did take, to bring about that result. They were seeing what might be done in obtaining assistance in planning the machinery which they had to plan in order to make their scheme move and work.

It is to be taken in connection with all the facts proved here. When Judge Page brought this man Stimson before him, when he brought these witnesses before him for the purpose of proving the contempt, or for the purpose of proving what Stimson had to do with the commission of the contempt, he had to ask them a great many questions in relation to the matter for the purpose of ascertaining what Stimson had done; and when French, this prosecutor of Mower county, appeared upon the stand and was questioned by the prosecution as to what had occurred there, you recollect he stated that various questions were asked by Judge Page in relation to what Stimson's object was in having in his possession this paper, and remember he finally stated, on cross-examination, after he had been chased through a great many mazes and labarynths he had placed himself in, he finally stated that in every instance, as I understood him to say, the court was trying to ascertain what Stimson had to do with this particular matter, and was putting his questions to develop that fact, and he admitted at last that he had purposely withheld that fact when giving his testimony in chief Said he: "I supposed you would find it out at last, Mr. Losey."

It reminds me of a couplet in Hudibras:

> "He wired in and wired out,
> Until it left the mind in doubt,
> Whether the snake that made the track
> Was going south or coming back."

You cannot tell anything from the evidence of these men as to what the real facts in this matter are. You must cast their evidence out as corrupt. It is a "pity that their corruption could not put on incorruption; and their mortality put on immortality," and their places in life be filled by somebody bearing a little less reputation for honesty, and having a little more of it.

Now, gentlemen, how does this case stand? What is its position to-day before you? I, personally, would have no hesitancy, if I stood in the shoes of this respondent, relying on the integrity and honor of the Senators of this State to say: "You may take the case as the prosecution have made it, and, if you believe I am guilty, beyond any reasonable doubt, of these charges that are brought against me, convict me! I would have no fear; but for the sake of respondent's reputation, to dispel the murky cloud that hovers over this whole thing. it is necessary perhaps that evidence should be introduced for the purpose of making some matters plain; to show the prejudices, the influences that have been brought to bear by these conspirators, the corrupt conduct they have been guilty of, in testifying here; to show, also, to future generations what respondent's record really was, it is perhaps a necessity, that he should introduce evidence here.

Now, gentlemen, will the Senate of the State of Minnesota say that a band of conspirators, banded together, as these men are in Mower county, that such a band of men shall come up and impeach a judge of one of the highest courts of the State, that he shall be found guilty on their oaths and evidence? How do these specifications stand here to-day upon the evidence introduced by this prosecution? I will go over them very briefly.

Mollison had libeled this judge; he has been shown and proved to be a libeler of the grossest character; a defamer of character, who

gloried in his acts. Every right that he was entitled to was extended to him by this respondent, and I venture to assert here, Senators, that not one among you, exercising the judicial office that this respondent did exercise, would have done otherwise or different from what he did, in a like situation. I venture to assert, too, that many of you, in your action, would have been much more harsh than respondent.

Riley may be innocent of wrong intent, but he was assisted by Cameron, who advised him to go and get these subpœnas, knowing, as Cameron does perfectly well, and as he did then know, it was done to assist in robbing the county in their service out of a small sum, a species of petty theft, both dangerous and despicable. French was selling the county in the Riley case. His actions showed he was selling justice; he did nothing for the county; he knew, as a lawyer, that if he stood up, and asserted the rights, which the law gave the county, that Riley could never recover the amount of his bill. There was a principle involved in that matter. The respondent stood in the door, and prevented the treasury from being robbed. True, the sum to be obtained was small, but it makes no difference whether great or small, duty required it be prevented.

Again, the sheriff was drawing pay for Mandeville's work; and again this respondent stepped in and prevented a small steal.

Stimson was stealing in the most reprehensible and scandalous manner under color of law, and the robbed victim squealed.

Ingmundson—and I assert it boldly, and defy you to take the law and the proof and say otherwise,—was violating the law, and this respondent was bringing him to the bar of justice, and the grand jury stood in the road to prevent it.

Stimson, a libeler, circulating a libel in the community, against respondent, himself one of the conspirators who had engaged in planning this iniquity, was brought to justice, and no wrong was done him.

Affidavits were gathered together by these men from different parts of the county—some of them forged, as the proof here shows the names of the officers before whom the oaths purported to have been taken never having been signed or an oath administered. Midnight meetings were held for what? To rob a man of that character which every one of you hold as dear as you hold life itself; to take away character this respondent had worked a lifetime to build up, and endeavoring to take it away by the most disreputable and damnable means that could have been devised. He was being filched of his good name by falsehoods, lies and libels.

That is the condition of this case, senators, before you here to-day. I say that a set of men banded together as these men were, and as they have shown themselves to be, swearing in behalf of the prosecution, their oaths and their evidence is entitled to no consideration. I would apply to them an old anathema that I remember once to have read.

"Wherever ship floats or land is tilled—wherever fire burns or water runs—wherever man is honored, or woman loved—there, from henceforth and forever, let there be to them no part nor lot in the honor of man, nor love of woman."

Gentlemen, it is for you to say whether, upon the law and the facts, you believe this respondent guilty. If your duty calls upon you to convict after a full consideration of the law and the facts in this case, let justice be done, and convict the respondent.

But, gentlemen, remember you are to give him the benefit of all reasonable doubts; remember a man is presumed to be innocent until proven guilty. It is scarcely necessary for us to ask that at your hands in this case, for I believe that no man here entertains a doubt but that the respondent honestly construed the statutes of this State in doing the acts he did as charged against him under these several specifications; that he construed the statutes of this State not only honestly but correctly.

Gentlemen, you must not convict unless there is proven as against the accused, a clear and undoubted case. You can crush him if you will; he is on trial with the power of the State of Minnesota arrayed against him; he is here with private counsel, arrayed against him; something never heard of before, I believe, in impeachment trials, except in one instance, and that in the case of Judge Hubbell, in my own State. He relies upon the justice of his cause, and upon the fairness of this Senate; aad I say to you gentlemen, when this case is all laid before you, if you can then say on your oaths and consciences, that you believe the respondent guilty, you must pronounce that sentence.

But if you have any doubt, that doubt you are to resolve in favor of the respondent, Senators. As you hope for justice to be done you at the last great day when the trump shall sound, when all mankind shall assemble before God, to have justice meted out to them for sins done in the body, so may you mete out such justice here, Senators, as you expect and hope to have meted out to you at that supreme moment. I thank you for your attention.

D. A. DICKINSON SWORN,

And examined on behalf of the respondent, testified:

Mr. LOVELY:

Q. Judge Dickinson, you are judge of the 5th judicial district of this State?

A. Of the sixth.

Q. How long have you been so?

A. Since February, 1875.

Q. You are acquainted with the respondent in this case?

A. I am.

Q. You may go on and state what efforts, if any, the respondent made to obtain your attendance to hold court in the county of Mower during the last two or three years.

A. I think the first application, by Judge Page, which was made to me for that purpose, was in the autumn of 1875, in November, I believe; it was made by a letter written to me, asking if I could come to Austin.

Mr. Manager CAMPBELL:

Q. Have you that letter?

A. I have.

Mr. CAMPBELL: I think that would be the best evidence.

Mr. DAVIS, to the witness: Will you please produce that letter?

Mr. LOVELY: We will put the letters in, if you want to see them.

Mr. CLOUGH: We would like to look at them.

The Witness (producing some letters): This is the first letter.

The letter in question was here handed to Mr. Clough.

Mr. CLOUGH, (after examining letter): No objection.

Mr. LOVELY: I will read the letter:

AUSTIN, Minn., Nov. 23d, 1875.

JUDGE DICKINSON.—DEAR SIR: Will it be convenient for you to hold an adjourned term of court for me on the 2d Tuesday in January next? There are several cases on the calendar in which I am interested, directly or indirectly. The somewhat noted case of Mower county vs. Sylvester Smith, in which I was, originally, counsel, has come back for a new trial, and I presume will be on the calendar.

"I understand that it is the purpose of the defendant to insist upon a jury trial at this time; a rape case, also somewhat noted, is to be tried. I have waded through its filth twice and am heartily sick of it. Please give me as early a reply as convenient, and oblige

"Yours very truly,

"SHERMAN PAGE."

Q. You may go on and state what other efforts the judge made?

A. I didn't go at the time requested by that letter, and the next communication was—the next I'm aware of was in October '76, at which time I received another letter, which I have in my possession.

Mr. DAVIS. Will you hand it to Judge Campbell?

The letter in question was received without objection, examined by Mr. Campbell and read by Mr. Lovely, as follows:

"AUSTIN, Oct. 2, 1876.

"JUDGE DICKINSON—Dear Sir: Can you preside at an adjourned term of court to be held here the 4th Tuesday the coming month? I have not yet succeeded in disposing of the cases which I wrote you about last fall, and in which I was interested as attorney.

"Yours very truly,

"SHERMAN PAGE."

The Witness. I answered that letter; according to my recollection, I agreed to go at the time indicated substantially—

Mr. CLOUGH. Wait a moment, if you please. Let me suggest to the counsel that it will be well to advise us whether they are in possession of the answers?

Mr. DAVIS. If the counsel will take our word for it, those letters have never been preserved.

The Witness. I said that I could go at that time, but before that time arrived I received either a letter from attorneys interested in some cases which were expected to be tried there, or else, as my recollection is, a stipulation in form, signed by them, postponed or agreeing to postpone the trial to a later day.

In pursuance of that stipulation or letter, I think it was at my own suggestion, that the precise time was fixed at which I could and would go, to a date in February of the following 1877, I think on the 13th of the month, and I so informed Judge Page. At that time I went and held an adjourned term at Austin. Those, I think, are the only applications that were made to me prior to that time; there may have been other

correspondence in respect to it. Subsequently, I received an application from Judge Page, which was contained in this letter [witness produces letter.] I think that was the request for attendance at Austin.

The letter was received from the witness by Mr. Lovely, by whom it was handed to Mr. Manager Campbell and examined by him. Mr. Lovely read the letter as follows:

"PRESTON, November 19, 1877.

HON. D. A. DICKINSON,

MY DEAR SIR:—I am very desirous of making some arrangement with you to hold a term (general or special) at Austin, for the trial of some cases in which I have a personal interest. The next general term in that county comes on the 3d Tuesday in March, and probably the cases cannot be brought to trial before that time; if you could arrange to hear these cases down here in April, it will answer. If agreeable to you, in order to secure such an arrangement, I would be willing to hold one of your terms in Faribault or Jackson, or elsewhere, during the winter months after December. Would be pleased to hear from you as soon as convenient.

Yours very truly,

SHERMAN PAGE."

Q. What did you do in pursuance of that letter?

A. In answer to that letter, while I did not say I could not go, I stated some reasons why I deemed it impracticable, and desired him, if possible, to arrange for the procuring of some other judge who might be better able to go than I. I didn't go.

Q. Did you receive anything further?

A. I think I received another letter than that in reference to attending, at some time, and it was perhaps in answer to the letter of which I have just spoken as having been returned in answer to this. I have not that letter with me; I think I remember, in general, its purport.

Q. Have you looked for the letter?

A. I think I have the letter at home.

Mr. CLOUGH. There is no objection to his answering the substance of it.

The witness. In my answer to this letter, I remember suggesting what I have before stated as reasons why it was not convenient or justifiable for me to attend. I know I suggested the matter of his calling upon some other judges, whom I think at the time were not so much engaged as I was. In answer to that, he expressed some doubt about his right to call other judges, from other districts, and asked my own ideas upon that, and saying, if I recollect right, that, while he would not insist upon my doing so, he hoped I would not decline to come. That was, in substance, the letter as I recollect it. It related to the same action as this letter; to the same to which this other letter refers to, and it was received immediately after the letter I wrote in answer to this.

Q. Since then you have received other letters, have you?

A. Not with reference to holding a term at Austin. I did with reference to holding a term at Albert Lea.

CROSS EXAMINATION.

By Mr. CLOUGH. Q. From what counsel did you receive the stipulation you have referred to, disposing with your attendance at question.

A. I will not be sure, but I think General Cole was one.

Q. In respect to what case was that?

A. I think there were counsel introduced in the case of the county of Mower against Smith.

Q. Was that in respect to that single case of Smith's?

A. My recollection is that the stipulation referred only to that.

Q. Do you know what Judge Page's disability was in connection with that case?

A. All that I know of is what may have been stated in the letter to me in regard to it.

Q. It was, that he had been counsel on behalf of State?

A. I didn't say interested—that he had been counsel at some time.

Q. At the February term of 1877, when you were there, was any jury in attendance on the court?

A. There was not.

Q. It was merely a term for the trial of what might come up before the court?

A. I cannot say as to that; there was no jury in attendance.

Q. Did you do anything more that term, than try the Smith case?

A. It was not tried, it was referred.

Q. Did you do any more than merely to make an order of reference and adjourn the court?

A. Yes sir. The order of reference was made at that time, I believe.

Q. But no criminal cases were prosecuted?

A. There were no criminal cases tried.

Q. And no jury to try them?

A. There was no jury to try them.

Q. You speak about suggesting to Judge Page that he obtain the services of certain other judges, do you remember who those judges were?

A. I know that I made some suggestions myself. I remember of making this suggestion to Judge Page: "That the new judge, then recently elected for the district in which St. Peter is, (that is the 9th, I believe,) I thought would necessarially, having come recently into his office, have no accumulated business on his hands, and that he would be able to attend. I know I spoke of the district lying north, in which Judge Brown presided, where I understood the business was not heavy. My own district, at the time, was so situated that I thought it but just that some other judge should be taken.

Mr. LOVELY. At the time you attended at Austin was any motion made by any attorney or attorneys in any case for a special venire for a jury?

A. No motion was made for a special venire. The case of Smith against Mower county was, I should say, by reason of negotiations for reference that finally culminated in that, didn't reach a point when it became necessary to make such a motion. I will state that the calling of a jury in that case, if it is not improper, was a matter of consideration at that time.

Q. When you suggested to Judge Page that he could secure the

assistance of those judges, outside of a general distance didn't he, in response, say he had no right to call for them?

Q. He did, and asked for an expression of my views in regard to that.

Q. Did you give your views?

A. I replied that I hadn't a doubt of it; my idea arose, perhaps, from the practice I had had in such matters, constituting instances where I knew it had been done.

GORDON E. COLE SWORN

on behalf of the respondent, testified:

By Mr. LOVELY. Gen. Cole, you were attorney for Davidson and Bassford, in a civil action for libel, commenced by Judge Page against those parties, were you?

A. I was the counsel; Mr. Johnson of Austin, was attorney of record.

Q. Was Mr. Mollison one of the parties defendant in that civil case?

A. Yes, I find by referring to the records, or to the files at my office, that he was. I could not have recollected it without that.

Q. Do you remember of the discontinuance of this civil case?

A. Yes sir.

Q. You may relate how that discontinuance occurred; what led to it?

A. Well, I was at the term Judge Dickinson held there.

Q. I mean the civil action.

A. Yes sir. I was down there on another business; the cases had run along some three or four years, I think, and my connection with it had been simply as counsel. There had been nothing done—but little done, but occasionally Davidson had spoken to me and at that time, I think, he had spoken to me about it, and I suggested to Mr. Davidson, whether it would not be well to suggest to Judge Page, that a retraction would be drawn with reference to one item or one charge which was contained in the article upon which suit had been brought.

With the acquiescence of my client, I also met Judge Page and said to him, that I had intended, at some suitable time, to propose to him to have my clients, make a retraction of the libelous charges that were contained in the article of which he complained; and suggested that I would draw up a retraction of that kind, and would submit it to him. There was a little said—I don't remember what his reply was—but I drew up a retraction and submitted it to my clients, Messrs. Davidson & Bassford, and with their acquiescence I think I took it to Judge Page at his office. I went to him and expressed myself entirely satisfied; I then said to him, I think, in substance, I won't attempt to give the exact language, that I had no doubt that my clients would publish that retraction, and if they did so, I asked him if he would sign a stipulation, discontinuing the civil action, and he said that he would. I then think that I stated to him that, so far as the criminal prosecution was concerned that, while, of course, I would not undertake to settle, and did'nt expect he would any criminal proceeding, that I supposed if his civil rights were redressed, that the civil action which he brought would be discontinued, and that the county attorney understood that there was no necessity of the public authorities to press the criminal prosecutions, and that I would like to have him state to the county

attorney that, so far as his civil rights were concerned, that he would be satisfied after an *amende honorable* had been made. Those civil suits were dismissed.

I took the retraction to Davidson & Bassford, and they agreed to publish it; a stipulation was drawn, signed by Judge Page, and placed in my hands; I had the authority to file it whenever the article was published in the Austin Register; but it could not be published till the succeeding week, and in the meantime the court had adjourned. At my request Judge Page went over to the court room with me, when I believe Judge Dickinson was presiding; I got Mr. Davidson, Mr. French's attorney, and we four went into the back part of the court room, and I there stated to the county attorney, in the presence of Judge Page and Mr. Davidson, that Mr. Davidson had consented to publish a retraction of one of the charges contained in the libelous articles, or the alleged libelous article; and that I understood that Judge Page was satisfied with the retraction, that so far as his private rights were concerned, that such action was entirely satisfactory to him. I asked whether there would be any objection on the part of the proper authorities to dismiss the criminal actions.

Mr. CLOUGH. Who?

A. Mr. French, to dismiss or discontinue it—to *nolle pros.* the criminal proceedings. I think Mr. French stated that if Judge Page were satisfied, he certainly had no disposition to press the criminal proceeding. Judge Page, I think, acquiesced. I won't undertake to give the language and statement that I made; then it was arranged between myself and the county attorney, I think, that at the next March term, that they should be dismissed.

Q. State whether Judge Page was a party to that arrangement in that conversation?

Mr. CLOUGH. I object to that. The witness has already stated what occurred there, and he was there. Now I suppose this Senate is to be the judge of any transaction to which Judge Page was a party.

Mr. LOVELY. There were three, four parties there together, it seems, at the back part of the court room. Now, General Cole is testifying to what took place between him and Mr. French. Mr. Davidson has previously stated that it was distinctly between those parties, altogether; that this criminal indictment against Mollison should be discontinued. Now, the facts are that this arrangement—these remarks—were between himself and Mr. French. Now, I ask him, whether or not, that conversation and that arrangement, with reference to the dropping of the criminal cases, whether that was participated in by Judge Page?

The PRESIDENT. I think the question may be asked.

The Witness. Whether he was a party to it, I don't know; that I am am prepared to say; I cannot say just how much he was a party to it. Of course, from the very beginning, I understood very well what was required; I think I understood my duty well enough to know better than to propose to Judge Page to consent to the condoning a criminal prosecution; I modified that throughout; I was satisfied that I could get the civil actions dismissed, and could get Judge Page to say to the county attorney, that he, personally, was satisfied.

I was perfectly satisfied that the criminal prosecution would never be pressed, and all that I asked of Judge Page was that he should so state,

or should acquiesce, or make a statement to the county attorney; and so fas as he was concerned with the statements made, I stated to Mr. French what had been done, and that Judge Page was satisfied with the amendment which had been made; and Judge Page acquiceed in some form in that statement. I then asked the county attorney if, under these circumstances, there would be any objection on the part of the public authorities, to dismiss the criminal proceeding—if there would be any objection on the part of the public authorities, to dismissing the whole criminal proceedings, and I think his reply was, that if Judge Page was satisfied, that he was satisfied; that he should have no disposition to press them, or something to that effect; I cannot recollect the language.

Q. State what criminal prosecution—that conversation with the county attorney, related to?

A. Well, I can only say this with reference to that, that Mr. Davidson, from the beginning, seemed rather anxious to extend the protection, or the benefit of his retraction, over Mr. Mollison.

Q. Was that in Judge Page's presence?

A. No sir.

Q. I don't care about that; I only care about the conversation there at the court house?

A. I don't know, so far as the conversation in the back part of the court room was concerned. No, I think in any conversation that I ever had with Judge Page that Mollison's name was not mentioned by him. I only know that I supposed that the criminal proceedings would be all dismissed. But I don't think there was any allusion to Mr. Mollison by him; it is very likely that Mr. Davidson did ask him in the back part of the court room, but I cannot swear whether he did or not; it is possible that the arrangement included Mollison. I don't think, in any conversation I had with Judge Page, that Mr. Mollison's name was mentioned. I was not attorney for Mr. Mollison.

Q. Do you think that Judge Page heard Mr. Davidson mention Mr. Mollison's case, in that conversation?

A. I could not swear that he did, or that he referred to it, until after Davidson asked me as his attorney, whether the arrangement included Mr. Mollison, and I am not sure that he said that.

Q. What is your impression as to the fact whether Mr. Davidson asked you that in Judge Page's presence, or in an aside in your own private conversation with him, as between attorney and client?

A. I dislike to swear to impressions, because we are very likely to be mistaken; if I was to give a guess, it is a very faint impression; if I am requested to give a guess about it, I will say, that right there, and standing there, in and aside as a client would address his counsel, that that question perhaps was asked me, bnt I am very doubtful; I have no very positive recollection about it.

Q. State whether or not, in that conversation, Judge Page mentioned Mr. Mollison's name?

A. I don't think he did.

CROSS-EXAMINATION.

Mr. CLOUGH:

Q. Did this question between Davidson and Bassford, and Judge Page, result in a written stipulation?

A. Yes sir.
Q. Have you it in your possession?
A. No sir, I supposed that was filed, or sent to Davidson.
Q. When was it sent? Was it before you had this interview at the court house, or after?
A. I think it was before.
Q. Have you any distinct recollection?
A. I am not positive about it, but I think it was signed then in Judge Page's office, before we went over to the court room.
Q. Don't you remember that the stipulation was not signed until after you had this conversation at the court room?
A. I don't remember; it's possible it might have been so.
Q. Then you have no certain recollection as to what happened first?
A. No sir.
Q. Mr. French had nothing to do with these civil actions?
A. No sir.
Q. That interview with Mr. French related wholly to the criminal action?
A. Yes sir.
Q. Did Mr. Davidson say anything on that occasion?
A. As I say, it is very possible that he did ask the question.
Q. Didn't he participate in the general conversation on the subject as well as yourself?
A. I doubt very much whether Mr. Davidson did any more than to ask that question, if he did anything; but my recollection is, that I did most of the talking, that I stated to Mr. French in regard to the arrangements, with reference to the civil actions, and that Mr. French stated if it was satisfactory to Judge Page there was no objection to dismissing the criminal prosecution.
Q. Have you any distinct recollection that the subject of the criminal prosecution was not a part of that conversation; will you state that that was not a subject of the discussion there?
A. I will say that very likely Davidson may have mentioned that?
Q. I mean was it not mentioned between yourself and the county attorney; did Davidson and the county attorney so state in the presence of Judge Page?
A. I can only testify my recollection about it; so far as I have any recollection, it was possible; but I am rather inclined to think it was so; that Davidson asked him if that settlement included Mollison.

Mr. LOVELY. We would like the records of the district court of Mower county, for the year 1873 and the calendar. We propose to offer the record—the calendar—of the March term 1873, to show that there were some fifteen civil cases, then pending in that court; in which Judge Page was interested in as an attorney. I believe that is not disputed; the record shows that fact.

Mr. CLOUGH. No.

Mr. LOVELY. That is admitted, then?

Mr. CLOUGH. Yes.

SHERMAN PAGE, THE RESPONDENT, BEING SWORN.

testified:

Q. You are the respondent in this proceeding?
A. I am.

Q. When did you come upon the bench of the tenth judicial district?

A. My term of office commenced on the tenth of January, 1873.

Q. You may state what was the condition of the calendar of the Mower county district court at the time you went upon the bench, so far as your interest of attorney is concerned.

A. The first term that was held after my term of office commenced—first term held in that county in March, 1873. At that time there were about thirty cases on the calendar, on the civil calendar—I will not attempt to state the exact number—and I think fifteen of them were cases in which I had been interested and was interested at that time as an attorney.

Q. You may now state what effort was made to secure the attendance of another judge, to preside upon the trial of those cases that you have referred to?

A. At that term of court, for the purpose of disposing of these cases, or some of them, I procured the attendance of Judge Waite, who held the term, or part of the term, for the purpose of hearing those cases. Some of the cases were disposed of at that term; some of them were continued over the term.

Q. You may state how long those cases were being disposed of; how long it took to dispose of them?

A. I had considerable difficulty in disposing of those cases, for the reason that I was not able always to secure the attendance of a judge to hear them; and, also, for the reason that the attorneys were sometimes stipulating that they be continued, when I had procured the attendance of a judge; and, for those reasons, some of the cases remained on the calendar until quite recently, I think; I am not certain that all of them have been disposed of even at this time. I think, however, that they have.

Q. You were the presiding judge at the September term of Mower county court in 1873?

A. I was present at that term of court; as I stated Judge Waite presided there.

Q. I am now referring to the September term of court when an indictment was found against Mollison and Davidson and Bassforde.

A. I presided at that term.

Q. You may state if you charged the grand jury at that time?

A. I did.

Q. State whether, in your charge to the grand jury, you gave them inststructions upon the law of libel?

A. I did not refer to the law of libel in my charge to the grand jury at that time.

Q. You may now commence and state what you know of the arraignment of D. S. B. Mollison upon an indictment; go on give your knowledge of what transpired during that term of court?

A. At that term of court—that is September, 1873—an indictment was presented by the grand jury against Mr. Mollison. My recollection now is that a bench-warrant was issued on that indictment. I will not be certain as to that, however.

Mr. Mollison came into court and was arraigned on the indictment. The proceedings on the arraignment were substantially these: Mr. Mollison came forward and he was enquired of whether he had any counsel.

Q. By whom?

A. By myself, as I always do. He answered that he had not. I enquired if he desired counsel, and he stated that he did not. The

county attorney commenced to read the indictment and read a portion of it. While the indictment was being read, Mr. Mollison was standing over near the table or desk, and made some movements with his head, and when the county attorney reached a certain portion of the indictment he emphasized it.

Mr. DAVIS. Judge, can you point out that portion of the indictment?

A. I can state it, very nearly.

The Witness. Well, I can state generally, that a portion of the indictment that was being read was that portion which charged the judge then presiding—myself—with having made a corrupt decision in some case that had been pending in court. At that time Mr. Mollison emphasized his reading with considerable force. I asked the county attorney to stop reading for a moment, and I inquired of Mr. Mollison then, what his object was, what he meant by the nodding. He made me some reply; I am unable to state now what it was, but I presume that Mr. Mollison's statement with reference to it was correct, and I simply requested him to remain quiet; that was all that occurred at that time.

I said nothing with reference to punishing him, or putting him in the hands of an officer; after the reading of the indictment was concluded, he was asked to plead, and he entered a plea of not guilty to the indictment; I then stated to Mr. Mollison that the nature of the case was such that I did'nt consider it proper for me to sit at the trial of the case, it was an indictment for libel of myself, and I considered it then very improper for me to sit, and that I intended to do no more in connection with the case than would be simply necessary to hold it in court until such time as I could secure the attendance of some Judge to hear it. I stated these facts to him, and I don't recollect the exact reply he made at that time; I have no recollection that he said he was ready for trial at that time; he may have said something in regard to trial, but I stated to him what the facts were—the situation of the case. Mr. Mollison, after this occurred, retired to his seat in the audience, several—well, perhaps half way back from the desk to the door, the rear part of the room, and after he arrived there he arose in his seat and commenced to speak. I had noticed that Mr. Mollison was a good deal excited at the time of his arraignment, and at the time he retired; I knew something of his temperament, and when he arose and commenced to speak, I told him that I had not time to hear him at that time, or words to that effect; and he still persisted in speaking, and seemed to desire to make an address of some kind; and at the time he turned around to the audience, in the direction of the audience; I don't mean by that that he turned his back to me, but he turned around as if to address the audience. And I then said to him that I did'nt desire to hear him, and requested him to sit down.

At a subsequent time during the same term, the day following that, Mr. Mollison appeared by attorney, Mr. G. N. Cameron, and Mr. Cameron moved for leave to withdraw the plea of not guilty, which had been entered and interposed a demurrer to the indictment. I examined the statute, and, after reflection, stated to Mr. Cameron that I did not think under the circumstances of the case—the interest that I appeared to have in it indirectly; but I thought I had better not entertain the motion, and it was passed for that time. The bail of Mr. Mollison was fixed at fifteen hundred dollars, he gave bond for his appearance; there was no discussion as regards the bail at all, and no objection made to it; at that term the bail was approved. That is the substance of what occurred at that term of court with reference to this case as I recollect.

Q. State what you had to do if anything in the insisting of the finding of an indictment against Mr. Mollison?

A. I had nothing to do with it at all, I didn't know anything of the indictment until it was presented in court.

Q. Some conversation has been testified to by Mr. Davidson with reference to what occurred between him and you at his office previous to that term of court; state what did occur, what was said?

A. When Messrs. Davidson & Bassford published a statement in their paper, which has been offered in evidence here, of my connection with the railroad case, and of my decision in that matter, I thought it was against, and that I would have an interview with Davidson, for the purpose of securing, if possible, a correction of this statement. And for that purpose I went, in company with Mr. O. W. Shaw, to his office, and had a conversation with him in regard to his publication of the matter. In that conversation I stated to him that he was mistaken as to the facts in the matter, and I thought it was simple justice that he should correct the impression that he had given to the public. Mr. Davidson then said to me that he didn't consider himself responsible for the article that had appeared, for the reason that it was signed by another person. I told him I didn't consider that made any difference with his legal liability nor with his moral obligation to correct an impression which he had conveyed to the public. He declined to publish any retraction with reference to it, or to correct the statement at that time, and that was the substance of the conversation. There was very little talk to him with regard to it. The question as to Mr· Mollison's liability or Mr. Mollison's connection with the case, was not discussed at all; only came in incidentally by mentioning the fact that Mr. Mollison's name was signed to the article.

Q. You may state now what occurred at the subsequent terms of court with reference to the Mollison case?

A. The next term of court was holden in that county in March, 1874. Previous to that term, some time, I don't now recollect the exact date, I opened correspondence with Judge Mitchell of the third district, with reference to securing his attendance at some term of court for the purpose of disposing of all those cases which remained on the calendar in which I had been interested, and such others as there might be brought to trial.

Mr. CLOUGH. Let me ask the counsel, right at this point if they expect to produce Judge Mitchell.

A. Yes, he is under subpœna.

The witness. I would say here that Judge Mitchell's letters to me are destroyed.

Mr. DAVIS. We give the learned counsel our word, that the same was the case with Judge Dickenson's letters.

The witness. That is true. I opened correspondence with Judge Mitchell, and that correspondence resulted in the adjournment of the March term of court of 1874 to July 7th, I think, of that year the same year at which time Judge Mitchell had agreed to attend for the trial of those cases. I think the time was fixed by some arrangement with Judge Mitchell—some correspondence with him, that being the time when he could, conveniently, attend for that trial.

At the March term of court, this case—the State against Mollison, was on the calendar. I then stated to the counsel—and I will say here that in the case, State against Mollison, I always recognized Mr. Cameron as the attorney, and took no notice whatever that he was not the

attorney at any time—have not to this day; I always supposed he was the attorney; he had appeared in the case and I have no doubt as to the matter at all, but I stated then, in open court, what effort I had made to secure the attendance of a judge to hear that case with others, and it was then agreed or understood in court that the cases should be continued to the term which was to be holden by Judge Mitchell. The term of court held by Judge Mitchell I did not attend, that is, I was not present. A jury was ordered for that term; my recollection now, though I have not refreshed it from the record—that an order was made for a jury, and a jury was summoned to be in attendance upon that term; whether they were there I am unable to say, because I was not there myself; the records will show in regard to that.

This term in July was secured for the express purpose of the trial of these cases, the criminal case and other cases which I had been interested in, and which were on the calendar. The next term of court which I attended was in September following the next general term, and the case of the State against Mollison was still on the calendar—it was undisposed of. I made some inquiry in reference to this matter with reference to that with other cases, and the information I received was that they had been continued by consent of attorneys. I don't state that as a fact. At subsequent terms of court held, this case remained on the calendar. I stated in open court, when the calendar was called, whenever it seemed to be necessary, whenever it was a fact I stated what I had done, what effort I had put forth for the purpose of securing other judges to attend as the trial, and the result of my efforts. This did not occur, however, at every term, but when the case was called there was no objection interposed to its continuance, and it was continued from time to time. Sometimes the cause of continuance was entered, and sometimes not. I did not suppose that after the term ending July, 1867, I felt with reference to that case—that the efforts that were made after that were not so much with reference to this particular case as they were with reference to all the cases that were on the calendar.

Mr. LOVELY. You may state why.

A. Well, that was the reason; I gained the impression from the fact that it was not brought to trial; that there was no desire on the part of the defendant to move it for trial, or to have it for trial. Between the term that was held in July, and the time that the correspondence commenced with Judge Mitchell with reference to securing his attendance, if I recollect correctly, and I think I am not mistaken, I had some correspondence with Judge Lord with reference to the same end, of making exchange with him. I recollect one conference with him personally with reference to it, and I had some correspondence with him with regard to it afterwards. I wrote Judge Lord after, with reference to it, one letter that I never received any answer to; and, I may presume, he had not received it at all; I am not able to say. I was not able to make any arrangement with Judge Lord with regard to it; never succeeded in doing that. The correspondence with Judge Dickinson commenced in the fall of 1875; that correspondence— that is in reply—the correspondence with Judge Dickenson commenced in the fall of 1875; that correspondence, that is in reply to the letters which are in evidence; this adjourned term of court which was held in January, 1876, and at which term only the Jaynes case was tried, was originally intended by myself to be a general term for the trial of all these cases, in which I was interested; and I intended to secure the attendance of Judge Dickenson for that purpose. That correspondence was com-

menced for that purpose, but being unable to secure the attendance of Judge Dickenson, all of the other cases were continued or deferred, and only the Jaynes case was tried, that was the reason why that case, and no other, was tried at that time.

Q. You may state whether or not there was ever any attempt on the part of the attorney or party defendant in the Mollison case that it be tried, or that you procure another judge to attend and try it?

A. There was not anything said to me at all there by the attorney or Mr. Mollison. I always stated what efforts I was making, and the reasons for continuing the case, and there was never any objection made to its continuance.

Q. Was there ever a motion made for a change of venue in that case, or for a dismissal of it?

A. No; nothing, whatever, of that character.

Q. You may state what subsequent efforts you made to procure Judge Dickenson, or other judges, subsequent to the January term?

A. Well, in the fall of 1876, correspondence was renewed with Judge Dickenson, for the purpose of securing his attendance at an adjourned term in October, 1876; that was a term in which I desired to dispose of those cases that remained on the calendar, and the arrangement was perfected to the effect that he could attend at that time.

Q. Did you state, at the September term, anything to the attorneys, with reference to the procuring Judge Dickenson to be there?

A. I think, at the September term, it was understood that the case in which I was interested, should be tried at the October term. My recollection is that Judge Dickenson wrote me, in reply to some of my letters, requesting me to state to him as near as I could, the cases that would come to trial in October. I then requested the clerk of court, Mr. Elder, to call upon the attorneys in those old cases, and inquire if they would be ready for trial in October, and he stated to me that he had done so, and reported to me that the attorneys would not be ready for trial; did not desire to try cases, and it resulted in there being, at that time, no case for trial except the case of Mower county against Sylvester Smith.

Q. Did you make any effort to notify the various attorneys in various cases that a judge would be there prepared to try the civil cases?

A. It was announced at the time of the adjournment. I think the term in October was an adjourned term from September to October for that purpose. I think it was generally understood among the attorneys.

Q. Did you not send Mr. Elder to notify the parties at that time, or was it subsequent to that time?

A. That I think, was the time. With reference to that time, the time that I have stated,—

Q. State what word you sent?

A. Have just stated that I requested him to call upon the attorneys and see if they would be ready in those cases.

Q. You may state what took place between you and the attorney of the defendants in the civil case of Sherman Page against Davidson and Bassford; what took place between you and Gordon E. Cole?

A. I think that at or about the time that Judge Dickenson held a term in Mower county—I think in February, 1877—Mr. Cole called upon me and wished to know if I would consent to a dismissal of that case—the civil case, and provided Davidson and Bassford would publish a free and complete retraction of their statement. I said to them that I thought it a slow justice after allowing a publication of that character to remain before the world for a lapse of three years, that I would consider the matter, that was my first statement to him; I reflected upon

the matter, and finally said to him that if he would do that, that I would consent to a dismissal of the case. He brought me a written article and read it to me, and asked me if I would consider that satisfactory, I told him that I would if they would publish it. He drew up a stipulation in pursuance of that, and a stipulation was signed, and under an agreement which was retained in his hands, not to be filed until after the publication should be made.

Q. State whether or not anything was said about the Mollison case or about the criminal cases?

A. There was nothing said in regard to the criminal cases at that time during that interview, if I recollect correctly, and I think I am correct. At the court house Mr. Cole asked me if I had any objection to stating, or his stating in the presence—

Q. It was after the article was brought to you?

A. It was after the article was brought to me, and after the arrangement had been made between Mr. Cole and myself; he asked me if I had any objections to stating, in the presence of Messrs. Davidson, Bassford and the county attorney, what my view in the matter was; I told him I had none, still I think I first objected to doing it; but I consented to it afterwards, and in the back part of the court room an interview of that sort took place. These were the persons that I have named that were present at the interview, and the agreement which myself and General Cole had entered into was there stated, in the presence of those parties. Some question was then raised as the case of the State against Bassford—Davidson and Bassford; there was some criminal cases they had been into then pending, I then stated that so far as I was concerned personally that I should not intervene or interpose to secure the prosecution of those cases, but I wished it distinctly understood that I didn't consent to any compromise in the case on the part of the public, at all. I simply stated, as far as I was concerned, that I didn't desire to prosecute them further, or that they should be prosecuted further, or some words to that effect. I think General Cole took part in the conversation. The case of the State against Mollison, was not mentioned during the interview, in my hearing, nor was it mentioned at all in any interview, or taken into consideration in making that arrangement at all. If anything was said with regard to it, it was not in my hearing.

Q. Some reference has been made, Judge, to your action in fixing the amount of bail in a case of forgery?

A. I have no recollection that any case of forgery has ever risen in Mower county during my term of office. A case of forgery arose in Freeborn county some time. I will not state, now, just when it arose, but the circumstances of this case are these: A person was indicted for orgery, and when the indictment was presented ———

Mr. CLOUGH. What was his name, please?

Mr. LOVELY. A. M. Perr.

The witness. When the matter came up in court on the indictment it was suggested that Mr. Pen—well, now I recollect, he was indicted by various names. It was stated by the county attorney that he was out of the State; was not in the reach of the process of the court, and a bail was fixed nominally, without any expectation that he would be secured, at five hundred dollars. Those were the circumstances of that case. The defendant was not in court.

Q. State how that bail was fixed; there may be some lack of understanding about the manner in which bail is fixed in criminal cases, when the defendant is not in court; by an endorsement on the back of an indictment, is it not?

A. Yes, I think that is the way it is fixed.

Q. Or a bench warrant order?

A. Yes, I think that was the method at the time that was done.
Q. You acted upon the suggestion of the county attorney?
A. Certainly, I had no personal knowledge of it.
Q. Who was the county attorney at that time?
A. I think Mr. A. G. Wedge, if I recollect aright.
Q. State whether there was any objection made to you of the bail that was required of Mr. Mollison?
A. There was none at all; there was no objection made to it whatever.
Q. Was there any difficulty in his obtaining the bail?
A. I cannot say as to that; none was brought to my notice; no application was brought to my notice, and no difficulty was made to secure it.
Q. Some reference has been made to bail taken in other cases?
A. Bail has been fixed in that county, as well as others, with reference to the circumstances concerning each case, I have always taken in consideration, in fixing the bail, the circumstances of the parties, the nature of the offenses, and the probability of securing bail; sometimes it is reduced, and sometimes it is raised, at the suggestion of the prosecuting officer, or the suggestion of the defendant perhaps; in come cases it is refused.

I have no uniform rule with reference to the amount of bail as to any particular class of offenses. I don't consider that it would be proper to adopt one.

Q. Some testimony has been given with reference to an attempt to surrender this bail of Mr. Mollison's by sheriff Hall, and the delivering to you of a paper, or the attempt to deliver to you of a paper. You may state what knowledge you have of that transaction?
A. All I know of that is this: The sheriff, Mr. Hall, came into the court rooms about the close of the term—
Q. Fix the time, if you please.
A. I don't now recollect the term of court; it might have been March term, 1877. I would not undertake to state without refreshing my recollection in regard to it. My impression now is that it was.
Q. I believe you testify to that—go on.
A. He came into the court room and handed me a paper, what the contents of the paper were, I am now unable to state. I never examined it. I stated to him and made the remark that I might make—
Q. What did he say to you when he handed you the paper?
A. Well, he asked me, I think, what I was going to do about it, or what I should do about it.

Mr. DAVIS. Was Mr. Mollison with him?
A. I did not see Mr. Mollison, he was not present with the sheriff. I did not see him at all on that occasion. The sheriff asked me some question with regard to it. The reply I made was this—that I didn't think that I had anything to do with the paper myself. I examined the paper and I was under the impression then—

Q. Mr. LOVELY. Did you state to him that it was nothing to him?
A. No sir, I did not; I made no reply of that kind.
Q. Did you say it was nothing to you?
A. The matter was simply this: From the examination of the paper I didn't consider that was presented in such form that I could interpose, or do anything in regard to it.

Q. Can you state just what answer you made to Mr. Hall?

A. I think that was the answer, that I told him it was a matter that I had nothing to do with in the way it was presented.

Q. What did you say about Hall putting it in his pocket?

A. I do not think I said anything about his pocket. I have no recollection of any such remark at all.

There is one matter that occurs to my mind.

Q. Go on and state it?

A. With reference to statement that Mr. Mollison at some time arose in court and said he was ready for trial—at some term of court. I state this with regard to that: that if such an occurrence took place I have no knowledge of it; I did not, at any term of court, hear any statement by Mr. Mollison, or his counsel, that he was ready for trial. Mr. Mollison might have said that; I would not say that he did not. I have no recollection of seeing Mr. Mollison in the court room more than once or twice during this term of court, he may have been there; but I always recognized his counsel as I do in all cases.

Q. You may state, Judge Page, what you know of the original, so called Riley bill, for serving subpœnas of witnesses in certain cases, that have been referred to here?

A. What do you desire?

Q. The history of the case?

A. I think at the September term of court held in Mower county in 1874, indictments were presented against C. N. Beisicker, John Walsh and John Bunson. That demurrers were interposed to those indictments; those demurrers were not argued nor decided at that term of court. The cases were on the calendar at the March term of court 1875; the demurrers yet undetermined. It was agreed at that term of court, that the demurrers should be argued either before the close of the term, or after the close of the term in vacation, and to be decided in vacation. It was agreed to by counsel. I think some agument was had upon the demurrers of that term of court with an understanding that authorities might be submitted subsequent to the term of court, which I think was the fact, and an order sustaining the demurrers to the indictments was afterwards made and filed, I think, in some cases in the year 1875. The transaction which occurred at that term of court in March, with reference to those cases was this. I noticed by something that transpired in the court room that action was being had, or that subpœnas or some papers were being issued in connection with this case. I made inquiry of the clerk to see what was being done, and he informed—

Q. Who was the clerk?

A. F. A. Elder. He informed me that subpœnas had been issued for a large number of witnesses in those cases, and that those subpœnas had been placed in the hands of officers, or an officer, for service. I then said to him that the demurrers of those cases had not been disposed of; that there was no issue of fact to be tried at that term of court, and that I didn't consider it necessary to issue those subpœnas, and directed him not to issue any more subpœnas in the cases. And I then stated to him—gave directions to him—that the costs of those proceedings would not be paid by the county. From the large number of subpœnas that had been issued, and as something had been brought to my attention previous to that time, I was satisfied——

Mr. CLOUGH. Wait; I don't want to know what you were satisfied about.

Mr. LOVELY. We insist upon the Judge's right to state what view he had of the law.

Mr. CLOUGH. Go ahead.

A. I was satisfied that the subpœnas were not issued for purposes of trial, and that I didn't consider that, under the statute, that costs of that kind could be accumulated to be made a public charge. That was the reason why I gave the direction that I did. The matter passed at that time.

Q. State whether you heard of anything to make costs?

A. I had received, or heard statements—I cannot state now from whom—but I had heard statements that it was the intention to subpœna a very large number of persons in those cases, for the express purpose of making costs to the county. I had heard that statement made, that was one thing that lead me to inquire with regard to the matter; that is all.

Q. You may go on where you left off.

A. Subsequent to this time—subsequent to this term of court, I don't recollect the exact time, I think that I had some conversation with some members of the board of county commissioners, with reference to that bill, while the board was not in session. I think some of the commissioners made some inquiries of me with regard to it; but I won't state positively; that is my recollection. At a session of the board of county commissioners held at that time, or during a session of the board, one of the commissioners came to my house and requested that I should go before the board, and make a statement of the facts in connection with that case.

Q. Do you remember when that was, you went before the board?

A. My recollection now is, that it was in January, 1876, I think.

Q You may go on and state what occurred then; I believe you have stated how you came to go there.

A. Yes sir. In response to this request by the county commissioner —Judge Felch, I think it was, who requested me—I went to the room where the board was in session, and some member of the board then requested me to make a statement of facts in connection with that case.

Q. State who was present if you remember?

A. The members of the board were present, I think.

Q. Who were they?

A. Judge Felch and Mr. Grant, I think, Mr. Kimball, Mr. Richards, and Mr. French.

Q. Which Mr. French?

A. Mr. A. J. French. I am stating the names of the commissioners; Mr. R. O. Hail, the sheriff, Mr. Lafayette French, if I mistake not, and Mr. Kinsman, I think; those were all the persons present at that time; one of the commissioners requested me to make a statement of facts connected with that bill; I then stated to the commissioners what had occurred in court with reference to the bill, substantially as I have stated it here; and I was asked some questions in regard to it, whether I considered it a legal charge against the county, and I stated that I did not, that I had so determined it was not.

Q. State anything about having determined a similar bill anywhere else.

A. There was no statement made there, that a similar case had come before me in another county; there had never come before me any case just like this. There was a statement made something in this form: that questions were frequently arising in other counties with reference to the fees of officers in such cases, but no particular case was referred to. Mr. Kimball, after I had made the statement as to what I had said in court, Mr. Kimball, one of the commissioners, asked me the question, if I had filed a written order in that case?

Q. An order of what character did he refer to?

A. An order directing—I had stated to them that I had directed the clerk to make an order of that kind, or give a direction to the clerk, in open court, that the costs in those cases should not be paid by the county. I considered that sufficient, and so I stated to them then,—it seemed there had been some discussion arising out of the statement that Mr. Kinsman had made—some question as to whether it was necessary in those cases to make a written order and file it; and I gathered from what Mr. Kimball had said to me, that some examination had been made of the clerk's minutes, to see whether there had been actually an order entered in the case, and I judge that this question had reference to that matter he asked me with reference to the finding of an order. I stated to him that I hadn't made a written order and filed it, but that I might do so at any time, or that an order might be entered at any time, if it was necessary; but I didn't consider it was necessary to do that in a case of this character.

That is substantially the conversation that was held with the county commissioners with reference to it.

Q. State whether any controversy occurred between you and Mr. French at that time?

A. Not any whatever. Mr. French, I think, said very little indeed, while I was in there before the board.

Q. State whether or not anything was said of an opinion of the attorney general having been given?

A. I have not now any recollection that any reference to that matter was made; it is possible that some reference might have been made or said, or something said with reference to the opinion of the attorney general. I never saw the opinion; there was none produced there; there was nothing said in regard to it; there was no remark made by myself with reference to the opinion of the attorney general at all.

Q. You probably recollect the statement made here about you saying something about "a big man with little brains, or a little man with no brains;" did you make such a remark?

A. No such statement was made by myself, and none in my hearing. If there was any such statement made, it was before I appeared. It was not in my hearing or made by myself. That is an expression I never heard until I heardit from Mr. French.

Q. You state that this meeting was held in January, 1876.

A. That is my recollection.

Q. Did you state the term of court—when it was held, at which these subpoenas were returned?

A. I stated that that term of court was held in March, 1875.

Q. You may state whether you were before the board of county commissioners with reference to that bill, or any bill, at the March session of the board in 1875.

A. No sir, I never was before the board of county commissioners with reference to this bill of Mr. Riley's but once.

Q. You may state when you were before the board, at which there were some words between you and Lafayette French, to which he has referred here.

A. At the January session of the board, which I think was held in 1875, a year previous to this time that I have now been speaking of?

Q. The year previous to the January session of 1876?

A. Yes, I was present one evening while the board of county commissioners were in session in the auditor's office. This session, that I have now spoken of, took place in the upper part of the jail, a room that had been made subsequent to the time I think. The first interview occurred previous to that time. The session was sometimes held in the auditor's office, and sometimes in the court room, but this occurrence was in the auditor's office, I think, in January 1875.

At that time Mr. Riley's bill for the service of these subpœnas, was not under consideration, and of course could not have been spoken of, for it had not occurred at that time; the subpœnas were not served until after that time. There was nothing said with reference to Mr. Riley's bill. The bill which was under consideration at that time was the bill that had been presented by Mr. Geo. Baird; the former sheriff of the county. There was some talk with reference to that bill—Mr. Baird's bill. The county commissioners asked me some questions, they, I think, were eating apples, when I went into the room. I didn't know that they were in an open session, for they were having some sort of a social gathering, it appeared to me. While I was there some questions were asked me with reference to the Baird bill, as it was denominated; it was a very large bill for services running over, I think, some length of time.

Q. Will you state who the county commissioners were, that were then present?

A. Judge Felch, Mr. French—A. J. French—Mr. Grant, I think, Mr. Tanner—A. T. Tanner—and Mr. Richards. That is my recollection in regard to it.

Q. They are under subpœna?

A. I believe so.

Q. Were any other persons present?

A. Yes; Mr. J. P. Williams, who was then, I think, auditor or clerk of the board, simply acting as clerk at that time, and Mr. French—Lafayette French—was either present, or came in very soon after. My recollection now is that he came in very soon after I entered the room. What conversation occurred with reference to this bill of Mr. Baird's, was that the county commissioners asked me some questions with regard to some of the items connected with it; and about that time, Frehch came into the room, and he made some remarks with reference to the bill; and remarks were made with reference to the size of the bill, and the fact that it covered an amount of time, I think, reaching to the past, sometime; that is, covering a time that had been covered by other bills that had been presented. I think some of the commissioners present stated that bills had been allowed covering the same time that this bill had accrued, and some question was raised with reference to it in that regard; that is my recollection. Mr. French took some exception to some remarks that I made with reference to some of the items in the bill, and conveyed the idea, by his remarks, that I had no right to say

anything about the items in the bill, and a statement, perhaps, that he had passed his opinion on the validity of the bill. And one word brought on another, and Mr. French finally made this remark to me, "that I was corrupt in my office." Well, I was perfectly thunderstruck at the remark, so to speak. I didn't know what to make of it, and I answered him in this way: said I, "Young man, you are the first person who ever made any such charge as that against me, and I certainly hope that you will live to see the day that you will regret it." That was the remark that I made to him.

About that time one of the commissioners called the room to order, and stated that the board was in session. I remarked that I was not aware that the board was in session, or I would not have said anything at all, and I apologized to the board, and very soon went out. That was the substance of the conversation with Mr. French.

Q. Right there I will ask you if you either directly or indirectly accused Mr. French of selling out the party "for that contemptable Irishman?"

A. No sir; there was no such expression made at all.

Q. State whether or not Mr. Baird was an Irishman.

A. Not to my knowledge.

Q. It was the Baird bill under consideration?

A. Yes sir, Mr. Riley's name was not mentioned there at that time at all.

Q. State whether or not at that time you said you had no apology to make to Mr. French as he stated here?

A. I think I said this after I had apologized to the board, I think I stated that until Mr. French would retract or correct the statement he had made with reference to myself, that I had no apologies to make to him, I think I said that.

Q. I will now recall your attention to the meeting of the board in 1876 when you appeared before them; I would ask you if anything was said by Mr. Kinsman or any one else to the effect that if the bill was disallowed they would sue the county?

A. Not in my hearing.

Q. Did you state then and there that they could sue the county, or "let them sue?"

A. No such conversation took place in my hearing. Mr. Kinsman and these parties were in there when I went in.

Q. Did you say so?

A. No sir, I did not. They were present, and it appeared from the conversation that seemed to continue after I went in that they had been having a conversation in regard to this bill. I have no knowledge only what I have been informed of.

Q. State when you next heard of this claim of Riley for his fees?

A. The next that I recollect about the bill was this, or in regard to that matter; I think Kinsman sometime stated to me that he and Mr. French had stipulated that a certain case should be tried in vacation before me; either tried by me without a jury as to some issues of fact. I do not now recollect whether he stated what the case was; at any rate, at the time which had been agreed upon previously, Mr. French and Mr. Kinsman appeared at my chambers in Austin, and stated that they had agreed to submit the case to me. My recollection now is, that I didn't know what case it was until they came in. They stated that they had made a stipulation as to the facts in the case, and after some

preliminaries, I think Mr. French took the stipulation to read it. He read the stipulation throughout, and after he had got through reading I said to him, that there was one matter contained in the stipulation that I thought perhaps he was mistaken about.

Mr. LOVELY. We would like the records in that case, Mr. Campbell.

Mr. CLOUGH. They are in evidence.

The Witness. He then asked me what it was, and I called his attention to it; I told him I thought he was mistaken in regard to the facts in the matter; then I went on and stated to him what had occurred in the court room when this matter of the fee-bill came up. I stated that my understanding was, that I had made a sufficient order in the matter with reference to the fees being paid out of the county, or by the county—by the county treasurer. Mr. French then said to me, that he believed that he recollected about that matter himself, "come to think about it;" he was present and heard my statement to the clerk, and stated if those were the facts, he didn't desire to have the stipulation remain; and then he turned to Mr. Stimson—or Mr. Kinsman, I would say, and asked him some questions in regard to it, and Mr. Kinsman did not give him much, if any reply, which I recollect now. I then said to both of them that, if they consented, why, the stipulation would be stricken out; but it was a matter for them wholly to control, or words to that effect.

Q. That provision of the stipulation?

A. Yes, that part of the stipulation. Mr. French insisted that that part be stricken out, after his attention had been called to it. Mr. Kinsman did not object to it—to its being stricken out. I can't say that he stated it in so many words, that he consented to it, but it was the understanding, I think, by all parties, that the stipulation should be stricken out.

Mr. Kinsman, about this time, asked me if I would allow testimony to be introduced showing that I had made a different statement before the county commissioners from what I made then, with reference to the transaction in the court room, when the fee bill came up. I said to him that it didn't occur to me that it was material at all in the issue, I did not see the pertinency of evidence of that kind. That was all that was said. He didn't offer testimony of that kind, or anything further said with regard to it.

Q. State whether testimony was received?

A. After this consultation with regard to it there, either Mr. French or myself—I will not now state which—drew a pen through that portion of the stipulation. I did not insist upon that portion of the stipulation being stricken out. I would not have stricken it out; as I understood it, they consented that it be stricken out; I simply called the attention of Mr. French to it, as I thought, when it was read, that he was probably misinformed as to the facts, and had forgotten that he was present in the court at that time. The case was then tried, Mr. French producing his witnesses.

Q. Who were they?

A. Mr. Elder, I don't know who went after Mr. Elder: Mr. French examined him.

A. Did you send after Mr. Elder?

A. No sir, I did not; I think it occurred in this way: Some person was present, and it was talked by Mr. French or some one else, that

some person should go and call for Mr. Elder; whether it was the sheriff or not I cannot say. Mr. Elder appeared and gave his testimony in the case. Mr. French was also sworn in the proceeding; Mr. French corroborated Mr. Elder's statement. Mr. Elder testified substantially as I have stated here; and Mr. French corroborated Mr. Elder's statement in that regard. No argument was made, and the trial was concluded. No argument was made of any account; there might have been a few words stated, but I think it was submitted without argument, and I stated to the attorneys that I should take the case under advisement, and examine the case carefully. I examined it carefully afterwards, and made my decision on it, and wrote my—

Mr. LOVELY. Wait a moment. We propose now, at this period of the examination to read that part of the record which you have introduced, containing the decision of the Judge on that matter, and spread it upon the record.

Mr. CLOUGH. We have no objection, you can read it all if you wish.

The witness. I think the original is in evidence.

Mr. Lovely here read decision in question, which is as follows:

State of Minnesota, County of Mower—ss.—District Court, Tenth Judicial District.

THOMAS RILEY, *Plaintiff*,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF MOWER COUNTY.

By stipulation in writing the issues of law and fact in the case were tried by the court in vacation, the parties appearing by counsel, C. C. Kinsman, Esq., for plaintiff, and L. French, Esq., for defendant, from the written admissions and evidence offered by the parties, I find the following facts:

I.

That on the first day of March, A. D. 1875, and for some time previous thereto, and afterwards, plaintiff was deputy sheriff of Mower county, and was acting under an agreement with the sheriff of said county that he (plaintiff) might have and collect the fees allowed by law for his services. That on that day, indictments were pending in said court against John Benson, John Walsh and C. A. Beisicker, to which demurrers had been interposed, and which demurrers had not been argued nor determined That afterwards, by counsel, said demurrers were argued and sustained in vacation.

That on said first day of March, on the application of one of said parties, to-wit, John Benson, the clerk of said court, issued a large number of subpœnas for witnesses in all of said cases, to appear on the fifth day of said month, and give evidence at the trial of said causes.

That no issue of facts was joined or then pending therein. The trial had not been ordered to take place, and did not take place at that time.

That plaintiff served said subpœnas, and his bill for such services amounted to the sum of forty-three and 60-100 dollars, which has not been paid. That before the commencement of this action, plaintiff presented said bill to the county commissioners of said county, and payment was refused by them.

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

As conclusions of law I find:

First. That the issuance of subpœnas by the clerk in this case was unauthoirzed That clerks are not required to issue subpœnas in criminal cases unless an issue of fact is pending which is to be tried. The trial of an issue of law on general demurrer requires no witnesses. A defendant who has interposed such a demurrer has no right to assume that it will be ordered. Nor is he required to summon his witnesses and prepare for trial until the issue of law shall have been determined.

If the determination is in his favor, he has no need of witnesses; if against him, the law has made ample protection in giving him four days after plea in which to prepare for trial. Any other construction of the law would give defendants in criminal cases the power to involve a county in unlimited needless expense without securing to himself any further protection than he would otherwise have. See 2 Bis. Stat., page 978, sec 11.

Second. I find further that the costs and fees made in this case are not such as the law contemplates shall be paid out of the county treasury. By the provisions of section 42, page 976, 2 Bissell's Statutes, only such fees are contemplated as are lawful and necessarily made. If a prosecution fails the fees are to be paid by the county unless otherwise ordered. What fees? Evidently such as the law contemplates will be made in the case, and it only contemplates such as are necessary. Hence I conclude that in no event could the fees in this case be paid by the county.

Third. The order made and directed to be entered in open court was sufficient to deprive plaintiff of any right of action against the county for the services claimed. The action must be dismissed with costs.

Ordered accordingly.

SHERMAN PAGE,
District Judge.

Filed Februray 17th, 1877.

F. A. ELDER,
Clerk.

Due service of the within proceedings and order by copy this day admitted. Dated April 3rd, A. D. 1877.

KINSMAN & MERRICK,
Attorneys for Plaintiff.

Q. You may state whether or not you had had any previous difficulty with Thomas Riley, or entertained any malicious feeling toward him.

A. I never had any difficulty with him at all; I never had any acquaintance with Mr. Riley of any account, I do not know that I ever had any acquaintance with him, I have no recollection that I had, he had lived in the town, I knew him by sight.

Q. I believe you stated that you went to the commissioners' meeting at the invitation—

A. Of one of the county commissioners.

Q. At each time you were there I believe you had stated that you were before them twice?

A. Well I don't recollect as to the first time how that was, whether any of the commissioners had spoken to me previous to that time or not, I don't know that they had.

Mr. LOVELY. I believe that is all under article three.

Q. Is there anything else occurring to you under that article but what you have testified to?

A. I don't know of anything except perhaps this: (if it is proper to state) The decision was made after a careful examination of the law and authority. I spent considerable time in examining the matter, and arrived at such conclusion as I considered correct at that time, and do still.

I will state further in connection with that, at the time Mr. Kinsman and Mr. French came up to submit the order to me, I knowing that both of them knew all that I had said with regard to it before the county commissioners, I felt a little surprised at their submitting that issue to me as a matter of fact.

Mr. CLOUGH. I object to that.

Mr. DAVIS. Its force will be acknowledged.

The witness. I don't recollect that I said anything to them in regard to it, I might have done so. I don't recollect that I stated—I considered this that.

Mr. CLOUGH. Wait a moment; never mind what you considered.

Mr. DAVIS. May it please the president, this respondent is on trial here for making unjust decisions corruptly—unlawful decisions; and we have a right to give to this Senate his views or allow him to give to this Senate his views, processes and operations of his mind by which he arrived at the decisions which he reached.

Mr. CLOUGH. In reply to that, I would say, that the judge of that court sat down deliberately at that time and wrote an opinion; we are to take that as an evidence of what he thought about that case.

Mr. LOVELY. Mr. President, that would be very proper if this question were before the supreme court upon an appeal, but that we are engaged here in the trial of Judge Page not for a mistake of law but for a malicious and wilful intention to construe the law to injure a certain individual. His intent is the principal ingredient of these articles from beginning to end, and we claim that inasmuch as that is made the issue and that is the issue which the senate is to determine, and inasmuch as they have charged it and have not only stated that his decisions were illegal, but further than that, that he knew they were, and that he was rendering them for the purpose of maliciously injuring these parties, we have a right to show here that Judge Page has a right to state not only all the matters of fact but what construction he gave in his own mind to those matters of fact at the time he gave them. And if reasonable and proper in connection with the facts that are proved, we take it that such explanation of them will be received by the senate as an answer of these allegations that these acts of the Judge were malicious and with wilful intent.

The PRESIDENT. The witness may go on and state what he considered.

The Witness. At the time the parties come and presented their stipulation, the thought occurred to me as to whether it was a case that I could properly hear; and upon slight reflection, I considered that the stipulations which the parties had entered into, knowing all the facts connected with what I had said concerning the case—took away, removed any impropriety that might otherwise exist, as to my hearing the case. That is all that I—I considered that they had a right to waive any matter of that kind, the same as parties had the right to waive the interest that a jurors might have, if they desired to do so. Cameron and French were both present at the meeting of the board of commissioners, and heard all that I said in regard to it.

Q. Well, if that is all, upon article two, we will go to article three. You may state, judge, what you know of the employment, and action in court, at the January term, 26th, A. D., 1876, of W. T. Mandeville as a deputy?

A. The term which was held in January, 1876—

Mr. DAVIS. Just wait a moment; I would like to ask consent of counsel and permission of the court, before we enter upon the testimony of respondent as to this article, to place Judge Mitchell upon the stand, a little out of order, so that he can leave.

Mr. CLOUGH. No objection.

JUDGE WILLIAM MITCHELL SWORN

On behalf of respondent, testified:

Mr. DAVIS:

Q. Judge Mitchell, you are the judge of the fourth judicial district?

A. Third.

Q. The third judicial district; how long have you occupied that position?

A. Since January '74.

Q. You are acquainted with the respondent, are you not?

A. I am.

Q. Have you had any personal interviews with him in 1874, '75' 76, and '77 in regard to your holding court for him in Mower county?

A. No personal interviews.

Q. Do you produce any letters wherein he makes such request?

A. I have some such letters; all that I could find in my correspondence.

Q. Are these the letters?

(Papers handed to witness).

A. These are the letters.

Q. Will you select the one first in date?

Mr. CLOUGH. Read it.

Mr. DAVIS (reading).

AUSTIN, February 21, 1874.

Hon. William Mitchell:—There is quite a large number of cases on the court calendar in this county in which I am interested as attorney and otherwise; I have, during the past year, made repeated efforts to get some one to try them, but without success; I dislike very much to call upon you, still it seems to be my duty to do so. Can you name any time during the coming spring or summer when you will agree to come here and hold an adjourned term? I write you now for the reason that our March term of court commences on the third proximo, and I would like an answer before that term closes. Will you go to Fillmore county and try one case the first Monday in June? it is an old murder case."

Q. Judge Mitchell, did you answer this letter?

A. I did.

Q. It is in testimony here that your answer no longer exists, Will you state your recollection as to what answer you made to that letter?

A. I have very little recollection of it. My recollection is that it was a consent to go if I could, but some uncertainty as to when I would be able to attend on account of engagements in my own district.

Q. Did that correspondence and uncertainty result in your going on the basis of that letter?

A. It did. I went in the early part of July.

Q. 1874?

A. 1874.

Q. That was an adjourned term, I believe.
A. I so understood it.
Q. Did you proceed to open and hold a term there?
A. I did.
Q. Were you ready to try all cases that were to be tried?
A. I was.
Q. Jury cases called?
A. Yes sir.
Q. Was there a jury in attendance?
A. That is my very distinct recollection.
Q. Do do you recollect calling the calendar?
A. It is my recollection that I called both the civil and criminal calendar.
Q. Jury and court cases?
A. Jury and court; the attention of the witness is called to page 98 of the court calander, the entry of the State of Minnesota against D. S. B. Mollison.
Q. Is there anything in that entry or on that page, by which you recognize it; on either page by which you recognize it?
A, There is.
Q. What is it, Judge Mitchell?
A. It is an entry made by myself.
Q. Read it, please.
A. "Continued by consent."
Q. That is opposite the entry of the case?
A. State against ——
Q. State against Mollison?
A. Yes, sir.
Q. That is your handwriting, is it?
A. It is.
Q. Have you any recollection independent of that entry, or your mind refreshed, by it, as to the circumstances connected with that continuance by consent?
A. My recollection is that the county attorney was in court at that time, who I think was Mr. Wheeler; and my recollection is that Mr. Cameron was in court, and who appeared on the calendar, as the attorney, or one of the attorneys, for the defendant.
Q. And that they consented?
A. That is my recollection.
Q. Did you try any jury cases that term, Judge Mitchell?
A. I did not; I found no jury cases ready for trial, or to be tried.
Q. Have you stated all that relates to this term that you think of in regard to this Mollison case?
A. That is all. The only thing that was done with regard to this case was its continuance.
Q. Did you produce other letters from Judge Page, requesting your services as judge?
A. I have some others here on that subject matter.
Q. Let me ask, Judge Mitchell, if during these years, Judge Page changed, and held court for you?
A. I think he has not; I think I had some correspondence with him once, about holding or trying some cases for me, but his own engagement prevented.
Q. Is this letter of April 6th, with reference to that matter?

A. My recollection is that this was written in answer to some letter I had written him, as to my probably calling on him.

Mr. DAVIS. [Reading.]—

Austin, April 6th, 1874.

Hon. William Mitchell—

Dear sir:—If possible, make arrangements not to call on me during this month. Since your letter was received I have had notice of several important matters, to be brought up from other counties, and which cannot well be deferred during this term.

I will hold myself in readiness to respond to your call at almost any time in the future, will write you again with reference to the Fillmore case, and July special term.

Yours truly,

S. PAGE."

Mr. DAVIS. I now offer, in evidence, a letter dated June 27th, 1874.

"AUSTIN, June 27, 1874.

Hon. William Mitchell, Winona,

DEAR JUDGE: Yours of the 23d is just received. On my return from Freeborn Co. term, a jury has been ordered and summoned for the adjourned term, July 7th, with the understanding that you would be here. From what I can learn from the attorneys, I think that most of the business set for this term, will be deferred, and that not more than two or three jury cases will be tried. There is a large number of old cases involving title to real estate which I had hoped would be tried, but am informed that the parties are not ready. I do not think you will have to remain more than three days, at the outside. It would probably not be praticable to continue all the cases by consent. However, if you should be unable to attend from any cause, the results would not be very serious, I apprehend, though I hope you may be able to be here. I, also, intended to go East in July, but find it difficult to leave the business of my office.

Truly yours,

S. PAGE."

Q. Judge Mitchell, what is the practice in your district as to defendants obtaining the process of subpœna from the clerk in crimina cases?

Mr. CLOUGH. I object to that as being immaterial.

Mr. DAVIS. Well, I would like to hear the ground of the learned counsel's objection.

Mr. CLOUGH. There is an express statute upon the issuance of subpœnas in criminal cases, and I apprehend that would govern in any event. If the practice in Judge Mitchell's court should not happen to conform to that statute, I suppose it would make no difference; if it does, it certainly won't make any difference.

Chapter 92 of the General Statutes of 1876, section 11, reads as follows—(the title of this chapter is "the rights of person accused"):

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

I apprehend that whatever the practice may be in Judge Mitchell's court, it will make no difference in this case. There is a plain statute upon the subject.

Mr. DAVIS. Well, may it please the court, that assumes precisely one of the many issues which this body will be called upon to determine, and that is as to what this statute means. My learned associate was heard this morning, in an elaborate argument upon the true construction which the law requires. Now, if this statute has been practically construed, in courts of great respectability in this State, if a practice has grown up by it, warranted by judicial sanction not existing in reported volumes, it is true, but still provable by the declarations of lawyers, and of the judges, who have created and enforced it, surely we have the same right to refer to those sources of information, as I have to go into the library and produce before this body a volume of the Supreme court reports, wherein the decisions of that court are invariable printed.

Again, if such a practice as that has grown up in this State, and such a construction has been given to it; or, if it were not such a construction, it seems to me to bear most materially upon the question whether the respondent at the bar, as it is charged, has wantonly trodden down—as has been argued and will be argued here—that which my learned friend asserts is positively given.

Again, may it please the Senate, the construction of this section 11 is not so entirely clear: "The clerk of any court at which any indictment is to be tried, shall, at all times, upon the application of the defendant, issue a subpœna."

So far as the case at the bar is concerned, upon the testimony already in, it was not apparent at the time when these subpœnas were issued by the clerk, that that indictment ever would be tried in that court at all. In fact, the defendant, by coming in and putting in his demurrer, had asserted to the court that in his opinion it never would be tried, because he proposed to confess the facts in the indictment. We submit the question to the consideration of the Senate.

The PRESIDENT. I will submit the question to the Senate. The clerk will call the roll.

The question being taken on admitting the question in evidence, and

The roll being called, there were yeas 30, and nays none, as follows:

Those who voted in the affirmative were—

Messrs. Armstrong Bailey, Bonniwell, Clement, Deuel, Donnelly, Doran, Edwards, Finseth, Gilfillan C. D., Gilfillan John B., Goodrich, Henry, Hersey, Langdon, Macdonald, McClure, McHench, McNelly, Mealey, Morrison, Morton, Nelson, Pillsbury, Remore, Shaleen, Smith, Swanstrom, Waite and Wheat.

So the question was admitted.

The witness. In what respect Governor? I don't fully understand.

Mr. DAVIS. I want to know, what the practice in your district is, in regard to how the defendant proceeds to obtain subpœnas, mean blank subpœnas of the clerk; when that defendant is under indictment, to be served at the expense of the county.

A. The custom has been, for the counsel to apply to the court for a direction to the clerk and sheriff; I found that custom in existence, when I went on the bench, and it has so continued up to this time, so far as I now recollect.

Q. Upon that application, whether or not, is it the custom of the court to hear and determine upon the grounds of application?

A. They are ordinarily directed to be issued almost as a matter of form, at least upon the attorneys stating that the defendant is unable to pay for the subpœnas.

Q. My question is this, whether the court muet not be satisfied that some ground such as poverty, insolvency, or something of that kind, exists for the use of the public funds?

A. When they ask for the service at the expense ot the State, that has been my custom.

Q. State whether or not such subpœnas are ever issued while a demurrer is pending, before an issue of fact is joined?

A. I don't now recollect of any having been issued under such circumstances, nor do I now recollect of any such application having been made until there was an issue of fact formed by the plea.

CROSS EXAMINATION.

Mr. CLOUGH. Q. Gov. Davis has asked you about the practice in your court in the 3rd district. I will ask you another question, is it the practice of the judge of the court in the 3rd judicial district, so far as you know, to appear before the board of county commissioners of the various counties to oppose bills of the officers when they come in there.

Mr. DAVIS. I object to the evidence as not proper cross examination.

Mr. CLOUGH, It is withdrawn. [Laughter.]

Q. Judge Mitchell, has the question of rights of defendants in criminal cases under the provision of statute which I read ever come up, to your knowledge, for determination?

A. It never has.

Q. It never has been passed upon?

A. I simply found that custom in existence when I went on the bench, and it has so continued.

Q. But no question has been raised as to what the rights of the defendant are under that provision of the law?

A. It has never been raised.

Q. Have you any recollection, judge, as to what kind of a jury appeared before you in July, 1874; whether it was the jury of the March term that adjourned over, or a special jury.

A. I have no recollection on that subject. Being an adjourned term I perhaps had the impression it was the same term; I got the impression that it was carried over from the March term.

Q. Do you remember of the fact of any jury being in court and called?

A. There was no jury called; there was no jury case tried.

Mr. DAVIS. I suppose you mean, Mr. Clough, whether the venire was called.

Mr. CLOUGH. Yes, sir, whether the names of any jurors were called in court or whether the jury was called.

The witness. I don't think the list of jurors was called.

Q. Do you remember of a couple of criminal cases on the calendar for that term of court, entitled the State of Minnesota vs. Davidson & Bassford, for alleged libels against Judge Page?

A. I have very little recollection of any case; I knew nothing about any particular case before I went there; have an impression that there was a demurrer argued in one of those cases.

Mr. CLOUGH. I call the attention of the witness to page 99, of this same court calendar, the State of Minnesota against Davidson & Bassford. There appears upon page 100 or the page opposite the entry of "Demurrer filed." That is in your handwriting is it?

A. Yes sir.

Q. Now, do you remember of a demurrer in this case being argued and submitted at that term?

A. I recollect that there was one demurrer if not two in criminal cases argued and submitted, and, on seeing that entry, I have no doubt but that is one of them.

Q. If a demurrer was argued and submitted at that term, as appears from these minutes, the case was decided shortly after wasn't it?

A. The demurrer or demurrers that were argued or submitted at that term, I decided within a week or ten days after returning home.

Q. And filed your decision in the court of Mower county?

A. I presume I sent the decisions to the clerk.

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

A. I do not.

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

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

Q. Your recollection is not clear upon what did occur there?

A. As to any remarks made by counsel, it is not.

Q. Have you any distinct recollection at all of Mr. Cameron appearing in court, on that occasion, as counsel for Mr. Mollison?

A. I recollect he was in court.

Q. Well, do you remember of his acting, or arguing anything in respect to the continuance of the Mollison case at that term?

A. I have no distinct recollection except finding his name there as attorney on the calendar, and either he or Mr. Wheeler said, "continued by consent," and I so marked it, there being no objection made to that statement.

Q. Now, might not Mr. Wheeler have been the man that made that statement "continued by consent" and not Mr. Cameron?

A. He might have been; I don't pretend to say which one made the statement.

Q. Do you remember, as a matter of fact, whether Mr. Cameron's name to the suit appeared on this calendar when you called it over?

A. No answer.

Q. Do you have any recollection of seeing those names, Cameron and Crane, as attorneys for defendant on the calendar, at all, when you called the calendar?

A. I don't think I have any distinct recollection of that.

Q. No recollection on that subject, whether those appeared there at that time or not?

A. I have not.

Q. I will ask you whether those names, Cameron and Crane, as attorneys for Mollison, is in your handwriting?

A. It is not.

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

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

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

A. There are.

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

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

RE-DIRECT EXAMINATION.

Mr. DAVIS. Q. One question, Judge Mitchell; do you remember discharging the jury present at that special term for want of business?

A. I have quite a distinct recollection, that finding there were no jury cases to be tried, I discharged them the same day that court was convened.

On motion, court adjourned.

Attest:

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

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